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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

**CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: February 27, 2009
Time: 10:30 a.m.
Dept.: 17c (telephonic)

1 Plaintiff Richard Wood (“the Small Pumper Class”) submits this case management
2 statement regarding the status of service of the Small Pumper Class Notice.

3
4 **A. ASSEMBLING THE DATABASE**

5 As indicated in at the last case management conference, counsel for the Small
6 Pumper Class met in January with William Leever of Wildermuth Environmental to
7 discuss the construction of the database to be used for the Small Pumper Class notice
8 mailing.

9 Wildermuth has been solely charged with gathering raw data for landowners in the
10 adjudication area meeting certain parameters. Mr. Leever gathered data along following
11 parameters:

- 12 1. He generated a list of all landowners owning property that sits outside the
13 current service areas of the various public water suppliers, and narrowed
14 this list down to only those parcels that were shown on public records to be
15 improved. The assumption here is that if a property is outside the water
16 service areas and improved, then that property must be actively using
17 groundwater, or likely was at sometime in the past.
- 18 2. Mr. Leever obtained a list of all customers inside the water service areas for
19 Los Angeles Waterworks District 40, Rosamond, and California Water
20 Service Company,¹ and compared those against all landowners inside those
21 districts. The assumption here was that if an improved property was inside
22

23
24 ¹Mr. Leever stated that a number of the public water suppliers did not provide him with their
25 customer lists, so he was unable to perform this analysis for those purveyors. Given the scope of
26 the Court’s order on the class definition, this analysis must either be completed, the class
27 definition should be modified to exclude landowners inside the service areas, or all landowners
28 within the remaining service districts should receive the Notice. (Parenthetically, this latter
category was added to the Small Pumper class at the insistence of the United States.) Palmdale
Water District apparently did its own in house analysis on this issue, but counsel for PWD,
Thomas Bunn, refuses to provide a declaration specifying what was done in this regard.

1 a water district but was not receiving water, that property was serviced by a
2 well.

3 Wildermuth has turned this raw data over to defense counsel (Best, Best &
4 Krieger), who then process it in some fashion to make it useable for mailing. The
5 database for these two categories of class members is not complete. Counsel is informed
6 by defense counsel that it will take several more weeks to clean up this data and assemble
7 it in a format suitable for mailing. About five thousand of the raw data entries are
8 missing primary mailing addresses. In addition, there are quite a number of 'data
9 mishaps' that occurred in the Willis notice mailing that caused unknown numbers of
10 potential class members not to be given notice. For example, it is believed that Richard
11 Wood did not get notice because his name is similar to two other landowners in the
12 valley, and was thus purged from the database.² These issues need to be reviewed and
13 corrected. Plaintiff's counsel was not told how long that will take to complete.

14 These two categories of potential small pumpers will be supplemented by an
15 additional group of people who identify themselves as pumpers in response to the Willis
16 class notice. Because of the volume of tens of thousands of these forms, counsel is
17 informed by Best, Best & Krieger that it will take approximately six more weeks to
18 process the forms and assemble this section of the small pumper database.

19 Counsel for the water suppliers and the Class have agreed that all those who are
20 sent the Small Pumper Class Notice will be presumed to be class members, i.e. if they do
21 not opt-out they will remain in the class. For this reason, it is important that database for
22 mailing be as accurate as possible. Once counsel for the Class receives the database, at
23

24 ² As the Court will recall, the Willis notice was allegedly sent to all of the Small Pumper class
25 members as well, without consent of counsel or the Court. Small Pumper counsel is aware of
26 many small pumpers who did not get the Willis notice. To wit, at this point, there are only a few
27 hundred people who have returned the Willis notice and identified themselves as pumpers (out of
28 an estimate 7,500 to 10,000). This would tend to support the conclusion that there are serious
glitches in the database refinement process that need to be identified and corrected before the
Small Pumper Notice is mailed.

1 least a week will be needed to review it for accuracy.

2 **B. OTHER CLASS NOTICE-RELATED WORK**

3 On February 21, Counsel submitted a revised class notice that has been approved
4 in form and content by Jeffrey Dunn and Thomas Bunn. Their comments and changes
5 have already been included in the modified draft now before the Court.

6 Counsel has conferred with defense counsel on design issues for the website to be
7 used in conjunction with the Small Pumper Class notice. Best, Best & Kreiger has begun
8 updating the website, and it is anticipated that the remaining content will be delivered
9 within a week. Within a week thereafter, the appropriate testing should be completed,
10 allowing mailing to occur as soon as the database is complete.

11 There have been no discussions as of yet as to the content of the notice to be
12 published in newspapers, but Class counsel does not anticipate that content will
13 materially deviate from what is contained in the proposed Notice.

14
15 **C. ANSWERS TO CLASS DEFINITION QUESTIONS**

16 In its case management statement AGWA posed a number of questions regarding
17 the class definition. The position of the Small Pumper Class on those questions is as
18 follows.

- 19 1. The 25 acre-foot per year cutoff relates to each individual parcel.
- 20 2. As the Court has indicated, this is essentially an in rem action. Therefore,
21 an individual with multiple parcels may be a member of both class actions,
22 or may be a member of one class action with regard to one parcel, and may
23 represent himself or herself individually or through joint representation on
24 any other parcel.
- 25 3. Whether or not commonly owned parcels are contiguous is irrelevant.

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4. A landowner who pumped groundwater at any point in time since 1946 is a member of the Small Pumper Class.

DATED: February 23, 2009

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

By: _____ //s//
Michael D. McLachlan
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and am not a party to the within action. My business address is 523 West Sixth Street, Suite 215,
4 Los Angeles, California 90014.

5 On February 23, 2008, I caused the foregoing document(s) described as **CASE**
6 **MANAGEMENT CONFERENCE STATEMENT** to be served on the parties in this
7 action, as follows:

- 8 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa
9 Clara County Superior Court website: www.scefilings.org regarding the Antelope Valley
10 Groundwater matter.
11 () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and
12 processing of documents for mailing. Under that practice, the above-referenced
13 document(s) were placed in sealed envelope(s) addressed to the parties as noted above,
14 with postage thereon fully prepaid and deposited such envelope(s) with the United States
15 Postal Service on the same date at Los Angeles, California, addressed to:
16 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other
17 overnight delivery service, for delivery on the next business day. Each copy was
18 enclosed in an envelope or package designed by the express service carrier; deposited in a
19 facility regularly maintained by the express service carrier or delivered to a courier or
20 driver authorized to receive documents on its behalf; with delivery fees paid or provided
21 for; addressed as shown on the accompanying service list.
22 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of
23 facsimile transmission of documents. It is transmitted to the recipient on the same day in
24 the ordinary course of business.
25 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the above is true and correct.
27 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of
28 America that the foregoing is true and correct.

//s//
Carol Delgado