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15 Attorneys for Plaintiff Richard Wood and the Class

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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' CASE
MANAGEMENT CONFERENCE
STATEMENT; DECLARATION OF
MICHAEL D. MCLACHLAN**

Date: November 15, 2011

Time: 9:00 a.m.

Dept.: 316 (CCW)

1 **I. SETTLEMENT DISCUSSIONS**

2 After many years of negotiations, earlier this year the Class reached a settlement
3 of its case against the public water suppliers. The Court denied the motion to approve
4 that settlement because of concerns over the appearance of the allocation of water right to
5 the class and certain provisions relating to a future physical solution. Class counsel then
6 spent considerable further time discussing these matters and revising the settlement
7 agreement to address all of the Court's concerns. Class counsel believes with a high-
8 degree of confidence that this amended settlement agreement would have satisfied the
9 Court's concerns. (McLachlan Decl., ¶ 3.) However, the public water supplier
10 defendants changed course, yet again, refusing any further settlement discussions with
11 the class settlement. (*Ibid.*)

12 On August 31, 2011, class counsel travelled to Sacramento to attend the mediation
13 session with the public water suppliers, who are defendants to the class action, and
14 various other parties to the coordinated proceeding, who are not party to the class action.
15 The public water suppliers and the 'big five' landowners (Tejon, U.S. Borax, Bolthouse,
16 AGWA, and Diamond Farming et al.) have agreed amongst themselves to allocate to the
17 other all of the water they want, leaving very little of the safe yield for the other smaller
18 parties. They understand the profound disadvantage class counsel has been placed in by
19 the lack of any reliable assessment of the class' water use, and have elected to take
20 advantage of that. These parties propose the class accept in settlement less water than the
21 water suppliers' own experts testified the class uses for domestic purposes. (McLachlan
22 Decl., ¶ 4.)

23 On a per parcel basis, the offer was indeed less than what is even set forth in the
24 summary expert report. (McLachlan Decl., ¶ 5.) On October 6, 2011, class counsel sent
25 a counter proposal to Eric Garner and Jeffrey Dunn setting forth general terms for a
26 settlement with the class. (McLachlan Decl., ¶ 6, Ex. 1.) There has been no response to
27 that proposal. (*Ibid.*)

28 On September 7, 2011, class counsel sent a written request to Warren Wellen and

1 Jeff Dunn asking for the data underlying used in their summary expert report as the basis
2 for table D-4, which relates to the water use of various mutual water companies.
3 (McLachlan Decl., ¶ 7.) On September 29, 2011, Stefanie Hedlund of Best, Best &
4 Krieger wrote to class counsel and stated that she was working on compiling the data.
5 Defense counsel never delivered the data. Defense counsel has continued to refuse to
6 produce the data, without explanation, and has ignored the follow-up requests. (*Ibid.*;
7 Exhibit 2.)

9 II. COURT-APPOINTED EXPERT AND FUTURE TRIAL PHASES

10 The Court should reconsider the issue of the court-appointed expert because that is
11 necessary for the approval of any settlement of the class' rights that involve water rights.
12 If the Court's positions remains consistent, then it should at a minimum order the public
13 water suppliers to resolve the class claims of prescription and re-engage in the settlement
14 efforts for the class complaint.

15 If the Court is considering setting any future phase of trial, then the court-
16 appointed expert work must proceed. There is no dispute that there has been no study
17 conducted of the class' water use, other than some dubious 'back of the envelope'
18 estimates using alleged data from various mutual water companies which the public water
19 suppliers are concealing.

20 At further phases of trial, class counsel cannot rely on anecdotal evidence from
21 class members or the estimates of opposing experts who have been paid to advocate
22 against the interests of the Class. Based on the Court's comments at the class settlement
23 approval hearing, this is equally true of a hearing for approval of a hypothetical global
24 settlement involving the Class' water rights. As the Court is aware, this situation has put
25 class counsel in a completely untenable position with regard to the future phases of trial.¹

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27
28 ¹ This issue was raised in May of 2008, before class counsel agreed to take on this
matter. Class counsel would not have taken on this matter if they would have been told

1 The public water suppliers refuse to negotiate in good faith, or even respond to
2 settlement communications and requests for information. They have had many months
3 to resolve these issues and have chosen not to do so. They have initiated this basin-wide
4 adjudication, and have doggedly pursued prescriptive rights claims against the Class
5 despite this Court's numerous inquiries of the utility of such claims. If they wish to force
6 the Class to negotiate their water rights in perpetuity with all in those in the basin – relief
7 that falls well outside the bounds of the complaint being prosecuted on behalf of the class
8 – then they should not be heard to complain about the relatively small cost of the court-
9 appointed expert.

10
11 DATED: November 10, 2011

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

12
13
14 By: _____ //s//
15 Michael D. McLachlan
16 Attorneys for Plaintiff
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26 that it would not be resolved. Because it has not been resolved, class counsel will be
27 forced to file a motion to withdraw and decertify the class if the Court sets the matter for
28 trial on any questions that deal directly with the actual water rights of the class, e.g.
allocation, prescription, and physical solution issues.

1 Dunn setting forth general terms for a settlement with the class. There has been no
2 response to that proposal. My letter as well as the e-mail enclosure and my subsequent
3 follow-up e-mail of November 7 are attached as Exhibit 1.

4 7. On September 7, 2011, I sent a written request to Warren Wellen and Jeff
5 Dunn asking for the data underlying used in their summary expert report as the basis for
6 table D-4, which relates to the water use of various mutual water companies. On
7 September 29, 2011, Stefanie Hedlund of Best, Best & Krieger wrote to class counsel and
8 stated that she was working on compiling the data. Defense counsel never delivered the
9 data and has continued to refuse to produce it, without explanation. On October 27, I
10 wrote to Ms. Hedlund stating that the data had not been produced. I receive no response
11 to that email. I again wrote to her on November 7, and again there was no response. I
12 attach true and correct copies of these e-mails as Exhibit 2.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed this 10th day of November, 2011, at Los Angeles,
15 California.

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17 _____
//s//

18 Michael D. McLachlan
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Exhibit 1

LAW OFFICES OF MICHAEL D. McLACHLAN

A PROFESSIONAL CORPORATION
10490 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90025
PHONE 310-954-8270 FAX 310-954-8271
E-MAIL mike@mclachlanlaw.com

October 6, 2011

VIA ELECTRONIC MAIL

Eric Garner
Jeffrey Dunn
Best, Best & Krieger
3750 Riverside Avenue, Suite 400
Riverside, CA 92502

Re: *Antelope Valley Groundwater Litigation, JCCP 4408*
Richard A. Wood. v. Los Angeles County Waterworks Dist. No. 40 et al.
CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Eric and Jeff:

I write to present our response to your settlement proposal presented at the last session of the Robie meetings.

We firmly believe the water use of the class is well above the 3850 acre-feet allocated. It is troubling that the number you are using for settlement is even below the number generated by your experts, and testified to by Joe Scalamini (1.3 afy). Here is a summary of the basic terms of our counter-proposal:

1. Richard Wood and the Class contend that the total pumping of the small pumper class is substantially above the estimates advanced by the water suppliers and certain landowners. There has been no study of the actual pumping of the Class to date, for either domestic or non-domestic purposes.
2. For purposes of the current allocation of the total safe yield set by the Court in its Statement of Decision dated July 13, 2011, the parties will agree to use 1.3 afy per class parcel as the domestic water use of the class. Each class member, however, shall have the right to pump up 3 afy total for domestic use on a given parcel. Such domestic use shall be exempt from assessment. Prior to class notice of this settlement and without consideration of future opt-outs, the class size is approximately 3850.

Eric Garner
Jeffrey Dunn
October 6, 2011
Page 2

3. The Class' and class members' domestic water use can only be reduced by Court order, after: (1) submission and consideration of a statistically reliable study of the Class' domestic water use; and (2) a ruling on the applicability of California Water Code section 106.
4. The non-domestic water use of class members may be reduced, but only in a percentage consistent with pumping reductions for other overlying users.

The agreement would also include many of the other provisions set forth in the prior class settlement agreement. If a settlement is reached or course, there would be a delay of at least four months prior to court approval because of the class notice and opt-out periods.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M/D McLachlan', with a horizontal line extending to the right.

Michael D. McLachlan

Cc: Dan O'Leary
Michael Fife (*via email*)
Richard Zimmer (*via email*)
Bob Joyce (*via email*)
Bill Sloan (*via email*)
Robert Kuhs (*via email*)
Tom Bunn (*via email*)
Bradley Weeks (*via email*)

Mike McLachlan

From: Mike McLachlan
Sent: Monday, November 07, 2011 5:10 PM
To: 'Eric Garner'
Cc: 'Wellen, Warren'; Jeffrey Dunn; Stefanie Hedlund; Tom Bunn; Dan Oleary; Michael Fife; 'Richard Zimmer'
Subject: RE: Small Pumper class

Eric, It's been over a month since I sent my letter. Given the lack of response we are now assuming the proposal has been rejected.

Mike

From: Eric Garner [<mailto:Eric.Garner@bbklaw.com>]
Sent: Wednesday, October 12, 2011 5:26 PM
To: Mike McLachlan
Cc: 'Wellen, Warren'; Jeffrey Dunn; Stefanie Hedlund; Tom Bunn
Subject: RE: Small Pumper class

Mike,

Thanks for sending this. We need to discuss with the other PWS before we respond.

Eric

From: Mike McLachlan [<mailto:mike@mclachlanlaw.com>]
Sent: Thursday, October 06, 2011 5:38 PM
To: Eric Garner; Jeffrey Dunn
Cc: Michael Fife; 'Richard Zimmer'; Bob Joyce; William M. Sloan; rgkuhs@kuhsparkerlaw.com; 'Tom Bunn'; 'Bradley T. Weeks'; Dan Oleary
Subject: Small Pumper class

Letter of today attached.

Mike McLachlan

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Los Angeles, CA 90025
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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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Exhibit 2

Mike McLachlan

From: Mike McLachlan
Sent: Monday, November 07, 2011 5:13 PM
To: 'Stefanie Hedlund'
Cc: 'Jeffrey Dunn'; 'Wwellen@counsel.lacounty.gov'; 'Ariki, Adam'; 'Eric Garner'; Dan Oleary
Subject: RE: AVAA Water Company and Rural Residential Water Requirements

Stef, We still have had no response on the production of the data used in the table. It should pretty simple to produce the underlying data, so I am not sure I understand why we can't get a response on this.

Mike

From: Mike McLachlan
Sent: Thursday, October 27, 2011 12:14 PM
To: 'Stefanie Hedlund'
Cc: Jeffrey Dunn; 'Wwellen@counsel.lacounty.gov'; 'Ariki, Adam'; Eric Garner; Dan Oleary
Subject: RE: AVAA Water Company and Rural Residential Water Requirements

Stef, Where exactly in App. D. I have been through page by page on several occasions? I find no data behind D:4, Table 1. I would appreciate it if you could direct me to the page or pages I cannot seem to locate.

And I do have to ask if it is the County's belief that the small pumpers are using surface water?

Mike McLachlan

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Los Angeles, CA 90025
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Fax: 310-954-8271

From: Stefanie Hedlund [<mailto:Stefanie.Hedlund@bbklaw.com>]
Sent: Thursday, October 27, 2011 11:47 AM
To: Mike McLachlan
Cc: Jeffrey Dunn; 'Wwellen@counsel.lacounty.gov'; 'Ariki, Adam'; Eric Garner
Subject: RE: AVAA Water Company and Rural Residential Water Requirements

Mike,

Please see the email from Mr. Scalmanini's office that states all the underlying data is available in the Summary Expert Report, appendix D. The Summary Expert Report is available on the Court's website.

Thanks,
Stef

From: Mike McLachlan [<mailto:mike@mclachlanlaw.com>]
Sent: Thursday, October 27, 2011 11:45 AM
To: Stefanie Hedlund
Cc: Jeffrey Dunn; 'Wwellen@counsel.lacounty.gov'; 'Ariki, Adam'; Eric Garner
Subject: RE: AVAA Water Company and Rural Residential Water Requirements

Stef, Thanks, but that is not what we have been asking for. I was asking for the underlying data.

Mike McLachlan

Law Offices of Michael D. McLachlan, APC
10490 Santa Monica Boulevard
Los Angeles, CA 90025
Office: 310-954-8270
Fax: 310-954-8271

From: Stefanie Hedlund [<mailto:Stefanie.Hedlund@bbklaw.com>]
Sent: Wednesday, October 26, 2011 2:12 PM
To: Mike McLachlan
Cc: Jeffrey Dunn; Wwellen@counsel.lacounty.gov; 'Ariki; Adam'; Eric Garner
Subject: FW: AVAA Water Company and Rural Residential Water Requirements

Mike,

Please find attached the information you requested. As you can see from the forwarded (from Mr. Scalmanini's office) email and attachment all the information in the table is contained in the Summary Expert Report. Please note that the 1.3 afy per dwelling unit used in the Summary Expert Report is based on both groundwater and surface water use. The Summary Expert Report data shows a .92 afy per capita water use per dwelling unit for groundwater.

As we discussed, Adam is available to discuss this data with you. Please let me know if you would like me to set up a meeting with Adam.

Thanks,
Stef

Good morning, Stef,

The attached document explains how we estimated water company and rural residential water requirements in the AVAA.

As noted in the document, a full description of the process with all supporting data, including from Calif. Dept. Health Services and U.S. Geological Survey, are already provided in the Summary Expert Report, specifically Appendix D, pp. D-20 and D-21, and Appendix D-4:Table 1.

Also noted is that additional supporting information, including per capita water use for LACWWD40 and PWD, is found in the IRWMP for the Antelope Valley.

All the best,

Liese

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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

5 On November 10, 2011, I caused the foregoing document(s) described as **SMALL**
6 **PUMPER CLASS' CASE MANAGEMENT CONFERENCE STATEMENT;**
7 **DECLARATION OF MICHAEL D. MCLACHLAN** to be served on the parties in this
8 action, as follows:

- 9 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa
10 Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley
11 Groundwater matter.
12
13 () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and
14 processing of documents for mailing. Under that practice, the above-referenced
15 document(s) were placed in sealed envelope(s) addressed to the parties as noted above,
16 with postage thereon fully prepaid and deposited such envelope(s) with the United States
17 Postal Service on the same date at Los Angeles, California, addressed to:
18
19 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other
20 overnight delivery service, for delivery on the next business day. Each copy was
21 enclosed in an envelope or package designed by the express service carrier; deposited in a
22 facility regularly maintained by the express service carrier or delivered to a courier or
23 driver authorized to receive documents on its behalf; with delivery fees paid or provided
24 for; addressed as shown on the accompanying service list.
25
26 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of
27 facsimile transmission of documents. It is transmitted to the recipient on the same day in
28 the ordinary course of business.
29
30 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
31 the above is true and correct.
32
33 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of
34 America that the foregoing is true and correct.

35 _____ //s//
36 Ana Horga