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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

**CASE MANAGEMENT
STATEMENT; JOINDER IN CASE
MANAGEMENT STATEMENT OF
BOLTHOUSE PROPERTIES, LLC**

Date: January 9, 2009

Time: 1:30 p.m.

Dept.: 1

1 Plaintiff Richard Wood (“the Small Pumpers Class”) submits this case
2 management statement on the issue the right to a jury trial, and joins in the case
3 management statement of Bolthouse Properties and the various other unresolved issues
4 set forth in the therein, as further addressed in the Joint Statement filed November 21,
5 2008.

6
7 **I. THE SMALL PUMPERS CLASS HAS A JURY RIGHT TO THE ISSUES**
8 **IN THE PHASE III TRIAL.**

9 In its November 25, 2008 Minute Order, the Court suggested that the Phase III
10 trial issues would be the determination of safe yield and overdraft. It also requested
11 briefing on whether a right to a jury trial existed for these issues. It does.

12 For the reasons discussed below, the Small Pumpers Class have a right to a jury in
13 the Phase III trial. Since the Small Pumpers class members are, by definition, overlying
14 landowners within the Antelope Valley Area of Adjudication, their right to pump
15 groundwater for a reasonable beneficial use is superior to other claimants. Thus, from
16 their perspective, the Phase III issues are relevant to whether their pumping can be
17 impaired for non-overlying use. This relevancy implicates legal (as opposed to equitable)
18 rights and, therefore, creates a right to trial by jury.

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20 **II. THE COURT SHOULD ‘ZEALOUSLY GUARD’ THE WOOD**
21 **CLASSMEMBER’S RIGHT TO A JURY TRIAL.**

22 The right to a jury trial is guaranteed by the California Constitution. (Cal. Const.,
23 art. I, § 16.) As a general rule, a jury trial is a matter of right in a civil action at law, but
24 not in equity. “In determining whether the action was one triable by a jury at common
25 law, the court is not bound by the form of the action but rather by the nature of the rights
26 involved and the facts of the particular case—the gist of the action. A jury trial must be
27 granted where the gist of the action is legal . . . on the other hand, if the action is

1 essentially one in equity and the relief sought ‘depends upon the application of equitable
2 doctrines,’ the parties are not entitled to a jury trial.” (*C & K Contractors v. Amber Steel*
3 *Co.* (1978) 23 Cal.3d 1, 9.)

4 Although the ‘gist’ of the current coordinated action is somewhat opaque, at
5 bottom, the public water purveyors claim that their pumping of groundwater during
6 lengthy periods of overdraft has established their right to continue pumping over
7 objections from various overlying landowners. The gist of this is a claim of prescription,
8 which must be established at law.¹ The water purveyors concur that the assertion of their
9 water rights is based on acquisition by adverse possession. (Water Purveyor Brief Re:
10 Trial Phasing, 3:25.)

11 To the extent there is some doubt as to the ‘gist’ of the action, the burden rests
12 firmly with those parties claiming that no right to jury trial exists. The Supreme Court
13 has stated “The right to a trial by jury is fundamental and ‘should be zealously guarded
14 by the courts.’ ‘In case of doubt . . . the issue should be resolved in favor of preserving a
15 litigant’s right to trial by jury.’” (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396,
16 411.) Moreover, a right that existed at common law cannot be converted into an
17 equitable right by legislative action. In other words, the fact that water law is largely
18 statutory cannot change the ‘gist’ of the action so as to defeat the right to a jury trial.
19 “[T]he Legislature cannot ‘by providing new remedies . . . in form equitable,’ convert a
20 legal right ‘into an equitable one so as to infringe upon the right of trial by jury.’”
21 (*Wisden v. Superior Court* (2004) 124 Cal.App.4th 750, 755.)

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26 1 Although the Small Pumper class members are nominally plaintiffs, this action is
27 largely a defensive class action in which they seek to retain their right to pump
28 groundwater against the water purveyors’ claims of prescription.

1 **III. THE PHASE III ISSUES ARE LEGAL IN NATURE, AND THEREFORE**
2 **CARRY A RIGHT TO A JURY.**

3 Even if the Phase III trial was to focus on overdraft and safe yield, the gist of such
4 issues is legal: the determination of safe yield and overdraft only have relevancy in that
5 they bear on the various parties' rights to pump groundwater. Whether the Small Pumper
6 class members seek to enjoin pumping based on their rights as overlying landowners or
7 the water purveyors seek a declaration of priority, the issue is one of prescription. This is
8 made clear by the Supreme Court's decision in *City of Barstow v. Mojave Water Agency*
9 (2000) 23 Cal.4th 1224.

10 In the *City of Barstow* case, the Court reviewed a physical solution to a
11 groundwater basin in overdraft. The Court held that legal water rights, including those of
12 overlying landowners, must be considered in any apportionment of limited groundwater
13 resources.² (*Id.*, 23 Cal.4th at 1233.) The Small Pumper class members, as overlying
14 landowners, have a right superior to all others to pump groundwater for their reasonable
15 beneficial use. (*Id.*, 23 Cal.4th at 1240.) That right will always be superior to non-
16 owners' pumping rights, unless non-owners can show they have obtained rights as
17 appropriators, i.e., through prescription. As the Court summarized, "Proper overlying
18 use, however, is paramount and the rights of an appropriator, being limited to the amount
19 of the surplus, must yield to that of the overlying owner in the event of a shortage, unless
20 the appropriator has gained prescriptive rights through the [adverse, open and hostile]

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22
23 ²The first two sentences of the Court's opinion go a long way towards answering the
24 question of whether a jury right exists in a groundwater apportionment: "We granted
25 review to determine whether a trial court may definitively resolve water right priorities in
26 an overdrafted basin with a "physical solution" that relies on the equitable apportionment
27 doctrine but does not consider the affected owners' legal water rights in the basin. We
28 conclude it may not." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,
1233; footnote omitted.) If **legal** rights must be considered, the gist of the action must be
one at law.

1 taking of nonsurplus waters.” (*Id.*, 23 Cal.4th at 1241.) “Nonsurplus waters” are those
2 pumped in excess of a basin’s safe yield, i.e., when the basin is in overdraft.

3 Thus, the Phase III issues are relevant, at least to the extent the Small Pumper
4 class members are concerned, to the issue of prescription. And the establishment of a
5 right gained by prescription is, historically, an action at law.

6 The later point is made in *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114,
7 where the court of appeal held that a party claiming a prescriptive easement in a farm
8 road had a right to a jury trial. (*Id.*, 17 Cal.App.4th at 123.) The court noted that actions
9 to establish the existence of a prescriptive easement carried the right to trial by jury prior
10 to the adoption of the California Constitution in 1850; therefore, they continue to carry
11 the right to trial by jury today.

12
13 **IV. THE SMALL PUMPERS CLASS HAS NOT WAIVED ITS RIGHT TO A**
14 **JURY.**

15 Assuming for the sake of argument that a right to a jury existed in the Phase I or
16 Phase II trial, the Small Pumper class members could not have demanded a jury at either
17 phase. Thus, they cannot have waived their right to demand a jury for all future trial
18 phases. Indeed, they demand a jury for Phase III.

19 The Wood class did not exist at the time of the Phase I trial. And while the class
20 was certified before the Phase II trial, the class had not received notice of the
21 proceedings. The notice to these putative class members will not issue for at least two
22 more months.

23 Counsel for the Wood class participated in the Phase II trial by observation only.
24 The class had no position (and could not have appropriately taken any position) on the
25 sub-basin issues tried in Phase II. Indeed, because some of members of the Wood class
26 almost certainly reside in areas that various parties contended should be excluded from
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1 the proceeding, the Wood class lacked the commonality needed to participate in Phase II
2 in a coherent manner.

3 Commonality exists with respect to the Phase III issues. The Small Pumper class
4 members will participate in the Phase III trial. This will be their initial trial appearance
5 and they demand a jury.

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7 DATED: January 2, 2009

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

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By: _____ //s//
Daniel M. O'Leary
Attorneys for Plaintiff

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PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **CASE MANAGEMENT STATEMENT; JOINDER IN CASE MANAGEMENT STATEMENT OF BOLTHOUSE PROPERTIES, LLC**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 2, 2009, at Los Angeles, California.

Carol Delgado