

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 44 Hermosa Avenue
4 Hermosa Beach, California 90254
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 2300 Westwood Boulevard, Suite 105
11 Los Angeles, California 90064
12 Telephone: (310) 481-2020
13 Facsimile: (310) 481-0049
14 dan@danolearylaw.com

15 Attorneys for Plaintiff Richard Wood and the Class

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

Lead Case No. BC 325201

Case No.: BC 391869

**RICHARD WOOD'S BRIEF FOR
INFORMAL DISCOVERY
CONFERENCE; DECLARATION
OF MICHAEL D. MCLACHLAN**

Location: Santa Clara Superior Court,
San Jose, California
Dept.: 12
Date: January 22, 2015
Time: 11:00 a.m.

1
2 First, the class that Mr. Estrada represents is part of a Coordination
3 Proceeding in which there has been to date many orders on the question of
4 coordinated discovery. Indeed, at every phase of trial in this litigation, discovery
5 has been conducted on a JCCP proceeding-wide basis. The Court has never
6 issued an Order to the contrary. That has continued in the current Case
7 Management Order, wherein all discovery deadlines are directed to the
8 Stipulating Parties or the Non-Stipulating Parties. There is nothing in any order
9 that prevents a party to this JCCP from serving discovery on any other party to
10 this JCCP.

11 Second, this Court has previously ordered these cases consolidated for all
12 purposes on the basis of the common claims to groundwater asserted in causes of
13 action such as those for declaratory relief. (McLachlan Decl. ¶ 4, Ex. 4 (Order
14 Transferring and Consolidating Actions for All Purposes, February 19, 2010, 5:6-
15 28).) In short, pursuant to C.C.P. section 1048, these cases have been
16 consolidated for trial on all of the various common issues. Discovery on those
17 common issues necessarily arises from the consolidation. There is no statutory
18 or case authority supporting the position that a party in a consolidated action or a
19 JCCP may evade discovery in the fashion suggested by Mr. Estrada. Certainly,
20 there has never been such a ruling in this proceeding. Indeed, Rebecca Willis this
21 argument to the Court during the motion to consolidate and it was rejected. (*See*
22 *generally* Willis' Memo. of Points & Authorities in Opp. to Motion to Consolidate,
23 August 3, 2009 [Dkt. # 3025]; Hearing Transcript, August 17, 2009, pp. 18-22;
24 *cf.* Order Transferring and Consolidating Actions for All Purposes, February 19,
25 2010, 3:3-14).)

26 Finally, Mr. Estrada has indicated that he is “preparing to oppose the prove
27 ups of over one hundred parties” (Willis Class' Case Management, January
28 15, 2015 [Dkt. # 9572] , 2:18-19.) Since the number of parties Mr. Estrada claims

1 to be adverse to, by his own count, is greater than the number of defendants to
2 the Willis Complaint by roughly the same number of parties to the global
3 settlement, one must assume that the Small Pumper Class is among those that
4 Mr. Estrada will be directly opposing. What Mr. Estrada is suggesting is that the
5 Non-Pumper Class has a right to present whatever case it wishes at trial in
6 opposition to the Small Pumper Class, without the latter having any right to the
7 discovery necessary to mount a defense.

8 There should be little argument that Richard Wood and the Small Pumper
9 Class has a vested interest in the approval of the global settlement agreement
10 which Mr. Estrada plans to challenge. The notion that Mr. Estrada can challenge
11 the global settlement without being himself subject to discovery is anathema to
12 the process of civil litigation and the Court's consistent rulings and order in favor
13 of full and open discovery. Mr. Estrada cannot on the one hand (in his Case
14 Management Statement) ask the Court for relief so that he can prepare a case
15 against "over one hundred parties," while on the other hand refuse discovery
16 requests from those parties he wishes to oppose.

17
18 DATED: January 20, 2014

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

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21 By: _____
22 Michael D. McLachlan
23 Attorneys for Plaintiff
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DECLARATION OF MICHAEL D. MCLACHLAN

I, Michael D. McLachlan, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently. I am counsel of record of record for Richard Wood and the Small Pumper Class, and am duly licensed to practice law in California.

2. On January 6, 2015, I requested a date for the deposition of Mr. Estrada from counsel for the Non-Pumper Class, Ralph Kalfayan. Mr. Kalfayan responded to that e-mail indicating that he would not produce Mr. Estrada for deposition. True and correct copies of these emails are attached collectively as Exhibit 1.

3. Further meet and confer correspondence has been exchanged, to no avail. True and correct copies of my further meet and confer correspondence, consisting of an e-mail and a letter, are as 2 and 3.

4. Attached as Exhibit 4 is a true and correct copy of the Order Transferring and Consolidating Actions for All Purposes, dated February 19, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of January, 2015, at Hermosa Beach, California.

Michael D. McLachlan

Exhibit 1

Mike McLachlan

From: Ralph Kalfayan <ralph@kkbs-law.com>
Sent: Wednesday, January 07, 2015 11:27 AM
To: Mike McLachlan
Cc: Dan Oleary; Lynne Brennan; Greg James (gregjames@earthlink.net)
Subject: RE: Antelope

Categories: Evidence

Mike,

I received your email asking for a date to depose my client, David Estrada. Although it's great that we're able to communicate informally on the Antelope Valley case, Judge Komar's reminder this morning that we are all still subject to the CCP was very appropriate. The Willis Class and class representative David Estrada are not part of your client's lawsuit. Our former adversaries, the Public Water Suppliers, did not object to the Court's appointment of David Estrada as a class representative and have not noticed his deposition (they have no reason to).

Please provide me with the basis for your request to depose my client (which I suppose may be noticed pursuant to subpoena) and we can see if we can resolve this informally. Thank you.

From: Mike McLachlan [mailto:mike@mclachlanlaw.com]
Sent: Tuesday, January 6, 2015 12:07 PM
To: Ralph Kalfayan
Cc: Dan Oleary
Subject: Antelope

Ralph,

I would like to get a date to take David Estrada's deposition this month. Thanks,

Mike McLachlan
PLEASE NOTE NEW ADDRESS:

Law Offices of Michael D. McLachlan, APC
44 Hermosa Avenue
Hermosa Beach, CA 90254
Office: 310-954-8270
Fax: 310-954-8271

Exhibit 2

Mike McLachlan

From: Mike McLachlan
Sent: Wednesday, January 07, 2015 3:49 PM
To: Ralph Kalfayan
Cc: Dan Oleary; Lynne Brennan; Greg James (gregjames@earthlink.net); 'Jeffrey V. Dunn (jeffrey.dunn@bbklaw.com)'
Subject: RE: Antelope
Categories: Evidence

Ralph,

Your position is essentially this: your class can avail itself of the court for motions, such as the ones you have filed over the past month, it can file objections to the global settlement of this Coordinated Proceedings, it can propound discovery, and participate in joint trial proceedings held by order of the Judicial Council under the Coordination Order, BUT the class representatives are no subject to deposition.

If this is a position you really wish to defend, I will send you a formal meet and confer letter, and I will take the matter to the Court on January 22, 2015 – the date on which you have a motion to add another class representative, whom I must assume you also must believe is not subject to discovery.

Mike McLachlan
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Please provide me with the basis for your request to depose my client (which I suppose may be noticed pursuant to subpoena) and we can see if we can resolve this informally. Thank you.

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Mike McLachlan
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Exhibit 3

A PROFESSIONAL CORPORATION

44 HERMOSA AVENUE

HERMOSA BEACH, CA 90254

PHONE 310-954-8270 FAX 310-954-8271

E-MAIL mike@mclachlanlaw.com

January 19, 2015

VIA ELECTRONIC SERVICE

Ralph B. Kalfayan

Krause, Kalfayan, Benink & Slavens

550 W. C Street, Suite 530

San Diego, CA 92101

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

Dear Ralph:

I write in to respond further to our meet and confer correspondence regarding our refusal to produce David Estrada for deposition, and to advise you that I have set up an informal discovery conference on this matter for January 22, 2015 at 10:00 a.m., to be held at the hearings in San Jose. I will file a brief on this matter, and invite you to respond if you so choose.

Your position appears to be that the Non-Pumper Class, through David Estrada as named plaintiff, plans to attack the global settlement, but at the same time, Mr. Estrada contends that he is not subject to discovery from any party in this Judicial Counsel Coordination Proceeding (hereinafter, "JCCP") other than the Public Water Supplier defendants. Your position is not consistent with the applicable orders, the law, or your own litigation strategy.

First, as you are aware, the class that Mr. Estrada represents is part of a Coordination Proceeding in which there has been to date many orders on the question of coordinated discovery. Indeed, at every phase of trial in this litigation, discovery has been conducted on a JCCP proceeding-wide basis. The Court has never issued an Order to the contrary. That has continued in the current Case Management Order, wherein all discovery deadlines are directed to the Stipulating Parties or the Non-Stipulating Parties. There is nothing in any order that prevents this office from serving discovery on Mr. Estrada, or any other party to this JCCP.

Second, this Court has previously ordered these cases consolidated for all purposes on the basis of the common claim to groundwater asserted in claims such as those for declaratory relief. (Order Transferring and Consolidating Actions for All Purposes, February 19, 2010, 5:6-28.) In short, pursuant to C.C.P. section 1048, these cases have been consolidated for trial on all of the various common issues. Discovery on those common

issues necessarily arises from the consolidation. I have conducted an extensive review of California caselaw and cannot find a single case stating that discovery in consolidated actions may be segregated as you suggest. Certainly, there has never been such a ruling in this proceeding. Indeed, you presented this argument to the Court during the motion to consolidate and it was rejected. (*See generally* Willis' Memo. of Points & Authorities in Opp. to Motion to Consolidate, August 3, 2009 [Dkt. # 3025]; Hearing Transcript, August 17, 2009, pp. 18-22; *cf.* Order Transferring and Consolidating Actions for All Purposes, February 19, 2010, 3:3-14).)

Finally, you have indicated that you are "preparing to oppose the prove ups of over one hundred parties" (Willis Class' Case Management, January 15, 2015 [Dtk. # 9572] , 2:18-19.) Since the number of parties you claim to be adverse to, by your own count, is greater than the number of defendants to the Willis Complaint by roughly the same number of parties to the global settlement, I must assume that the Small Pumper Class is among those that you will be directly opposing. What you are suggesting is that the Non-Pumper Class has a right to present whatever case it wishes at trial in opposition to the Small Pumper Class, without the latter having any right to the discovery necessary to mount a defense?

Furthermore, I hope we can agree that the Small Pumper Class has a vested interest in the approval of the global settlement agreement which you plan to challenge. The notion that Mr. Estrada can challenge the global settlement without being himself subject to discovery is anathema to the process of civil litigation and the Court's consistent rulings and order in favor of full and open discovery. This would also appear to be inconsistent with the general theme of your most recent Case Management Conference Statement.

For these reasons, I ask you again to reconsider your position and to produce Mr. Estrada for deposition in my office.

Very truly yours,



Michael D. McLachlan

cc: All Parties (*via electronic service*)

Exhibit 4

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

**ORDER TRANSFERRING AND
CONSOLIDATING ACTIONS FOR
ALL PURPOSES**

Included Actions:

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

Hearing Date(s): February 5, 2010
October 13, 2009
August 17, 2009

Time: 9:00 a.m.
Location: Department 1, LASC

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

Judge: Honorable Jack Komar

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

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

2
3 The City of Palmdale, Rosamond Community Services District, Los Angeles County
4 Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
5 California Water Service Company, Quartz hill District, City of Lancaster, and Palmdale Water
6 District (collectively, "Public Water Suppliers") filed Motions to consolidate all of the
7 coordinated matter presently pending before the Court. The motions were heard on August 17,
8 2009 and, at the conclusion of the hearing, the Court orally stated its intent to grant the motions
9 and directed the parties to meet and confer concerning a form of order and to present to the
10 Court a proposed order granting the motion. Subsequently, proposed orders and written
11 arguments were filed and a hearing on the form of the order was held on February 5, 2010.

12 All of the included actions are complex and were ordered coordinated under the
13 provisions of Code of Civil Procedure Section 401.1. To the extent the actions were filed, or
14 were being heard in courts other than this Court, the Order of Coordination required the transfer
15 of the cases to this court for all purposes.

16 The Complaints and Cross-Complaints all include, in one form or other, declaratory
17 relief causes of action seeking determinations of the right to draw ground water from the
18 Antelope Valley basin. These claims are central to every action pending before the Court. In a
19 single aquifer, all water rights are said to be correlative to all other water rights in the aquifer.
20 A determination of an individual party's water rights (whether by an action to quiet title or one
21 for declaratory relief) cannot be decided in the abstract but must also take into consideration all
22 other water rights within a single aquifer.¹ All actions pending, therefore, of necessity involve
23 common issues of law and fact relating to the determination of the relative rights to withdraw
24 water from the Antelope Valley Groundwater Basin in the Antelope Valley and all parties to
25 the litigation claiming water rights are necessary parties to the Court adjudicating a binding
26 determination of those rights. Thus, it appears to the Court that consolidation is not only
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¹ In an earlier phase of the proceedings, the court found as a matter of fact that the area within the jurisdictional boundaries of the valley constituted a single aquifer.

1 necessary but desirable. Entering separate judgments would not permit the court to enforce the
2 judgments once they are entered without transferring each case back to this Court.

3 It is argued by several parties that consolidating the cases will require litigating against
4 parties they did not sue and would subject them to potential costs and fees in actions to which
5 they were not parties. However, the only cause of action that would affect all parties to the
6 consolidation are the declaratory relief causes of action which seek a declaration of water rights
7 (by definition, correlative rights). If the basin is in overdraft (a fact still to be established), the
8 Court in each declaratory relief proceeding would of necessity have to look at the totality of
9 pumping by all parties, evaluate the rights of all parties who are producing water from the
10 aquifer, determine whether injunctive relief was required, and determine what solution equity
11 and statutory law required (including a potential physical solution). All other causes of action
12 could only result in remedies involving the parties who were parties to the causes of action.
13 Costs and fees could only be assessed for or against parties who were involved in particular
14 actions.

15 Consolidation will allow for the entry of single statements of decision in subsequent
16 phases specifying the identity of the parties who are subject to the particular provisions and a
17 single judgment resulting in a comprehensive adjudication of rights to water from the Antelope
18 Valley Groundwater Basin which, among other things, is intended to satisfy the requirements
19 of the McCarran Amendment, 43 U.S.C. § 666.

20 The United States is the largest land owner in the Antelope Valley and claims reserved
21 water rights under federal law. The United States was made a party defendant in this action so
22 that the declaratory relief actions could result in a complete adjudication. No party objected to
23 the participation of the United States in these coordinated actions. There is jurisdiction over the
24 United States only if authorized by Congress. The McCarran Amendment provides a limited
25 waiver of immunity for joinder in *comprehensive* adjudications of all rights to a given water
26 source. In order for there to be a *comprehensive* adjudication all parties who have a water
27 rights claim must be joined in the action and the judgment must bind all the parties. Without
28 consolidation there is risk that the United States might attempt to withdraw from the

1 proceedings for lack of a comprehensive judgment. It may be that coordination itself might
2 permit a single comprehensive judgment but consolidation would eliminate any risk of
3 uncertainty. Consolidation of the water rights claims will result in a comprehensive
4 adjudication and a judgment that will affect all the parties. Complete consolidation will permit
5 these matters to proceed as an *inter se* adjudication of the rights of all the parties to these
6 consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin.

7 While there is a dearth of case law on the issue of consolidation in coordinated cases, it
8 does seem that Code of Civil Procedure Section 1048 applies in these cases and authorizes a
9 consolidation that will result in a final judgment. The California Rules of Court 3.451 requires
10 active management by the coordination trial judge and specifically provides for separate and
11 joint trials of causes of action and issues, as the court in its discretion might order.

12 Pursuant to Rule 3.545(d) of the Rules of Court, certified copies of the judgments
13 bearing the original case numbers of the cases must be entered in the courts where the cases
14 were being heard immediately prior to coordination and unless the coordination judge orders
15 otherwise, the judgments are enforced in those original jurisdictions. However, Rule 3.545(d)
16 empowers the court to provide for the court in which post judgment proceedings will occur and
17 to provide for the court in which any ancillary proceedings will be heard. In this case, that court
18 should be the coordination court in order to ensure proper enforcement of the judgment or
19 judgments.

20 This order of consolidation will not preclude any parties from settling any or all claims
21 between or among them, as long as any such settlement expressly provides for the Court to
22 retain jurisdiction over the settling parties for purposes of entering a judgment resolving all
23 claims to the rights to withdraw groundwater from the Antelope Valley Groundwater Basin as
24 well as the creation of a physical solution if such is required upon a proper finding by the
25 Court. Upon appropriate motion and the opportunity for all parties in interest to be heard, the
26 Court may enter a final judgment approving any settlements, including the *Willis* and *Wood*
27 class settlements, that finally determine all cognizable claims for relief among the settling
28 parties for purposes of incorporating and merging the settlements into a comprehensive single

1 judgment containing such a declaration of water rights and a physical solution. Any such
2 settlement can only affect the parties to the settlement and cannot have any affect on the rights
3 and duties of any party who is not a party to any such settlement. Complete consolidation shall
4 not preclude or impair any class' right to seek the entry of a final judgment after settlement.

5 Therefore it is ordered as follows:

6 Except as otherwise stated below the motion to transfer and to consolidate for all
7 purposes is **GRANTED**.

- 8 1. To the extent not previously transferred as a result of the Judicial Council's
9 order of coordination, all matter presently pending under the Judicial Council
10 Coordination Proceeding No. 4408 are ordered transferred from the Riverside
11 County Superior Court and Kern County Superior Court to the Los Angeles
12 County Superior Court, the Honorable Jack Komar, judge presiding by special
13 assignment.
- 14 2. The following actions are consolidated for all purposes because declaratory
15 relief concerning rights to the ground water in the single aquifer is central to
16 each proceeding:
 - 17 a. *Wm. Bolthouse Farms, Inc. v. City of Lancaster, et al.*, Riverside County
18 Superior Court, Case No. RIC 353840;
 - 19 b. *Diamond Farming Co., et al. v. City of Lancaster, et al.*, Riverside County
20 Superior Court, Case No. RIC 3444436;
 - 21 c. *Diamond Farming Co. v. Palmdale Water District, et al.*, Riverside County
22 Superior Court, Case No. RIC 344668;
 - 23 d. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
24 *al.*, Kern County Superior Court, Case No. S-1500-CV-254-348;
 - 25 e. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
26 *al.*, Los Angeles County Superior Court, Case No. BC 325201;
 - 27 f. *Rebecca Lee Willis, et al. v. Los Angeles County Waterworks District No. 40,*
28 *et al.*, Los Angeles County Superior Court, Case No. BC 364553;

1 g. *Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40, et*
2 *al.*, Los Angeles County Superior Court, Case No. BC 391869; and

3 h. And all cross-complaints filed in any of the above-referenced actions.

4 3. The action entitled *Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust v.*
5 *Wm. Bolthouse Farms, Inc.*, Los Angeles County Superior Court, Case No. 1-
6 05-CV-049053, is not consolidated, but shall remain related and coordinated
7 with the actions and cross-actions referenced in paragraph 3 above.

8 4. The Court has ordered a Case Management Conference at which it will hear
9 arguments concerning the order in which common issues will be heard and to
10 set the matter for further trial. It is the Court's present intent to first schedule
11 trial on the common issues relating to declaratory relief which will include the
12 determination of overall condition of groundwater basin:

13 1. Safe Yield

14 2. Overdraft

15 5. The determination of rights to withdraw groundwater, and claims to
16 prescription, issues affecting appropriation, municipal/domestic priority, rights
17 to imported water/storage rights, return flow rights, reasonable and beneficial
18 use of water, recycled water, quiet title, export of water, determination of
19 federal reserved right to water and physical solution may follow.

20 6. The following described causes of action for damages and other declaratory
21 relief will proceed after the determination of the issues identified in paragraphs
22 4 and 5 above. Any waiver of immunity by the United States under the
23 McCarran Amendment does not extend to these claims; jurisdiction over the
24 United States does not attach to these claims or causes of action alleging these
25 claims, and any determination on these claims shall not bind or otherwise
26 adversely affect the rights of the United States:

27 a) Conversion

28 b) Nuisance


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- c) 42 U.S.C. § 1983
- d) Takings/Inverse Condemnation
- e) Trespass

7. Any claim to declaratory relief regarding basin boundaries has been determined by the Court by Order dated November 6, 2008. To the extent any current party was not a party at the time of the determination of this issue, that party may seek to reopen or, consistent with the order, move to amend the basin boundary.

SO ORDERED.

Dated: FEB 19 2010



Hon. Jack Komar
Judge of the Superior Court