

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 10490 Santa Monica Boulevard
4 Los Angeles, California 90025
5 Telephone: (310) 954-8270
6 Facsimile: (310) 954-8271
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 10490 Santa Monica Boulevard
11 Los Angeles, California 90025
12 Telephone: (310) 481-2020
13 Facsimile: (310) 481-0049
14 dan@danolearylaw.com

15 Attorneys for Plaintiff Richard Wood and the Class

16
17
18
19
20
21
22
23
24
25
26
27
28

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' TRIAL
SETTING CONFERENCE
STATEMENT**

Date: October 12, 2012
Time: 9:00 a.m.
Dept.: 1

1 Plaintiff Richard Wood (“Wood”) submits the following statement regarding trial
2 setting on behalf of the Small Pumper Class.

3 **A. The Court Should Not Delay Trial Setting Any Further**

4 As a prefatory matter, Wood and the Small Pumper Class disagree with the
5 Federal Defendants and the several other parties who request a further continuance for
6 mediation. It has been nearly two years since the last phase of trial started, and over
7 thirteen years since this litigation commenced.

8 The next phase of trial will have to be set out in time at least six months from now
9 in order to allow the parties to conduct discovery and prepare for whatever issue the
10 Court decides will be tried. So there is no reason to wait any longer to set a trial date.
11 Setting trial will not distract from settlement negotiations; to the contrary, it will focus
12 those efforts. Settlement discussions have continued over the last year a rather glacial
13 pace, and have been ongoing in earnest for over four years. All of the issues are known
14 and have been hashed and rehashed many times over. The parties have shown time and
15 again that they will consume whatever time the Court affords, producing a significant
16 cycle of delay.

17 Now is the time for the Court to apply some pressure. As is standard for all types
18 of lawsuits, the threat of trial usually crystalizes the settlement discourse.

19 **B. Phases of Trial**

20 Wood believes taking the sub-phase the right to return flows first, so that the Court
21 can set a native safe yield. Doing so may completely resolve the question of prescriptive
22 rights, saving the Court a lengthy trial on that cause of action. After question of
23 appropriate rights and prescription are resolved, as well as the Federal reserved right, the
24 Court could hold a hearing as need on the elements of a physical solution, to the extent
25 there was no universal agreement on the terms of a physical solution.

26 Wood believes that the question of production should follow the other issues, as
27 the scope of that inquiry may be greatly reduced if there is no need to put on evidence of
28 self help. If and when the Court should wish to make determinations of water production

1 of the various parties, Wood concurs with the suggestion of the Alston parties relative to
2 the submission of declarations with exhibits as necessary, followed by a phase for
3 depositions as needed and/or an evidentiary hearing.

4 **C. Legal Issues**

5 There are a number of legal issues that have not been resolved that may be more
6 appropriately resolved prior to the next round of trial. The resolution of these questions
7 may greatly reduce the trial time, better inform the parties for the presentation of
8 evidence, and reduce or eliminate the need for certain parties to participate on various
9 issues. Some of those issues include: (1) the appropriate period to be used to establish
10 water rights; (2) the extent to which unexercised overlying rights may continue to exist
11 given the finding of overdraft (*see In re Long Valley* (1979) 25 Cal.3d 339, 358-59
12 (unexercised riparian right loses priority in condition of overdraft); (3) the significance of
13 residential production over agricultural pumping among overlying uses (*see Water Code*
14 § 106; *Deetz v. Carter* (1965) 232 Cal.App.2d 851, 854); and (4) the priority of the
15 Federal reserved right.

16
17 DATED: October 8, 2012

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

18
19
20 By: //s// Michael D. McLachlan
21 Michael D. McLachlan
22 Attorneys for Plaintiff
23
24
25
26
27
28

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 October 8, 2012, I caused the foregoing document(s) described as **SMALL PUMPER**
6 **CLASS' TRIAL SETTING CONFERENCE STATEMENT** to be served on the
parties in this action, as follows:

- 7 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa
8 Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley
Groundwater matter.
- 9 () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and
10 processing of documents for mailing. Under that practice, the above-referenced
11 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
12 Postal Service on the same date at Los Angeles, California, addressed to:
- 13 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other
14 overnight delivery service, for delivery on the next business day. Each copy was
15 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
16 driver authorized to receive documents on its behalf; with delivery fees paid or provided
for; addressed as shown on the accompanying service list.
- 17 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of
18 facsimile transmission of documents. It is transmitted to the recipient on the same day in
the ordinary course of business.
- 19 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.
- 20 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22
23 _____ //s//
Michael McLachlan