

1 Michael D. McLachlan, Bar No. 181705
LAW OFFICES OF MICHAEL D. McLACHLAN, APC
2 10490 Santa Monica Boulevard
Los Angeles, California 90025
3 Phone: (310) 954-8270; Fax: (310) 954-8271

4 Daniel M. O'Leary, Bar No. 175128
LAW OFFICE OF DANIEL M. O'LEARY
5 10490 Santa Monica Boulevard
Los Angeles, California 90025
6 Phone: (310) 481-2020; Fax: (310) 481-0049
Attorneys for Plaintiff and the Class
7

8 Eric L. Garner, Bar No. 130665
Eric.Garner@bbklaw.com
9 Jeffrey V. Dunn, Bar No. 131926
Jeffrey.Dunn@bbklaw.com
10 BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
11 P.O. Box 1028
12 Riverside, California 92502
Phone: (951) 686-1450 Fax: (951) 686-3083
13 Attorneys for Defendant Los Angeles County Waterworks District No. 40
14

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

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

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

Case No.: BC 391869

22 Plaintiff,

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

23 v.

24 LOS ANGELES COUNTY
25 WATERWORKS DISTRICT NO. 40; et al.

Date: May 24, 2011
Time: 9:00 a.m.
Dept: 316

26 Defendants.
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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 24, 2011, at 9:00 a.m., or as soon thereafter
3 as the matter may be heard, in Dept. 316, located at 600 South Commonwealth Ave, Los
4 Angeles, California, Richard Wood and Los Angeles County Waterworks District No. 40
5 jointly move for preliminary approval of the Wood Class Settlement.

6 Richard Wood and Los Angeles County Waterworks District No. 40 bring this
7 motion pursuant to California Rules of Court, Rule 3.769.

8 The Motion is based on this Notice, the Memorandum of Points and Authorities,
9 the Declaration of Michael D. McLachlan, the Declaration of Eric L. Garner, the various
10 documents attached thereto, the records and file herein, and on such evidence as may be
11 presented at the hearing of the Motion.

12
13 DATED: May 2, 2011

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

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15
16 By: _____ //s//
17 MICHAEL D. MCLACHLAN
18 Attorneys for Plaintiff and the Class

19 DATED: May 2, 2011

BEST BEST & KRIEGER LLP

20
21
22 By: _____ //s//
23 ERIC L. GARNER
24 JEFFREY V. DUNN
25 STEFANIE D. HEDLUND
26 Attorneys for Defendant and Cross-
27 Complainant LOS ANGELES COUNTY
28 WATERWORKS DISTRICT NO. 40

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR ORDER GRANTING PRELIMINARY APPROVAL OF WOOD CLASS**
3 **ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**
4

5 **I. INTRODUCTION**

6 Plaintiff Richard Wood has entered into a Stipulation of Settlement (“Agreement”)
7 with Defendants Los Angeles County Waterworks District No. 40, California Water
8 Service Company, City of Lancaster, City of Palmdale, Palmdale Water District,
9 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water
10 District, Rosamond Community Services District, Phelan Pinon Hills Community
11 Services District, Desert Lake Community Services District, and North Edwards Water
12 District (collectively, the “Settling Defendants”), all of whom are referred to as the
13 “Settling Parties,” subject to court approval and other conditions set forth in the
14 Agreement.

15 Plaintiff requests that the court adopt the Order Granting Preliminary Approval of
16 Class Action Settlement and Directing Notice to the Class, which would: (i) preliminarily
17 approve the proposed Agreement; (ii) approve the form of Notice to the Class and
18 authorize dissemination of the Notice; (iii) set dates and procedures for a fairness hearing
19 on the proposed Agreement; and (iv) set procedures and deadlines for class members to
20 object to the Agreement terms (the proposed Order will be lodged separately).

21 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

22 **A. History of the Wood Class Action**

23 The court is familiar with the history of this action and the details surrounding the
24 Wood Class (the “Class”). Briefly, Plaintiff Richard Wood (“Plaintiff”) filed this action
25 on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who
26 have been pumping less than 25 acre feet year (“afy”) of groundwater from the Antelope
27 Valley Groundwater Basin (“Basin”). Plaintiff filed this action so that he and the
28 members of the Class could continue to extract groundwater from the Basin for

1 reasonable and beneficial use. This action was also filed to contest claims of prescriptive
2 rights asserted by the Public Water Suppliers (also referred to herein as “Settling
3 Defendants”). The court certified the Wood Class Action by Order dated September 2,
4 2008, in which the court defined the Wood Class as:

5
6 All private (i.e., non-governmental) persons and entities that
7 own real property within the Basin, as adjudicated, and that
8 have been pumping less than 25 acre-feet per year on their
9 property during any year from 1946 to the present. The Class
10 excludes the defendants herein, any person, firm, trust,
11 corporation, or other entity in which any defendant has a
12 controlling interest or which is related to or affiliated with
13 any of the defendants, and the representatives, heirs,
14 affiliates, successors-in interest or assigns of any such
15 excluded party. The Class also excludes all persons and
16 entities that are shareholders in a mutual water company.

17
18 Notice of the Pendency of the Wood Class Action was sent by first class mail to
19 all Wood Class Members¹ who could be identified with reasonable effort on or about July
20 7, 2009 and a Summary Notice was published as instructed by the court. The deadline
21 for putative Class Members to exclude themselves (as extended) ended on December 4,
22 2009. Throughout this process, the court made various orders allowing certain parties
23 who had opted-out to rejoin the Class.

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25 **B. Wood Class Settlement Agreement Background And Terms**

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27 The Settling Parties commenced settlement negotiations in 2009, which continued
28 intermittently. As part of those negotiations, the Settling Parties also participated
in mediation before the Honorable Ronald Robie. As a result of the extensive
negotiations, the parties ultimately agreed upon the terms that form the Wood Class
Agreement, attached to the Declaration of Michael D. McLachlan as Exhibit “F”.

¹ If not defined in this Motion, all capitalized references are defined in the
Settlement Agreement. (McLachlan Decl., Ex. F.)

1 Class Counsel believes that the Wood Class Agreement, and the terms provided
2 therein, are fair to all concerned, including the non-settling parties, although the
3 Agreement does not bind the non-settling parties. Several of the material terms agreed
4 upon in this Agreement are: (1) the Wood Class agrees not to contest the Settling
5 Defendants' estimates of the Basin's Native Safe Yield as long as it is at least 82,300
6 acre-feet of water per year; (2) the Wood Class agrees not to contest the Settling
7 Defendants' estimate of the Basin's Total Safe Yield as long as it is at least 110,500 acre-
8 feet of water per year; (3) the Settling Parties agree that the United States has a Federal
9 Reserved Right to some portion of the Basin's Native Safe Yield, the amount of which
10 will be determined by the Court; (4) the Wood Class will not contest the Settling
11 Defendants' right to collectively produce up to 15 percent of the Basin's Federally
12 Adjusted Native Safe Yield; (5) the Wood Class has a correlative right (along with other
13 overlying landowners) to produce at least 85 percent of the Federally Adjusted Native
14 Safe Yield; (6) the prescriptive rights of the Settling Defendants, if any, shall not be
15 exercised to diminish the rights of the Wood Class; (7) if the Court imposes a Physical
16 Solution, the Wood Class will be bound by it subject to the terms of the Agreement; (8)
17 in the event of a Physical Solution, each Wood Class Member may pump up to 3 acre-
18 feet for reasonable and beneficial use on their overlying land from the correlative share of
19 the Federally Adjusted Native Safe Yield,² subject to downward adjustment if it is
20 determined that the Class as a whole is using less than 3 afy on average; and (9) all parties
21 have the right to recapture return flows from water that they have imported into the Basin
22 and the Class agrees not to contest the Settling Defendants' estimates that such return
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26 ² This di minimis exemption is included in water rights settlements for numerous
27 reasons, including the economics of enforcing the use of water by thousands of small
28 users. Examples of the use of a di minimis exemptions are discussed in the Declaration
of Eric L. Garner, filed concurrently with this Motion. The parties respectfully request
that the Court take judicial notice of the Exhibits to that Declaration.

1 flows total 28,200 acre-feet per year, of which 25,100 acre-feet is from municipal and
2 industrial use and 3,100 is from agricultural use.

4 **III. ARGUMENT**

5 **A. Standard For Preliminary Approval**

6 There is an overriding public interest in settling and quieting litigation, especially
7 class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276,
8 cert. denied, 506 U.S. 953.) Court approval is required before any action certified as a
9 class action may be settled or compromised and subsequently dismissed. Cal Rules of
10 Court, Rule 3.769. In deciding whether to approve a class action settlement, the court has
11 broad discretion to determine whether a proposed settlement is fair under the
12 circumstances of the case. (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

13 A class action settlement is approved in accordance with a three-step process: (1)
14 preliminary approval of the proposed settlement and proposed notice to settlement class
15 members; (2) dissemination of the notice of the settlement to class members; and (3) the
16 final approval hearing, at which class members may voice their opinion about the
17 settlement; it is also at this time that evidence and argument regarding the fairness,
18 adequacy and reasonableness of the settlement is presented.

19 The scope of a court's evaluation during the preliminary hearing stage is limited.
20 The purpose of the preliminary evaluation is simply to determine whether the proposed
21 settlement is within the "range of reasonableness" and thus whether it is appropriate to
22 send notice to the class of the proposed settlement terms and conditions and schedule a
23 final settlement hearing. At the final settlement hearing, the court reviews the proposed
24 settlement de novo, and considers in part the class members' opinions about the particular
25 settlement.

26 A settlement is presumed fair where: (1) "the settlement is reached through arm's
27 length bargaining;" (2) "investigation and discovery are sufficient to allow counsel and
28 the court to act intelligently;" (3) "counsel is experienced in similar litigation;" and (4)

1 “the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91
2 Cal.App.4th 224, 244-45.) A review of these factors strongly favors preliminary
3 approval of the proposed Settlement in this action.

4 **B. The Proposed Settlement Agreement Is Well Within The Range Of**
5 **Reasonableness And Merits Preliminary Approval.**

6 The proposed Settlement Agreement is well within the “range of reasonableness”
7 and thus merits approval. Although Plaintiff Wood and the Class believe that their
8 claims have merit, they recognize that, proceeding with this litigation carries considerable
9 risk. It is, therefore, in the best interests of Plaintiff and the Class to settle with, and
10 receive reasonable and prompt benefits from, the Settling Defendants.

11 It is elemental that a settlement is a compromise and, thus, does not ordinarily
12 provide a plaintiff with the full relief or recovery originally sought at the time the action
13 was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 (“In the context of a settlement
14 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on
15 the complaint, but rather whether the settlement is reasonable under all of the
16 circumstances.”).) Even under the Agreement, however, the Class will benefit
17 substantially.

18 The Agreement represents a compromise and allows for dismissal of Defendants’
19 prescription claims. It also recognizes the correlative rights of the Class and allows class
20 members to pump up to 3 acre feet for reasonable and beneficial use on their overlying
21 land, should the Court ultimately impose a Physical Solution.³ Additionally, the Class
22 may benefit from a higher yield of groundwater if the court deems Defendants’ estimates,
23 as set forth in the Agreement, are too low.

24 In sum, given the many risks faced by Plaintiff and the Class in pursuing this
25 litigation, the Agreement represents a reasonable resolution of otherwise complex and
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1 strongly contested issues. Had the Class not settled, the resolution of those issues would
2 have resulted in a long and considerably expensive trial. The Agreement is within the
3 range of reasonableness in light of these circumstances.

4 **C. The Extent Of Discovery Completed And The Stage Of Proceedings**

5 This Agreement is the result of years of discovery and contested law and motion
6 proceedings, all of which educated counsel on both sides as to the strengths and
7 weaknesses of their claims. Class Counsel reviewed and analyzed thousands of pages of
8 documents produced by Defendants, and have engaged in extensive research in relation
9 to the legal and factual issues central to Plaintiff's claims. Class Counsel also has
10 experience in complex class action litigation. Class Counsel was thus well-informed and
11 strategically positioned to negotiate an appropriate settlement agreement, which was
12 negotiated at arms-length over several years time

13 **D. The Proposed Notice Fairly Apprises The Class Members of the Terms**
14 **Of The Settlement Agreement And Their Options.**

15 Notice of a class action settlement must "present a fair recital of the subject matter
16 and proposed terms [and provide] an opportunity to be heard to all class members." (See,
17 e.g. *In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d 1353, 1361; see
18 also, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

19 The proposed Notice (Exhibit "G") apprises the Wood Class Members of their
20 rights and how their rights may be exercised. The Notice informs the Wood Class
21 Members of: (i) the persons that qualify as a member of the Wood Class; (ii) the history
22 of the litigation; (iii) the terms of the Agreement; (iv) the binding effect of any Judgment;
23 (v) the right of Wood Class Members to object to any aspect of the Settlement and/or to
24 appear at the fairness hearing and the procedures and deadlines for doing so; (vii) the
25

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27 ³ If there is no Physical Solution imposed, or until one is imposed or some other
28 binding order is made, the Class Members will continue to pump groundwater as they
have historically done, the same as other parties to these coordinated proceedings.

1 date, time and location of the fairness hearing; and (viii) how to obtain additional
2 information.

3 The method by which the Notice will be disseminated is also appropriate, as set
4 forth in Section VI.B of the Agreement. The Settling Defendants have agreed to send
5 Notice via the United States Postal Service directly to each of the Class Members (at their
6 last known address), as well as publish a Summary Notice (Exhibit "H") in three widely
7 read newspapers in the area. These actions fully comply with all applicable rules and due
8 process requirements. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.) Class
9 Members wishing to opt-out of the Settlement will have 45 days from mailing of the
10 notice to do so.

11
12 **IV. CONCLUSION**

13 For all of the foregoing reasons, Plaintiff Wood and District 40 respectively
14 request that the Court grant this Motion and: (1) preliminarily approve the proposed
15 Agreement; (2) approve the Notice and authorize its dissemination; (3) schedule a
16 fairness hearing on the proposed Agreement; and (4) set forth procedures and deadlines
17 for Class Members to file objections to the proposed Agreement, as set forth in the
18 Proposed Order submitted herewith.

19
20 DATED: May 2, 2011

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

21
22
23 By: _____ //s//
24 MICHAEL D. MCLACHLAN
25 Attorneys for Plaintiff and the Class
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DATED: May 2, 2011

BEST BEST & KRIEGER LLP

By: _____ //s//
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Defendant and Cross-
Complainant LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of 18 and am not a party to the within action. My business address is 10490 Santa
4 Monica Blvd., Los Angeles, California 90025.

5 On May 2, 2011, I caused the foregoing document(s) described as **NOTICE OF**
6 **MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**
7 **SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** to be
8 served on the parties in this action, as follows:

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

26 _____ //s//
27 Michael McLachlan