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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

**RICHARD WOOD'S CASE
MANAGEMENT STATEMENT**

Date: March 22, 2010

Time: 9:00 a.m.

Dept.: 1

1 Plaintiff Richard Wood respectfully submits this brief in the hope that the Court
2 will reconsider the impact of recent rulings on the Small Pumper Class (the “Class”).

3 **1. The Case Cannot Proceed to a Phase 3 Trial Without the Work of the**
4 **Court-Appointed Expert Being Presented As Evidence**

5 The contemplated posture of this case at the Phase 3 trial deprives the Small
6 Pumpers’ Class of the necessary adequacy of representation. The inadequacy of
7 representation arises from the Court’s decision not to allow the court-appointed expert to
8 do the work necessary to assess the class’ water use. This decision, in the context of this
9 case as currently postured, will violate the due process rights of the absent class
10 members.

11 Prior to notice being provided to the class, class counsel insisted, quite vigorously,
12 that an expert be appointed under Evidence 730 to ensure that class counsel could
13 properly represent the interest of the class. The class members are largely indigent, and
14 have no mechanism for funding their own expert. Class counsel cannot do so because
15 they are prohibited from recovering such expert costs in this context unless appointed by
16 the Court. Because the interests of the class dictated the retention of an expert to perform
17 work related to assessing the water usage of the class members and the class, the Court
18 appointed an expert.

19 By way of its recent ruling, the Court effectively reversed its prior ruling
20 appointing the expert. The fact that there has been no assessment of the individual or
21 collective pumping of the Small Pumper Class is not in dispute. Plaintiff can cite to no
22 filing in this case, nor any representation by any attorney to these proceedings to the
23 contrary. There similarly appears to be no disagreement on the proposition that in order
24 to determine the safe yield of the basin, evidence will have to be submitted relative to the
25 water use of the Small Pumpers.

26 Clearly this work will have to be done. As the Court has opined, the burden to do
27 that work falls on the Water Suppliers. Thus, it appears that instead of paying the neutral

1 court-appointed expert to make assessment, the Water Suppliers will end up paying Mr.
2 Scalaminini and company to cook up an opinion on the water use of the Class, which will
3 likely come into evidence unrebutted. Presumably, to reach the ultimate finding on the
4 question of whether the basin is in overdraft, the Court will need to make a finding of fact
5 as to the water usage of the Small Pumpers class. That factual finding will then be law of
6 the case.

7 When the Small Pumpers endeavor to assert their self-help defense in later phases
8 of this trial, they will be limited by that finding of fact, in whatever timeframe it may
9 apply. Hence, the likely outcome will be that the Water Suppliers will not have saved
10 any money on expert fees related to this issue, but they will have purchased the ability to
11 have their own advocates set the number as they deem fit.

12 Under this scenario, Plaintiff and his counsel cannot adequately represent the
13 interests of the class, rendering the ultimate judgment meaningless if challenged.
14 Without adequate representation, a resolution of class claims “cannot satisfy due process
15 as to all members of the class.” (*Hesse v. Sprint Corporation* (March 11, 2010) 2010 WL
16 790340 *4 (citing *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812).) “To
17 satisfy constitutional due process concerns, absent class members must be afforded
18 adequate representation before entry of a judgment which binds them.” (*Hanlon v.*
19 *Chrysler Corp.* (9th Cir. 1992) 150 F.3d 1011, 1020.) For due process to obtain, the class
20 representative must be able to vigorously prosecute the action on behalf of the class.
21 (*Ibid.*)

22 Richard Wood cannot adequately represent the interest of the class at the Phases 3
23 trial. Either the court-appointed expert should be permitted to do the contemplated work,
24 or the class should be decertified.

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If the case is to proceed as consolidated, new notice must be given to the class members.

DATED: March 22, 2010

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

By: _____ //s//
Michael D. McLachlan
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 March 18, 2010, I caused the foregoing document(s) described as **RICHARD WOOD'S CASE MANAGEMENT STATEMENT** to 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.scefilings.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//
Ana Horga