

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 523 West Sixth Street, Suite 215
4 Los Angeles, California 90014
5 Telephone: (213) 630-2884
6 Facsimile: (213) 630-2886
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 523 West Sixth Street, Suite 215
11 Los Angeles, California 90014
12 Telephone: (213) 630-2880
13 Facsimile: (213) 630-2886
14 dan@danolearylaw.com

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))

Judicial Council Coordination
Proceeding No. 4408

20 ANTELOPE VALLEY GROUNDWATER
21 CASES

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

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

Case No.: BC 391869

**RICHARD WOOD'S NOTICE OF
MOTION AND MOTION FOR
ORDER ALLOCATING COSTS OF
COURT-APPOINTED EXPERT
WITNESS**

25 Plaintiff,

26 v.

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

Date: June 5, 2009
Time: 2:00 p.m.
Dept.: 17C

Defendants.

TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on June 5, 2009, at 2:00 p.m., in Department 17C
of the Santa Clara Superior Court, located at 161 North First Street, San Jose, California

1 95113, a hearing will be held on plaintiff Richard A. Wood's Motion for Order
2 Allocating Costs of Court-Appointed Expert.

3 The motion is based on this Notice, the attached Memorandum of Points and
4 Authorities, the attached exhibits, Evidence Code section 731, and such other and further
5 evidence as the Court adduces at the hearing.

6
7 DATED: May 12, 2009

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

8
9
10 By: _____ //s//
11 Daniel M. O'Leary
12 Attorneys for Plaintiff

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. APPLICABLE LAW**

2 Evidence Code section 730 grants the Court authority to appoint an expert witness
3 under appropriate circumstances. As is relevant to this motion, it states “The Court may
4 fix the compensation for these services, if any, rendered by any person appointed under
5 this section, in addition to any service as a witness, at the amount as seems reasonable to
6 the court.” Evidence Code section 731 provides that “in all civil cases, the compensation
7 fixed under Section 730 shall, in the first instance, be apportioned and charged to the
8 several parties in such proportion as the court may determine and may thereafter be taxed
9 and allowed in like manner as other costs.”

10 **II. APPLICABLE FACTS**

11 The Court granted Richard Wood’s motion for the appointment of an expert
12 witness, but initially stayed its order pending the Phase III trial. Counsel for Mr. Wood
13 and counsel for the Public Water Purveyors subsequently entered into a stipulation lifting
14 the stay to allow for the expert’s service to conduct data-gathering and field services in
15 connection with water usage by small groundwater pumpers within the area of
16 adjudication. The Court entered an order on this stipulation on May 6, 2009.

17
18 **III. THE COURT SHOULD ALLOCATE THE EXPERTS COSTS,
19 INCLUDING FEES, TO THE PUBLIC WATER PURVEYORS.**

20 Mr. Wood now moves for an order apportioning the costs of the court-appointed
21 expert among the Public Water Suppliers,¹ or, more specifically, the Public Water
22 Suppliers that are the defendants in Mr. Wood’s complaint. These are the parties in the
23 entire proceeding who are most directly affected by the Wood class of small groundwater

24
25 1 The Public Water Suppliers are Los Angeles County Waterworks District No. 40; City Of
26 Lancaster; City Of Los Angeles; City Of Palmdale; Palmdale Water District; Littlerock Creek
27 Irrigation District; Palm Ranch Irrigation District; Quartz Hill Water District; Antelope Valley
28 Water Co.; Rosamond Community Service District; Mojave Public Utility District; California
Water Service Company, Desert Lake Community Service District, North Edwards Water
District, and Phelan Pinon Hills Community Service District.

1 pumpers. The allocation among the Public Water Suppliers should be either equal or
2 proportionate to their current respective pumping volumes.

3 While Wood is cognizant that the Court has articulated an intention to allocate the
4 expert costs across both the water purveyors and landowner parties, the landowners are
5 not parties to the Wood action. Wood has not sued them; the class has not sued them;
6 and they have not sued the class. While the Court may ultimately fashion a physical
7 solution that affects their respective rights, they have not brought any claims against one
8 another.

9 Under Evidence Code section 731(c), the allocation of the expert costs to the
10 Public Water Suppliers would be a recoverable cost in the event the small pumper class
11 ends up in a contested trial in which the Public Water Suppliers prevail. But, at least as
12 the pleadings currently exist, it could not be a recoverable cost since there are no claims
13 in which the small pumper class and other overlying landowners are adverse. And while
14 it is conceivable that the court-appointed expert could testify in a trial that did not involve
15 class claims, such is not likely given the anticipated scope of work.

16 Thus, it makes sense to allocate the expert costs to the Public Water Purveyors.

17 DATED: May 12, 2009

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

18
19
20 By: _____ //s//

Daniel M. O'Leary
Attorneys for Plaintiff

PROOF OF SERVICE

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

On May 12, 2009, I caused the foregoing document(s) described as **RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER ALLOCATING COSTS OF COURT-APPOINTED EXPERT WITNESS**

be served on the parties in this action, as follows:

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

//s//
Carol Delgado