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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

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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  
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**REPLY BRIEF IN SUPPORT OF  
MOTION FOR CLARIFICATION  
OF ORDER ON MOTION FOR  
AWARD OF ATTORNEY FEES,  
COSTS AND INCENTIVE  
AWARD; SUPPLEMENTAL  
DECLARATION OF MICHAEL D.  
MCLACHLAN**

Location: Room 222  
Date: May 25, 2016  
Time: 9:00 a.m.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Only the Lemieux & O'Neill firm has filed a "Response" to this Motion.  
4 That Response primarily raises those defendants' request for a specific allocation.  
5 These defendants do not oppose the other points of clarification requested by  
6 Plaintiff Richard Wood ("Plaintiff"). Neither California Water Service Company  
7 nor Los Angeles County Waterworks District No. 40 filed any opposition.

8 **II. THE PROPOSED LEMIEUX ALLOCATION**

9 The favored allocation suggested by the Lemieux Defendants uses the  
10 native safe yield number as a denominator rather than the rights afforded to the  
11 Public Waters collectively in Exhibit 3 to the Judgment and Physical Solution.  
12 (*See* McLachlan Decl., Ex. 2; Response, 2:16-20.)<sup>1</sup> There are several issues of  
13 potential concern with this allocation. First, it is unknown whether the other two  
14 public water supplier defendants are agreed with this methodology.<sup>2</sup>

15 Second, this approach, absent further clarification, might suggest that most  
16 of the attorneys' fees and costs award would be allocated to parties other than the  
17 seven defendants in question, or perhaps simply not allocated at all. Defense  
18 counsel, Keith Lemieux, has informally clarified that neither of these is what his  
19 clients are advocating, and that he understands that these seven defendants will  
20 be ordered to pay 100% of the fee and costs award in some form. (Supp.

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22  
23 <sup>1</sup> Plaintiff is submitting a proposed order using the preferred Lemieux  
24 allocation – as set forth in those defendants proposed order – but with the  
25 addition of an allocation for the two other defendants using their respective  
26 Exhibit 3 allocations of the native safe yield. This proposed order also addresses  
27 the other issues raised by this Motion.

28 <sup>2</sup> In the event that District No. 40 or Cal Water oppose the preferred  
Lemieux allocation, Plaintiff is submitting a second proposed order that uses only  
the water rights allocated to the seven defendants in Exhibit 3 to the Judgment  
and Physical Solution. The denominator used in this order is 9080.95 acre-feet,  
which is the total of the Exhibit 3 allocations for these seven defendants.

1 McLachlan Decl., ¶ 2.) In order for the preferred Lemieux allocation to work, the  
2 other two defendants would have to bear the remaining 97% in some fashion.

3 The larger problem that the Lemieux filing calls to attention is the question  
4 of what happens when one or more of the seven defendants refuses to pay,  
5 dissolves, or files bankruptcy? The Court's Order After Hearing on April 1, 2016  
6 does not directly speak to this issue, but by omission, seems to suggest that any  
7 fees or costs allocated to such defaulting or defunct defendant are lost to Class  
8 Counsel. This result, however, is contrary to terms of the contract forming the  
9 basis of the global settlement: the Stipulation for Entry of Judgment. That  
10 Stipulation provides, in relevant part, as follows:

11 The Public Water Suppliers and no other Parties to this Stipulation shall  
12 pay all reasonable Small Pumper Class attorneys' fees and costs through  
13 the date of the final Judgment in the Action, in an amount either pursuant  
14 to an agreement reached between the Public Water Suppliers and the Small  
15 Pumper Class or as determined by the Court. The Public Water Suppliers  
16 reserve the right to seek contribution for reasonable Small Pumper Class  
17 attorneys' fees and costs through the date of the final Judgment in the  
18 Action from each other and Non-Stipulating Parties.

19 (Supp. McLachlan Decl., Ex. 5 (Stipulation for Entry of Judgment), ¶ 11.)

20 In sum, this agreement provides that only these seven defendants shall  
21 bear the obligation to pay “**all** reasonable” fees and costs, subject to their right to  
22 seek contribution amongst and between themselves (or from other non-  
23 stipulating parties). As such, in the instance where one or more of the seven  
24 defendants defaults, the remaining defendants must still pay the 100% of the  
25 awarded fees and costs amongst themselves. The net effect of this language from  
26 the Stipulation is that it bars the imposition of purely several liability. On that  
27 basis, Plaintiff objects to any rendition of the award of attorneys' fees and cost  
28 that permits the non-payment of any portion of that award.

1           What Plaintiff suggests is that the Court clarify its order to conform with  
2 the above-cited language in the Stipulation for Entry of Judgment by making the  
3 fees and costs obligations joint in the first instance, and to also address the rights  
4 of contribution among and between the seven defendants by adopting an  
5 appropriate allocation. Plaintiff has submitted to alternative proposed orders. If  
6 there is no objection, Plaintiff is agreeable to the first alternative, which uses the  
7 ratios proposed in the Response filed by the Lemieux firm.

8 **III. CONCLUSION**

9           For all of the foregoing reasons, Plaintiff Richard Wood requests that the  
10 Court issue an order amending or clarifying its Order of April 25, 2016 consistent  
11 with the foregoing. Specifically, the defendants should be identified by name, the  
12 costs should be included in such order, and it should be consistent with the  
13 language of the Stipulation for Entry of Judgment such that the seven defendants  
14 at issue are collectively liable for the full amount of the award under any  
15 circumstance.

16  
17 DATED: May 18, 2016

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

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20 By: \_\_\_\_\_  
21 MICHAEL D. MCLACHLAN  
22 Attorneys for Plaintiff and the Class  
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**SUPPLEMENTAL 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.

2. On May 12, 2016, I spoke with Keith Lemieux about his Response to this Motion. He informed me that his intended allocation methodology did not have the purpose of allocating anything less than 100% of the fee and cost award to the seven defendants in question. He also indicated that he did not know whether the other two defendants opposed his proposed allocation methodology.

3. Attached as **Exhibit 5** is a true and correct copy of the Stipulation for Entry of Judgment that was executed by the parties and filed in support of the “global settlement.” The attached version omits 133 pages of signatures from the original document on file with the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18<sup>th</sup> day of May, 2016, at Hermosa Beach, California.

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Michael D. McLachlan

# **Exhibit 5**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Coordination Proceeding  
Special Title (Rule 1550 (b))

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Judicial Council Coordination  
Proceeding No. 4408

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**STIPULATION FOR ENTRY OF  
JUDGMENT AND PHYSICAL SOLUTION**

1. The undersigned Parties (“Stipulating Parties”) stipulate and agree to the entry of the proposed Judgment and Physical Solution (“Judgment”), attached hereto as Exhibit 1 and incorporated herein by reference, as the Judgment in this Action. This Stipulation is expressly conditioned, as set forth in Paragraph 4 below, upon the approval and entry of the Judgment by the Court.

2. The following facts, considerations and objectives, among others, provide the basis for this Stipulation for Entry of Judgment (“Stipulation”):

- a. The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.
- b. The Judgment resolves all disputes in this Action among the Stipulating Parties.

1 c. The Stipulating Parties represent a substantial part of the total Production within  
2 the Basin.

3 d. There exists now and has existed for many years an Overdraft on the  
4 Groundwater supply within the Basin.

5 e. It is apparent to the Stipulating Parties that protection of the rights of the  
6 Stipulating Parties and protection of the public interest within the Basin require the  
7 development and imposition of a Physical Solution.

8 f. The Physical Solution contained in the Judgment is in furtherance of the mandate  
9 of the State Constitution and the water policy of the State of California.

10 g. Entry of the Judgment will avoid the time, expense, and uncertainty associated  
11 with continued litigation.

12 h. The Judgment will create incentives, predictability and long-term certainty  
13 necessary to promote beneficial use of the Basin's Groundwater resources to the fullest  
14 extent practicable and for the greatest public benefit.

15 i. The Judgment will create opportunities for state and local funding as may be  
16 available to promote greater development and beneficial use of the Basin's Groundwater  
17 resources.

18 j. The Judgment will aid in securing a reliable and cost-effective water supply to  
19 serve the Stipulating Parties' constituencies and communities.

20 3. Defined terms in the Judgment shall have the same meaning in this Stipulation.

21 4. The provisions of the Judgment are related, dependent and not severable. Each and every  
22 term of the Judgment is material to the Stipulating Parties' agreement. If the Court does not approve the  
23 Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the trial  
24 court, then this Stipulation is *void ab initio* with the exception of Paragraph 6, which shall survive.

25 5. The Stipulating Parties will cooperate in good faith and take any and all necessary and  
26 appropriate actions to support the Judgment until such time as this Judgment is entered by the Court, and  
27 appeals, if any, are final, including:

28 a. Producing evidentiary testimony and documentation in support thereof;



1           b.     Defending the Judgment against Non-Stipulating Parties, including, as  
2           appropriate, providing evidence of the Stipulating Parties' prescriptive and self-help  
3           rights.

4           6.     Each Stipulating Party has agreed to this Stipulation without admitting any factual or  
5           legal provisions of this Stipulation or the proposed Judgment. In the event that this Stipulation is void,  
6           or if trial is necessary against any Non-Stipulating Party to determine issues provided for in the  
7           Judgment, the resulting factual or legal determinations shall not bind any Stipulating Party or become  
8           law of the case.

9           7.     As consideration and as a material term of this Stipulation, the Stipulating Parties hereby  
10          declare that they are not aware of any additional Person pumping Groundwater, or landowner owning  
11          property in the Basin, that is not either named as a Party in the Action, included in the Non-Pumper  
12          Class or Small Pumper Class, or a Defaulting Party.

13          8.     The Stipulating Parties, in order to protect the Basin from over-pumping, have stipulated  
14          and agreed to the terms of the Judgment and have agreed to substantial cuts to water allocation  
15          compared with what they claim under California law, and in the case of the United States, also under  
16          federal law. In return, the Stipulating Parties have agreed to provisions in the Physical Solution which  
17          are only available by stipulation. These provisions include, without limitation, the right to transfer  
18          Production Rights and the right to Carry Over rights from year to year, as set forth in the Judgment.  
19          Non-Stipulating Parties, or any other Parties contesting the Judgment, shall not be entitled to the benefit  
20          of these provisions, and shall have only the rights to which they may be entitled by law according to  
21          proof at trial.

22          9.     The Stipulating Parties agree to request the Court to order the representatives of the Non-  
23          Pumper Class and the Small Pumper Class to identify any Persons which have opted out of the Classes  
24          and provide the identities of any opt-outs to District No. 40 within twenty (20) days of the Court's order  
25          approving this Stipulation. District No. 40 will assure that all Persons opting out of the Classes have  
26          been named, served, and defaulted or otherwise adjudicated, and will provide a report to the Court and  
27          the Stipulating Parties.

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1           10.    As consideration for this Stipulation between the Stipulating Parties, District No. 40  
2 specifically agrees to the following:

3           a.       District No. 40 agrees to identify all landowners in the Basin, to confirm that each  
4 landowner was served, and to confirm that each landowner is a part of the Non-Pumper  
5 Class, the Small Pumper Class, the Stipulating Parties, a Defaulting Party, or a Party that  
6 has appeared, as the case may be. District No. 40 will file a report containing this  
7 information with the Court and with all Parties.

8           b.       District No. 40 agrees to take all available steps and procedures to prevent any  
9 Person that has not appeared in this Action from raising claims or otherwise contesting  
10 the Judgment.

11           11.    The Public Water Suppliers and no other Parties to this Stipulation shall pay all  
12 reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the  
13 Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and  
14 the Small Pumper Class or as determined by the Court. The Public Water Suppliers reserve the right to  
15 seek contribution for reasonable Small Pumper Class attorneys' fees and costs through the date of the  
16 final Judgment in the Action from each other and Non-Stipulating Parties. Any motion or petition to the  
17 Court by the Small Pumper Class for the payment of attorneys' fees in the Action shall be asserted by the  
18 Small Pumper Class solely as against the Public Water Suppliers (excluding Palmdale Water District,  
19 Rosamond Community Services District, City of Lancaster, Phelan Piñon Hills Community Services  
20 District, Boron Community Services District, and West Valley County Water District) and not against  
21 any other Party.

22           12.    In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as  
23 provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown  
24 established in the Judgment, a drought water management program ("Drought Program") shall be  
25 implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

26           13.    The Stipulating Parties do not object to the award of an incentive to Richard Wood, the  
27 Small Pumper Class representative, in recognition of his service as Class representative. The Judgment  
28 shall provide that Richard Wood has a Production Right of up to five (5) acre-feet per year for


1 reasonable and beneficial use on his parcel, free of a Replacement Water Assessment. This Production  
2 Right shall not be transferable and is otherwise subject to the provisions of the Judgment. If the Court  
3 approves this award of an additional two (2) acre-feet of water, such award shall be in lieu of any  
4 monetary incentive payment.

5 14. The Stipulating Parties agree that an orderly procedure for obtaining the Court's approval  
6 of the Judgment is a material term to this Stipulation. The Parties agree that the Case Management  
7 Order attached hereto as Appendix 1 is an appropriate process for obtaining such approval.

8 15. The Stipulating Parties agree that this Stipulation shall bind and benefit them, and will be  
9 binding upon and benefit all their respective heirs, successors-in-interest and assigns.


10 16. Each signatory to this Stipulation represents and affirms that he or she is legally  
11 authorized to bind the Stipulating Party on behalf of whom he or she is signing. The Stipulating Parties  
12 understand that this Stipulation and the Judgment are not effective as to the Small Pumper Class until  
13 the Court grants approval of a settlement agreement in *Wood v. Los Angeles County Waterworks District*  
14 *No. 40 et al.*

1 LOS ANGELES COUNTY WATERWORKS  
2 DISTRICT NO. 40

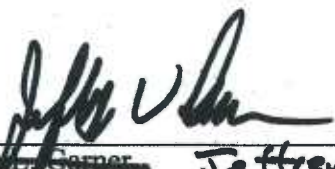
3 By:   
4 Gail Farber  
5 Director of Public Works

Date: 2/24/15

6 Approved as to form by:  
7 Mark J. Saladino, County Counsel

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9 By:   
10 Warren R. Wellen  
11 Principal Deputy County Counsel

12 Approved as to form by: Eric L. Garner

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14 By:   
15 ~~Eric L. Garner~~ Jeffrey V. Ann and Eric L. Garner  
16 Best Best & Krieger

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