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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

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

Plaintiff,

v.

LOS ANGELES COUNTY 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

SMALL PUMPER CLASS' REPLY BRIEF REGARDING WILLIS MOTION FOR ATTORNEYS' FEES

Plaintiff Richard Wood offers the following Reply Brief in response to the various purveyor oppositions to Rebecca Willis' motion for attorneys' fees because a number of the issues may ultimately impact the small pumper class.

A. The Purveyors Are Responsible for the Vast Majority of the Fees Incurred by Virtue of Their Refusal to Settle the Willis Case.

Ten people walk into the fanciest French restaurant in town and occupy the prime table for the entire evening, ordering a dozen courses and a healthy supply of wine. At the end of the meal, the bill is substantial. With great surprise, the members of the party exclaim that the bill is too high, that they cannot afford to pay it, and that they did not really enjoy the food sufficiently to justify the price. After further negotiations and unsuccessful attempts to slip out the back door, the group suggests that their bill could be fully satisfied by spreading it across the bills of all the other patrons in the restaurant.

This analogy fairly summarizes the position of the purveyors relative to the class actions. In approximately 65 pages of opposition briefing, the purveyors fail to explain the most important factor in the generation of the Willis class counsels' legal fees: the refusal of the purveyors to resolve the class cases in a timely fashion. Both classes could have been and should have been resolved in 2008, shortly after they were certified. There is no indication in the record that Rebecca Willis or class counsel were anything other than willing to resolve the matter at any juncture in the litigation. For reasons that the purveyors alone know – and decline to admit or explain – they refused to settle with the classes and instead chose to perpetuate the litigation. After they finally relented, they now complain about the cost of the litigation they caused by their refusal to settle.

B. The Public Benefit Beyond the Benefit to the Class Is Manifest.

As the Court is fully aware, the purveyors have been uniformly behind the formation and the progress of the classes. They adopted this position because they were very set on achieving jurisdiction over the United States under the McCarran Amendment. This expensive undertaking was a measured choice by the purveyors, and

they have doggedly stuck to it at great expense to all involved. The filing of their cross-complaint dramatically changed the nature of this litigation, and the scope of their legal obligations.

There were two options for achieving service of the approximately 70,000 parties needed to achieve a comprehensive adjudication: (1) individually name and serve all these parties at a cost of many millions of dollars; or (2) mail them class notices.[1] Through the classes, the purveyors obtained jurisdiction over the United States and saved millions of dollars in individual service costs. Of equal or greater importance, the purveyors also achieved a comprehensive adjudication over all stakeholders in the valley, legal representation of tens of thousands of otherwise pro per parties, and ultimately through the settlement agreement, jurisdiction over the Willis class members for a physical solution.

In their attempt to skip out on the check, the purveyors argue that there was no public benefit achieved. The jurisdiction over the United States, the comprehensive adjudication, and costs savings by themselves establish a public benefit (even if one ignores the benefits to the class). In an attempt to distract from the public benefit, the purveyors improperly focus on their own alleged benefits from the settlement and frequently overstate them.[2] The core of the Willis class was a battle over the purveyors'

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[1] There was a third theoretical option. The purveyors pleaded their first amended cross-complaint as a class action, intended to aggregate the dormant and small pumpers into a defense class. After pursuing this option for a short period of time, the purveyors abandoned it, instead opting to support the nascent Willis class and its counsel.

[2] For example, Littlerock Creek *et al*. boldly asserts that "the Public Water Suppliers . . . now have a right to pump a percentage of the naïve [*sic*] safe yield." (Littlerock Opp. 5:16-18.) This is simply wrong. All the Willis agreement establishes is that the class will not object to any future adjudication of a purveyor right to up to 15% of the federally adjusted native safe yield. The Court may determine that the purveyors are entitled to none of the federally adjusted native safe yield.

assertion of prescriptive rights against the class. The purveyors have surrendered those rights.

C. Allocation Issues

In its second opposition, the County by itself requests that everyone in the restaurant should chip in to pay its bill. The Court should reject this proposal. Indeed, this second opposition should be stricken in its entirety as it represents pages 18 to 24 in the County's opposition, significantly in excess of the 15 page maximum. (C.R.C. 3.1113(d).) No leave to file an over page brief was requested.

Finally, to the extent the Court engages in an allocation of fees between and among the purveyors, one sensible approach would be to use relative groundwater pumping. The pumping data is readily available and could be averaged over a period of five or ten years.

DATED: March 15, 2011

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 10490 Santa Monica Blvd., Los Angeles, California 90025.

On March 15, 2011, I caused the foregoing document(s) described as **SMALL PUMPER CLASS' REPLY BRIEF REGARDING WILLIS MOTION FOR ATTORNEYS' FEES** 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.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//_____
Michael McLachlan