

Exhibit A

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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))

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 NOTICE OF
MOTION AND MOTION FOR
ORDER AUTHORIZING COURT-
APPOINTED EXPERT WITNESS
WORK**

Date: February 14, 2012
Time: 9:00 a.m.
Dept.: 316 (Room 1515)

1 TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that on February 14, 2012, at 9:00 a.m., in Department
3 316 of the Los Angeles Superior Court, located at 600 S. Commonwealth Avenue, Los
4 Angeles, California, a hearing will be held on plaintiff Richard A. Wood's Motion for
5 Order Authorizing Court-Appointed Expert Work.

6 The motion is based on this Notice, the attached Memorandum of Points and
7 Authorities, the attached exhibits, Evidence Code sections 730 and 731, and such other
8 and further evidence as the Court adduces at the hearing.

9
10 DATED: January 18, 2012

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

11
12
13 By: _____ //s//

14 Michael D. McLachlan
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Wood has previously filed this motion requesting that the Court
4 lift the stay and permit the court-appointed expert to commence work assessing the water
5 use of the small pumper class. The Court heard this Motion in August of 2011, and took
6 the matter under submission. (Minute Order of August 30, 2011.) The subject matter of
7 this Motion has been discussed at several subsequent hearings, but no ruling was issued.

8 Plaintiff understands that the Court may set the next phase of trial, and that may
9 involve allocation of water rights. Because this would necessarily implicate the
10 assessment of the Class' water rights, Plaintiff is refiling this Motion so that there is no
11 objection that the matter is before the Court.

12 **II. ARGUMENT**

13 **A. Prior History Relevant to Allocation of Court-Appointed Expert
14 Witness Fees.**

15 On April 24, 2009, the Court granted Plaintiff's motion for a court-appointed
16 expert, thereby designating Timothy Thompson of Entrix to perform expert services
17 relative to the assessment of water use of the Small Pumpers' class. (Exhibit 1.) At that
18 time, the Court stayed the order pending allocation of the expert expenses. (*Ibid.*)
19 However, on May 6, 2009, by Stipulation of the parties, the Court ordered the stay lifted.
20 (Exhibit 2.) Mr. Thompson has conducted limited preliminary work, and has been paid
21 for that work, but has not commenced the substantive work regarding the quantification
22 of the class members' water use. The Court allocated these costs *pro rata* to the ten
23 water suppliers. (Exhibit 3, at p. 4.)

24 The Court did not authorize this work prior to the Phase 3 trial. On June 16, 2011,
25 the Court denied Plaintiff's motion for preliminary approval, in part because of the lack
26 of evidence or the pumping of the class, which the Court felt would be necessary to
27 establish the di minimis exemption and the water rights of the class members.

1 **B. The Legal Necessity for the Court-Appointed Expert Work**

2 Upon a showing of public benefit C.C.P. section 1021.5, the class counsel in this
3 matter will ultimately seek compensation for their time and costs in this action as against
4 the public water purveyors. An award under Section 1021.5, however, cannot include
5 expert witness fees.

6 In 2008, the California Supreme Court issued its opinion in *Olson v. Automobile*
7 *Club of Southern California*, holding that expert witness fees may not be awarded under
8 Section 1021.5, unless expressly ordered by the court. 42 Cal.4th 1142, 1150-51 (citing
9 C.C.P. § 1033.5(b)(1).) This opinion expressly overruled *Beasley v. Wells Fargo Bank*,
10 (1991) 235 Cal.App.3d 1407, which had previously held that experts witness fees were
11 recoverable under Section 1021.5. (*Id.* at 1151.)

12 The result of the *Olsen* case is that, assuming class counsel were willing to
13 advance substantial funds to cover expert witness fees, they could not recover those fees
14 at the end of the case. In other words, if class counsel were to expend funds toward
15 expert witness fees, they would be doing so on a *pro bono* basis.

16
17 The primary reasons the Court-appointed expert is necessary is to gather evidence
18 of the Class’ water use for both settlement and litigation purposes, i.e. establishing the
19 self-help defense, under which an overlying landowner may defeat a claim of prescription
20 by pumping water on his property during the prescriptive period. (*City of Pasadena v.*
21 *City of Alhambra* (1949) 33 Cal.2d 908, 931-32.) In *City of Los Angeles v. City of San*
22 *Fernando*, the California Supreme Court held that such rights of self-help persist in an
23 overdrafted groundwater basin. ((1975) Cal.3d 199, 293, fn.101; *Hi-Desert County*
24 *Water District v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1731.)

25 In the case at hand, the public water suppliers have alleged in their pleadings and
26 asserted in Court that the basin at issue has been in continuous overdraft since 1946 and
27 that the prescriptive period runs from that date to the present (the filing of the various

1 complaints). (*See, e.g.*, First Amended Cross-Complaint of Public Water Suppliers
2 (March 13, 2007), Santa Clara Sup. Ct. E-Filed Docket No. 503.)

3 By definition, all members of the Small Pumpers Class will be overlying
4 landowners who have pumped groundwater on their property during the prescriptive
5 period in question. (Order Certifying Small Pumpers Class Action, S.C. Sup. Ct. E-Filed
6 Docket No. 1865.) There is no dispute that the vast majority of the Small Pumper Class
7 members are single family residential users who are outside the available public water
8 supply network, and hence must rely upon their own pumping of groundwater to exist on
9 their land.

10 The court-appointed expert work may also be used to establish that the Class
11 members were engaged in a “reasonable beneficial use,” a threshold requirement to
12 establishing their overlying rights and an issue that other overlying landowners have
13 disputed as the Class. (*City of Los Angeles v. City of San Fernando*, Cal.3d at 293.)
14

15 **C. The Expert Work Should Commence Now**

16 As the Court may recall, prior to filing the complaint in this matter, class counsel
17 had several conversations with the Court at hearings and through written correspondence
18 in May of 2008, concerning this fundamental problem confronting class counsel in the
19 representation of the class. (Exhibit 4.)

20 Now that the Phase 3 trial is completed, any future phases of trial necessarily
21 require evidence of water use by the class (prescription, allocation of water rights, and
22 physical solution). It will likely take three or four months at least for this work to be
23 completed.

24 While the Court has expressed optimism about the prospect of settlement, it is
25 simply not realistic given the history of failed settlement talks in this case, nor is it fair to
26 use the ephemeral prospect of settlement as a justification to continue to keep class
27 counsel in the untenable position of potential malpractice on the one hand, or the

1 payment of substantial unrecoverable expert fees on the other hand. A staggering amount
2 of settlement talks have occurred over the last four years, all of which have failed to date
3 (but for the Willis class).

4 The water suppliers are again showing little interest of revising and re-submitting
5 the Wood Class Settlement, leaving the prescription claims hanging over the Class'
6 proverbial heads. Within a few days after the Wood Class Settlement was not approved,
7 class counsel circulated a revised settlement agreement, with very limited modifications
8 tracking the Court's comments at the June 16 hearing. In the month that has passed, the
9 water suppliers' continue to drag their feet, apparently sensing some sort of leverage to
10 force the Class to accept a very unfair deal they have hatched up with the farmers. The
11 lack of a report from the court-appointed expert puts class counsel in a very difficult
12 negotiating position with respect to proper and fair allocation of the available water for
13 overlying use. The issue of the Class' water use thus presents a serious obstacle to
14 settlement talks.

15 Furthermore, even if there was a settlement, the court has repeatedly made note
16 that an evidentiary prove-up hearing would be necessary. The testimony or report of the
17 court-appointed expert would be needed at such a hearing.

18 The proposed scope of work is attached as Exhibit 5. Mr. Thompson remains
19 ready and able to conduct the work at issue, and should be allowed to proceed. (Exhibit
20 6.)

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D. Allocation of Expert Costs

The Court should allocate these expenses among the same ten Public Water Suppliers that paid the prior court-appointed expert bill, as set forth in the Court’s order of May 25, 2010. (Exhibit 3, at p. 4.)

DATED: January 18, 2012

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

By: _____ //s//
Michael D. McLachlan
Attorneys for Plaintiff

Exhibit 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

DEPT. 1

HONORABLE Jack Komar

JUDGE

M. GODDERZ

DEPUTY CLERK

HONORABLE
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am

JCCP4408

Plaintiff

JAMES L. MARKMAN

(x)

Counsel

RALPH B. KALFAYAN

(x)

Coordination Proceeding Special
Title Rule (1550(b))

Defendant

DAVID B. ZLOTNICK

(x)

Counsel

W. KEITH LEMIEUX

(x)

JEFFREY V. DUNN

(x)

ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF AND THE CLASS FOR APPOINTMENT OF
EXPERT WITNESSES

CASE MANAGEMENT CONFERENCE RE ISSUE OF RIGHT TO
JURY TRIAL

Additional counsel appearing in court on this date:

BOB H. JOYCE (x)	MICHAEL FIFE (x)
WILLIAM J. BRUNICK (x)	BRADLEY T. WEEKS (x)
SCOTT K. KUNEY (x)	MICHAEL D. McLACHLAN (x)
DANIEL M. O'LEARY (x)	TAMMY L. JONES (x)
CLIFF MELNICK (x)	THOMAS S. BUNN III (x)
DOUGLAS J. EVERTZ (x)	R. LEE LEINIGER (x)
MICHAEL L. MOORE (x)	

Additional counsel appearing via telephone
conference call:

Rebecca Davis-Stein	Janet K. Goldsmith
Michael L. Crow	Robert G. Kuhs
Stephen M. Siptroth	Sheldon Blum
Bradley J. Herrema	Michelle L. Moore
Richard G. Zimmer	Brian Martin
Robert E. Dougherty	Theodore Chester, Jr.
Christopher M. Sanders	Susan M. Trager
Marlene A. Hammarlund	James J. Dubois

The above matters are called and the Court makes the
following rulings;

- Request for extension of time to Opt Out of Willis
class is granted and extended to May 1, 2009.

MINUTES ENTERED 04/24/09 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

DEPT. 1

HONORABLE Jack Komar

JUDGE M. GODDERZ

DEPUTY CLERK

HONORABLE
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am

JCCP4408

Plaintiff	JAMES L. MARKMAN	(x)
Counsel	RALPH B. KALFAYAN	(x)
	DAVID B. ZLOTNICK	(x)
Defendant	W. KEITH LEMIEUX	(x)
Counsel	JEFFREY V. DUNN	(x)

Coordination Proceeding Special Title Rule (1550(b))

ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05

NATURE OF PROCEEDINGS:

Motion of Plaintiff Wood for Appointment of Expert is granted and stayed until certain issues have been adjudicated.

Motion of Plaintiff Willis for Appointment of Expert Witnesses is taken off calendar to be re-scheduled at a later date, if necessary.

Motion for Preliminary Injunction is taken off calendar by the Moving party this date.

As to the Case Management Conference, Court and counsel confer Re issue of right to jury trial, class notice and scheduling.

The Court schedules a Settlement Conference for May 13, 2009 at 9:00 a.m., in Los Angeles Superior Court (LASC) Department One. The Woods parties are to report at 9:00 a.m. The Willis parties are to report at 1:30 p.m.

Any objections to the Settlement Conference are to be filed within 2 days of the Court notice from Santa Clara Superior Court Department 17.

Additionally, the Trial Setting Conference is scheduled for August 17, 2009 at 9:00 a.m., in LASC Department One.

Notice of these proceedings is deemed waived.

MINUTES ENTERED
04/24/09
COUNTY CLERK

Exhibit 2

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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))

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

**STIPULATION AND ~~PROPOSED~~
ORDER RE: SMALL PUMPER
CLASS NOTICE ISSUES**

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 08 2009

John A. Clarke, Executive Officer/Clerk
By Jalon Taylor, Deputy

After meeting and conferring, stipulating parties agree that substantial problems likely exist with the portion of the Small Pumper Class (the "Class") mailing list covering parcels inside the public water supplier service areas. The parties believe that many of the parcels on this portion of the proposed Class list do not in fact meet the Class

1
STIPULATION AND ORDER RE: SMALL PUMPER CLASS NOTICE ISSUES

1 definition.

2 The stipulating parties further acknowledge that it is important that the Class is
3 formed in such a manner as to include, as best as is practicable, properties that conform to
4 the Class definition.

5 Based on the foregoing, the parties stipulate as follows:

- 6 1. With regard to putative Class members inside the public water supplier service
7 areas, the parties will: (a) obtain shareholder lists from the mutual water
8 companies that are party to this suit, within 15 days of this order, and will
9 remove any such names from the database; (b) meet and confer on additional
10 names that should not be on the list, including review of water supplier records
11 and further expert analysis as needed;
- 12 2. That as to the remaining parcels identified as located inside the public water
13 supplier service areas, a second notice shall be submitted to the Court for
14 approval, within 5 court days of the execution of this Order, which will be an
15 “opt-in” notice, meaning that only those property owners who affirmatively
16 respond with written response form or via the Class website will be included in
17 the Class;
- 18 3. That the questionnaire to be included in the notice will be expanded to request
19 further data to be used by the parties, Entrix, and the water supplier experts to
20 assess the actual pumping of the Class members using statistically significant
21 sampling sizes;
- 22 4. That as to the putative Class members outside the service areas, the Class
23 notice will remain an “opt-out” notice, and those Class members will receive
24 the existing Class notice, to be modified with additional water usage questions;
- 25 5. That as to the putative Class members outside the service areas, the Court-
26 appointed expert will conduct a statistically significant assessment as to the
27 percentage of the Class members actually satisfy the Class definition, and if
28 this analysis reveals an improperly high number of improper Class members,

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further efforts will be taken to identify and remove improper Class members from the Class.

6. That the Court-appointed expert, and existing experts of the public water suppliers, shall use the data generated by the Class notice response forms, supplemented as needed by further field-work, to formulate reliable estimates of the water usage of the Class.

7. The stay as to the Court appointed expert, Timothy Thompson, will be lifted and his firm will conduct such work as necessary and consistent with this order, and to the extent practicable, data gathering and field work will be conducted by cost-effective means, potentially including use of less expensive independent contractors.

DATED: May 5, 2009

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

By: _____ //s//
Michael D. McLachlan
Attorneys for Plaintiff

DATED: May 5, 2009

BEST, BEST & KRIEGER LLP

By: _____ //s//
Jeffrey V. Dunn
Attorneys for Defendants Los Angeles County
Waterworks District No. 40 and Rosamond
Community Services District

IT IS SO ORDERED.

DATED: 5-6-09

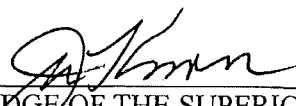
By:  _____
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA **JACK KOMAR**

Exhibit 3

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 01 2010

John A. Glavin, Clerk of Court

BY RAUL SANJUAN

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions; Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

1 Angeles, Case No. BC 391 869
2

3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 “physical solution,” as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS’ MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O’Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS’ MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named “Public Water Suppliers”
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.

19
20 Dated: May 25, 2010

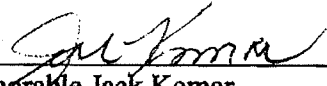
21 
22 _____
23 Honorable Jack Komar
24 Judge of the Superior Court
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Exhibit 4

LAW OFFICES OF MICHAEL D. MCLACHLAN

A PROFESSIONAL CORPORATION
523 WEST SIXTH STREET, SUITE 215
LOS ANGELES, CA 90014
PHONE 213-630-2884 FAX 213-630-2886
E-MAIL mike@mclachlanlaw.com

May 14, 2008

VIA U.S. MAIL & E-FILING

Hon. Jack Komar
Santa Clara County Superior Court
Department D-17
161 N. First Street
San Jose, CA 95113

Re: *Antelope Valley Groundwater Litigation*
Case No.: 1-05-CV-049053

Dear. Judge Komar:

This letter pertains to the further status conference in this matter set on May 22, at 9:00 a.m. in LASC, Department 1, and more specifically, my potential representation of a class we have loosely referred to as the "small pumper" class.

I write to address what I believe is a potential hurdle to the representation of this class, with the hope that it might be resolved at hearing next week. Last week I discussed this issue with Jeffrey Dunn, who I asked to discuss the matter with his colleagues in anticipation of this letter. If the water purveyors, or other interested parties wish to comment, it is my hope that they will do so now so that this matter can be fully addressed next week.

The proposed pumping class would consist of at least 7,500 members, according to Mr. Dunn. I have heard higher estimates, but even using 7,500, this is a rather sizeable group of people (and entities) with collectively and individually large stakes in this litigation. As the Court has recognized, these people as a group have interests that are at odds with the interests of other groups of stakeholders in this litigation.

I am informed that the primary vehicle for the conduct of this adjudication will be a rather sizeable report soon to be issued by a group of engineers and water experts, many or all of whom will ultimately testify in this case on behalf of their clients. I also understand that much or all of the information in this report has been assembled by a Technical

Hon. Jack Komar
May 14, 2008
Page 2

Committee comprised of a number of these experts. While there are apparently some landowner interests on this Committee, this group appears to be largely dominated by the water companies, and a few large landowners (including the Federal Government). These larger stakeholders obviously have the financial means to undertake such costly and complex analysis, and by virtue of that, are in control of this process.

I have serious reservations about representing this group of pumpers relying solely on the expert analysis of this group experts retained by large stakeholders with differing interests. My concern is born in large part from my years of experience in complex groundwater litigation. While the underlying data in such cases is generally fixed, the actual expert analysis is general subject to substantial subjective components that can vary significantly based on assumptions. It is no secret that experts have, from time to time, been known to angle their subjective decisions in a direction favoring the parties they represent.

I believe the interests of the small pumpers would be best served with an independent expert, and that the appearance of fairness in this adjudication would be enhanced through the appointment of such an expert under Evidence Code section 730, which provides in relevant part:

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

(See also Witkin, Cal. Evidence 4th, Opinion Evidence § 81.)

I propose that the Court appoint an expert to represent the interests of this group. Such an expert would not be commissioned to re-invent the wheel, but would instead undertake a satisfactory analysis of the work done to date. I have contacted Stetson Engineers, a reputable and qualified firm in this field, and they are willing to serve in this role. While the numbers are very rough, they estimate generally a cost of \$100,000-150,000 for the initial workup (year 1), and then considerably smaller costs if the case were to continue for successive years. If necessary, Stetson could assemble a more detailed proposal, but for the time being, I would suggest an order that simply caps the total costs on an annual basis.

Hon. Jack Komar
May 14, 2008
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Under section 731, the Court may apportion the costs for such an expert to those parties it deems proper. In this case, I suggest that the costs of such an expert should be born by the public water supplier entities, as this is a matter of general public benefit.

While my office is will to venture legal time and standard costs on a contingency basis, I will not assume the burden of paying for this expert. In the event the water companies are inclined to object to this proposal, I offer a back of envelope estimate of the costs of proceeding in the alternative, i.e. having to individually name and serve these parties. Using 7,500 as the number of small pumpers, and conservative cost of \$100 to identify and serve each pumper, a court order requiring the service off all these parties would cost at least \$750,000, and quite likely much more. So I suggest that it is more economical to proceed with a class action and an expert than in the alternative.

Finally, I have interviewed Mr. Richard Wood, the proposed class representative for this class (see letter to the Court, April 22, 2008, Docket #1286). I believe Mr. Wood will serve as a more than capable representative for the vast majority if not all of members of this class (reserving of course the possibility that some small number of members of this yet-to-be-defined class may have interests not fully in line with his). He understands the obligations of that role, and is willing to serve as representative. So, if we can resolve the concerns raised above, I believe the proposed class makes sense and can proceed.

If any of the attorneys for the interested parties would like to discuss this matter with me, please feel free to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MDM', with a long horizontal flourish extending to the right.

Michael D. McLachlan

Exhibit 5

MEMORANDUM

Date: February 25, 2010

To: Mike McLachlan, Law Office of Michael D. McLachlan, APC
Dan O'Leary, Law Office of Daniel M. O'Leary

From: Timothy J. Thompson, Vice President and Senior Consultant

Re: Scope of Technical Support Services for Small Pumper Class,
Antelope Valley Groundwater Adjudication

Task 1. Quantification of Small Pumper Class Water Usage

Services will include:

- A. Review responses to initial questionnaire sent to Small Pumper Class. Apply a set of evaluation criteria to identify responses that are representative and useful for the determination of actual water use of the Class, and which can be used directly or are candidates for follow-up requests for additional information or investigation. Criteria will include evaluations of completeness of response, geographic distribution of parcels, annual volume of reported use, range of property sizes, types of reported land use and other data that may be identified and determined to be relevant and useful. Utilization of the GIS database as prepared by other consultants for this case will be beneficial for this component of the Small Pumper Class water use evaluation. Methodology for selection of responses, reasoning in support of need for verification and other considerations will be provided in summary report.
- B. Conduct follow-up communications with selected Class members to verify existing data or request additional data. Additional beneficial data may include electrical usage records, well pump capacity information, water level measurement records, well repair records, flow meter records, well deepening or other improvements related to changing water levels, written logs of well operations and other data that may be identified and determined to be relevant and useful. Selected site visits may be conducted as necessary and relevant. Any information to be requested will be determined and approved in advance by counsel and/or the Court.
- C. Acquire data from other agencies to support calculation of actual pumping of Class members. Data to be collected may include electrical use records, historical land use information, groundwater water level depths as established by other technical studies, and other data that may be identified and determined to be relevant and useful. Any information to be requested will be determined and approved in advance by counsel and/or the Court. The result of these initial steps ("A" through "C") will be to identify a

statistically significant pool of responses which are representative of the Small Pumper Class actual water use.

- D. Compile and evaluate the selected responses and data to determine the range of current water use amounts, including annual volumes and historical use periods for representative members of the Class. Work products will include summary report, maps, charts, databases and other technical products.
- E. Provide professional opinion regarding typical groundwater use of Small Pumper Class during deposition and/or trial testimony.

Estimated Range of Costs

Task A: \$14,000-\$16,000

Task B: \$19,000-\$21,000

Task C: \$17,000-\$19,000

Task D: \$22,000-\$24,000

Task E: \$ 9,000-\$11,000

Total: \$81,000-\$91,000

Exhibit 6

Mike McLachlan

From: Tim Thompson [timothy.thompson@cardno.com]
Sent: Wednesday, June 29, 2011 10:56 AM
To: Mike McLachlan
Cc: Dan Oleary
Subject: RE: Antelope Valley small pumper water use assessment

Mike,
Yes, I am glad to conduct this work.

Thank you,
Tim

Timothy Thompson, P.G.

Vice President

Cardno ENTRIX

201 North Calle Cesar Chavez, Suite 203, Santa Barbara, CA 93103

Phone: 805 962 7679 **Direct:** 805 963 0438 **Mobile:** 805 895 7153 **Fax:** 805 963 0412

From: Mike McLachlan [<mailto:mike@mclachlanlaw.com>]
Sent: Wednesday, June 29, 2011 10:29 AM
To: Tim Thompson
Cc: Dan Oleary
Subject: Antelope Valley small pumper water use assessment

Dear Mr. Thompson,

The phase three trial has been completed. We will likely soon be filing another motion to authorize your work on assessing the water use of the small pumper class members. Please confirm that you remain able and willing to conduct this work.

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

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 Boulevard, Los Angeles, California.

On January 18, 2012, I caused the foregoing document(s) described as **RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK**

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//
Michael McLachlan