

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@mclachlan-law.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
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
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**RICHARD WOOD'S RESPONSE
TO CERTAIN DEFENDANTS'
REQUEST TO AUGMENT ORDER
CLARIFYING ORDER AFTER
HEARING ON APRIL 1, 2016**

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

1 On June 16, 2016, the various water supplier defendants represented by
2 the Lemieux & O'Neill firm filed a document titled "Request to Augment Order
3 Re Clarification of Order After Hearing on April 1, 2016 Re Attorneys' Fees
4 Award." In that filing, these defendants stated: "At the hearing, the court
5 indicated its order was clear and that no additional order regarding the attorneys'
6 fees was necessary." This representation is false, and indeed, directly opposite of
7 what the Court ordered:

8 MR. MCLACHLAN: VERY GOOD. THEN, AM I TO SUBMIT A
9 PROPOSED ORDER OR NOT?

10 THE COURT: I WOULD ASK YOU TO DO THAT, CONFORMING
11 TO WHAT I STATED HERE. BUT IN ADDITION I WOULD ASK
12 YOU TO CONFER WITH THE OTHER SEVEN LAWYERS TO
13 MAKE SURE THAT YOUR NUMBERS ARE IN SYNCH.

14 MR. MCCLACHLAN: THAT'S EASY ENOUGH, YOUR HONOR.
15 WE'LL DO THAT.

16 (Hearing Transcript of May 25, 2016, 15:1-8.) A copy of the relevant portion of
17 the hearing transcript is attached as Exhibit A.

18 Plaintiff Richard Wood has complied with the Court's request, and has filed
19 a proposed order that conforms with the Court's ruling at the May 25, 2016
20 hearing. Plaintiff conferred with all defense counsel prior to submitting the
21 proposed Order, and obtained assent of all but Mr. Lemieux.

22 The proposed Order does not address the question of the applicability of
23 Government Code election because the Court expressly declined to revisit that
24 matter at the hearing. (Exhibit A, 12:5-21.) The Lemieux clients' further request
25 to revisit that issue remains improper. For that reason, the Court should enter
26 the order as presented.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: June 20, 2016

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

By: _____
MICHAEL D. MCLACHLAN
Attorneys for Plaintiff and the Class

Exhibit A



EVIDENTIARY PROVE-UP HEARING - Stanley Mosk Room 222
1 Day

**Antelope Valley Ground Water Cases, 1-05-CV-049053,
JCCP4408**

May 25th, 2016

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROOM 222

HON. JACK KOMAR, JUDGE

IN RE

ANTELOPE VALLEY GROUNDWATER CASES.

CASE NO. JCCP4408

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MAY 25, 2016

APPEARANCES:

FOR PLAINTIFF UNITES STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE ENVIRONMENT & NATURAL RESOURCES DIVISION BY: R. LEE LEININGER, ESQ. JAMES J. DUBOIS, ESQ. (VIA COURTCALL) 950 PENNSYLVANIA AVENUE NW WASHINGTON, DISTRICT OF COLUMBIA 20530

FOR PLAINTIFF RICHARD WOOD:

LAW OFFICES OF MICHAEL D. MC LACHLAN BY: , ESQ. 44 HERMOSA AVENUE HERMOSA BEACH, CALIFORNIA 90254

FOR THE WOOD CLASS:

LAW OFFICES OF DANIEL O'LEARY BY: , ESQ. 2300 WESTWOOD BOULEVARD SUITE 105 LOS ANGELES, CALIFORNIA 90064

FOR DEFENDANT BOLTHOUSE PROPERTIES, LLC:

CLIFFORD & BROWN BY: RICHARD ZIMMER, ESQ. (VIA COURTCALL) 1430 TRUXTUN AVENUE, SUITE 900 BAKERSFIELD, CA 93301

(CONTINUED)

REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807 OFFICIAL REPORTER

1 CASE NUMBER: JCCP4408
2 CASE NAME: IN RE ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA WEDNESDAY, MAY 25, 2016
4 ROOM 222 HON. JACK KOMAR
5 REPORTER: RHONA S. REDDIX
6 TIME: A.M. SESSION
7 APPEARANCES: (SEE TITLE PAGE.)
8
9

10 THE COURT: GOOD MORNING.
11

12 (RESPONSES.)
13

14 THE COURT: THIS IS THE ANTELOPE VALLEY
15 COORDINATED CASES. ALL RIGHT. WE HAVE FOUR MATTERS
16 ESSENTIALLY ON FOR CALENDAR THIS MORNING WE'RE GOING TO
17 TAKE UP. IN THE ORDER OF EASE, THE FIRST MOTION THAT I
18 WANT TO CONSIDER IS THE ROBAR PARTIES.

19 ARE YOU PRESENT? COME FORWARD, PLEASE.

20 MS. BILOTTI: THANK YOU, YOUR HONOR.

21 THE COURT: COME FORWARD AND STATE YOUR NAME.

22 AND LET ME REMIND EVERYBODY, WHEN YOU
23 APPEAR, PLEASE STATE YOUR NAME FOR THE RECORD.

24 MS. BILOTTI: SO, YOUR HONOR, I HAVE TWO WITNESSES
25 TO CALL TODAY, A CLIENT AND AN EXPERT WITNESS. AND
26 SHALL I HAVE THE WITNESS GET INTO THE BOX OR --

27 THE COURT: OKAY. WHEN YOU -- ASK A QUESTION
28 FIRST.

1 MR. O'LEARY: SO IF THE COURT UNDERSTANDS OUR
2 POSITION --

3 THE COURT: I DO.

4 MR. O'LEARY: -- THERE'S NOTHING MORE TO ADD TO
5 IT. I DON'T THINK THAT THE CLERICAL NATURE OF THE ERROR
6 REALLY AFFECTS WHETHER IT SHOULD BE NUNC PRO TUNC OR
7 NOT. THE EFFECTIVE SUBSTANCE OF IT SHOULD, BUT OTHER
8 THAN -- AND THAT'S THE SAME POINT WAS MADE IN THE
9 OPPOSITION, SO WITH THAT I WILL SUBMIT.

10 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
11 ANYBODY? OKAY.

12 WELL, I'M GOING TO GRANT THE MOTION. I'M
13 GOING TO DIRECT THAT THE COUNSEL FOR DISTRICT 40 PREPARE
14 AN AMENDED FACE SHEET FOR THE JUDGMENT, TO REFLECT THE
15 CORRECTED CAPTION. AND IF YOU WANT TO CALL IT "NUNC PRO
16 TUNC," YOU MAY. I DON'T THINK IT'S NECESSARY TO DO
17 THAT. ALL RIGHT. IT'S NOT THE COURT'S INTENT TO EFFECT
18 OR IMPACT ANY TIME LIMITATIONS THAT MAY ARISE FROM THE
19 JUDGMENT.

20 OKAY. ALL RIGHT. SO, MR. DUNN, WILL YOU
21 PREPARE THE ORDER, OR YOUR OFFICE WILL?

22 MR. DUNN: YES, YOUR HONOR.

23 THE COURT: I SUSPECT I KNOW WHO IS GOING TO DO
24 IT, MS. WANG.

25 MR. DUNN: YES.

26 THE COURT: ALL RIGHT. THANK YOU. OKAY.

27 NOW, THE NEXT MOTION IS BY THE WOOD CLASS,
28 TO CLARIFY THE ORDER ON FEES AND COSTS. AND LET ME JUST

1 GIVE YOU A TENTATIVE AS TO MY VIEW OF THAT. FIRST OF
2 ALL, THE AWARD OF FEES AND/OR COSTS IS NOT APPLICABLE TO
3 BORON OR WEST VALLEY. CANNOT BE. PARAGRAPH 11 OF THE
4 STIPULATION SPECIFICALLY EXCLUDES THEM AS PAYEES OF
5 ATTORNEY'S FEES.

6 SECONDLY, CAL WATER, NOT BEING A PUBLIC
7 ENTITY, COULD NOT BE BLANKETED IN UNDER THE PROVISION
8 THAT AUTHORIZES PAYMENT OVER TIME. THIRDLY, THE
9 PERCENTAGE OF OBLIGATION OF EACH OF THE SEVEN PARTIES
10 WHO ARE OBLIGATED IS REFLECTED IN THE SUBMISSION AT THE
11 TIME OF THE HEARING ON THE MOTION FOR FEES THAT WAS
12 ATTACHED AS AN EXHIBIT BY MR. MCLACHLAN. LET ME SEE IF
13 I CAN PUT MY FINGER ON IT.

14 IT IS -- IT WAS ENTITLED "PROPORTIONAL
15 ALLOCATION," AND IT INDICATES 100 PERCENT PERCENTAGE
16 BASED UPON THE LODESTAR. NOW, THE COURT OBVIOUSLY
17 DIDN'T ACCEPT THE LODESTAR NUMBER, OR IT KEPT --
18 ACCEPTED THE NUMBER BUT NOT THE RATE OF FEES. BUT THE
19 PERCENTAGES REMAIN THE SAME. AND I'LL RESTATE THOSE FOR
20 YOU BECAUSE THOSE ARE THE NUMBERS THAT THE COURT ADOPTED
21 AT THE TIME IT MADE THE ORDER. IT WAS NOT AMBIGUOUS,
22 ONLY AS TO WHO THE PARTIES WERE.

23 SO THAT IT'S DISTRICT 40 IS 74.76 PERCENT;
24 QUARTZ HILL, 6.21 PERCENT; LITTLE ROCK CREEK INDUSTRIAL
25 DISTRICT, 8.77 PERCENT; CALIFORNIA WATER, 3.78 PERCENT;
26 DESERT LAKE COMMUNITY SERVICES DISTRICT, .81 PERCENT;
27 HAHN RANCH DISTRICT, 5.13 PERCENT; AND NORTH EDWARDS WAS
28 .54 PERCENT. THOSE TOTAL UP -- ACTUALLY I THINK THEY

1 TOTAL UP TO ABOUT 99.8 SOMETHING PERCENT, BUT WE'LL CALL
2 IT 100 PERCENT.

3 THAT'S MY TENTATIVE. NOW, ANYBODY WANT TO
4 FURTHER ARGUE?

5 AND IT WAS ALSO SEVERAL, AND I MADE THAT
6 VERY SPECIFIC IN THE ORDER.

7 MR. LEMIEUX: YES. KEITH LEMIEUX, L-E-M-I-E-U-X.

8 YOUR HONOR, I WOULD LIKE TO -- THE CLASS
9 COUNSEL SUBMITTED A PROPOSED ORDER AND PERCENTAGE THAT
10 HAD A LOWER PERCENTAGE FOR MY CLIENTS BASED ON THE SPLIT
11 OF WATER USE IN THE GLOBAL SETTLEMENT. AND AS FAR AS I
12 KNOW, NOBODY'S FILED ANY OBJECTION OR -- TO THAT SPLIT.
13 LET ME ARGUE WHY THAT'S IN THE INTEREST OF JUSTICE IN
14 THIS CASE.

15 THE HIGHER SPLIT THAT YOU'RE DESCRIBING IN
16 THE CASE OF, FOR EXAMPLE, LITTLE ROCK CREEK -- I DON'T
17 HAVE THE NUMBERS IN FRONT OF ME. UNFORTUNATELY I LEFT
18 THAT IN MY CAR BUT -- IT'S SOMETHING LIKE A SIXTH OF
19 THEIR ANNUAL OPERATING BUDGET, THAT HIGHER NUMBER, AND
20 THE -- IT'S LIKewise FOR NORTH EDWARDS. YOU KNOW, THEY
21 ONLY HAVE \$150,000 ANNUAL OPERATING BUDGET. THIS HIRE
22 SPLIT IS \$12,000 AWARD, SOMETHING IN THAT NEIGHBORHOOD,
23 WHICH, AGAIN, IS A SIZABLE CHUNK.

24 AND SO WHAT I'M SUGGESTING TO THE COURT IS
25 IN LIGHT OF THE FACT THAT, AS FAR AS I KNOW, THERE
26 HASN'T BEEN ANY OBJECTION TO IT, I THINK THE LOWER SPLIT
27 IS IN THE INTEREST OF JUSTICE. IT'S MORE CONSISTENT
28 WITH MAKING SURE THE AWARD ACTUALLY REFLECTS THE SIZE OF

1 THE ENTITIES THAT ARE PAYING THE AWARD. I DON'T THINK
2 THIS AWARD WAS INTENDED TO BE PUNITIVE ON ANY OF THESE
3 ENTITIES, AND SO THAT'S MY REQUEST.

4 I SEE YOU'RE SHAKING YOUR HEAD NO BUT --

5 THE COURT: WELL, THE REASON THAT I AM IS BECAUSE
6 THERE ARE NO NEW FACTS BEING PRESENTED TO THE COURT.
7 THE ORDER WAS MADE, AND WHAT YOU'RE REALLY ASKING FOR IS
8 A RECONSIDERATION OF THE ORDER, AND I CANNOT FIND A
9 LEGAL BASIS FOR THAT.

10 SECONDLY, YOU HAVE TEN YEARS TO PAY IT, AND
11 IT SEEMS TO ME THAT OVER THAT TEN-YEAR PERIOD, THAT
12 YOU'RE NOT TALKING ABOUT A SIGNIFICANT IMPACT ON THE
13 TAXPAYERS OR ANYBODY ELSE.

14 MR. LEMIEUX: IF WE WERE ABLE TO PAY IT OVER TEN
15 YEARS, I WOULD AGREE WITH YOU. I KNOW OPPOSING COUNSEL
16 HAS SUGGESTED THAT THAT'S NOT THE CASE.

17 THE COURT: WELL, IT'S IN THE ORDER, ISN'T IT?

18 MR. LEMIEUX: OKAY. ALL RIGHT.

19 THE COURT: TRUE?

20 MR. LEMIEUX: IT IS IN THE ORDER THAT STANDS, AS I
21 UNDERSTAND IT.

22 THE COURT: OKAY. ALL RIGHT. NOW, OBVIOUSLY --
23 MR. MCCLACHLAN, DO YOU HAVE ANY FURTHER OPPOSITION OR
24 STATEMENT WITH REGARD TO YOUR MOTION? SUPPORT OF YOUR
25 MOTION?

26 MOVING PARTY'S USUALLY ENTITLED TO SPEAK
27 FIRST.

28 MR. MCCLACHLAN: I GUESS THAT'S ME THEN.

1 MICHAEL MCCLACHLAN FOR RICHARD WOOD IN THE SMALL PUMPER
2 CLASS. I APPRECIATE YOUR HONOR TAKING THIS MATTER UP.

3 I AGREE WITH THE FIRST TWO POINTS,
4 REGARDING BORON AND WEST VALLEY, AND SO THE COURT
5 CLARIFYING THAT IS HELPFUL, AS SAME WITH CAL WATER.

6 WITH REGARD TO THE ALLOCATION, THAT WAS
7 LEGITIMATELY THE SUBJECT OF SOME CONFUSION AMONG ALL THE
8 PARTIES ON BOTH SIDES OF THE ORDER, AND SO I APPRECIATE
9 THE COURT'S CLARIFICATION ON THAT.

10 WHAT I SUGGEST IS -- MR. O'LEARY DID SOME
11 QUICK MATH AND HE GOT 99.98. I DID MATH ON THOSE
12 NUMBERS ONE TIME. I GOT 100 PERCENT. OBVIOUSLY I
13 PREPARED THOSE NUMBERS; SO I'M PROBABLY MAKING THE SAME
14 ERROR REPEATEDLY. BUT WHAT I'D LIKE TO SUGGEST IS THAT
15 WE'LL SUBMIT A PROPOSED CLARIFYING ORDER CONSISTENT WITH
16 YOUR HONOR'S ULTIMATE DECISION HERE AND LAY OUT THOSE
17 NUMBERS. THEY SHOULD CLEARLY -- THEY MUST ADD UP TO
18 100 PERCENT. MAYBE SOME ADDITIONAL DECIMALS DIDN'T GET
19 CARRIED OR SOMETHING LIKE THAT. I DON'T KNOW WHAT -- IF
20 THERE WAS A MATH ERROR, I DON'T KNOW EXACTLY WHAT IT IS.
21 BUT WE KNOW YOUR HONOR'S REASONING AND THE BASIS FOR
22 THAT, SO THAT CAN EASILY BE CALCULATED. AND THERE'S
23 VERY SMALL DIFFERENCE.

24 BUT THE STIPULATION SAYS THAT THEY WILL --
25 THOSE SEVEN DEFENDANTS WILL PAY ALL REASONABLE FEES.
26 OBVIOUSLY THEY'RE AWARDED BY THE COURT. AND "ALL" MEANS
27 100 PERCENT. SO WE NEED TO GET A NUMBER THAT --

28 THE COURT: WELL, I THINK WHAT'S HAPPENED IS

1 SOMEBODY HAS ROUNDED THE PERCENTAGES TO PROVIDE AN EVEN
2 NUMBER INSTEAD OF, FOR EXAMPLE, 3.788 PERCENT, IT SAYS
3 THREE-POINT -- OR 3.783 PERCENT, IT SAYS 3.88, SO -- OR
4 78. SO, YOU KNOW, I DON'T KNOW, BUT ALL I HAVE IS
5 WHAT'S PROVIDED TO ME. AND THE COURT IS NOT -- WELL,
6 I'M NOT INCLINED TO GO BEYOND THE NUMBERS THAT WERE
7 PRESENTED, BUT IF YOU CAN SHOW THE COURT THAT THE ACTUAL
8 PERCENTAGE IS -- HAS BEEN ROUNDED TO APPARENTLY A LOWER
9 NUMBER. BECAUSE I ALSO, WHEN I DID THE CALCULATION,
10 FOUND THAT IT WAS 99-POINT -- I THINK IT WAS 89 PERCENT,
11 BUT IT COULD HAVE BEEN A SLIGHTLY MODIFIED NUMBER. THAT
12 ALWAYS ROUNDS UP TO 100 PERCENT.

13 MR. MCCLACHLAN: THAT'S -- THEORETICALLY I
14 UNDERSTAND WHAT YOUR HONOR'S SAYING. WHAT I'M SAYING IS
15 THAT IN THIS INSTANCE PARTIES HAVE ALL STIPULATED THAT
16 THESE SEVEN DEFENDANTS WILL PAY 100 PERCENT, AND
17 REGARDLESS OF WHETHER THERE'S A ROUNDING ERROR OR NOT,
18 THE COURT HAS AN OBLIGATION TO ISSUE AN ORDER THAT IS
19 CONSISTENT WITH STIPULATION.

20 YOU CAN OBVIOUSLY DO -- YOU CAN CHANGE THE
21 LODESTAR HOURLY RATE, YOU CAN CHANGE THE FEES AND, ET
22 CETERA, AND DO THOSE THINGS DISCRETIONALLY ON THE FEE
23 MOTION, BUT SAYING THAT THESE SEVEN DEFENDANTS ARE
24 RESPONSIBLE FOR SOMETHING LESS THAN ALL THE FEES IS NOT
25 CONSISTENT --

26 THE COURT: NO, I HAVE NOT SAID THAT AND THAT'S
27 NOT MY INTENT. MY INTENT IS TO CONFORM TO THE AGREEMENT
28 WITH REGARD TO FEES.

1 MR. MCCLACHLAN: VERY GOOD. THEN, AM I TO SUBMIT
2 A PROPOSED ORDER OR NOT?

3 THE COURT: I WOULD ASK YOU TO DO THAT, CONFORMING
4 TO WHAT I STATED HERE. BUT IN ADDITION I WOULD ASK YOU
5 TO CONFER WITH THE OTHER SEVEN LAWYERS TO MAKE SURE THAT
6 YOUR NUMBERS ARE IN SYNCH.

7 MR. MCCLACHLAN: THAT'S EASY ENOUGH, YOUR HONOR.
8 WE'LL DO THAT.

9 THE COURT: AND IF YOU COULD ATTACH THAT OR
10 PROVIDE THE COURT WITH THAT IN YOUR ORDER, WITH THEIR
11 APPROVAL, THEN WE CAN PROCEED.

12 MR. MCCLACHLAN: THAT'S FINE. WE'LL DO THAT. AND
13 WE'LL LEAVE THE ISSUE OF SEVERAL LIABILITY FOR ANOTHER
14 DAY. WE STATED OUR POSITION ON THAT, AND I UNDERSTAND
15 THE COURT'S POSITION ON THAT.

16 THE COURT: WELL, IT WOULD BE A MOTION FOR
17 RECONSIDERATION, AND THAT HAS NOT BEEN PROPERLY
18 PRESENTED.

19 MR. TOOTLE: GOOD MORNING, YOUR HONOR.
20 JOHN TOOTLE ON BEHALF OF CALIFORNIA WATER SERVICE
21 COMPANY.

22 THE COURT: YES, MR. TOOTLE.

23 MR. TOOTLE: I JUST WANTED -- WHEN I READ THE
24 ORDER, I THOUGHT THAT YOUR HONOR WAS TAKING INTO ACCOUNT
25 SOME OF THE ARGUMENTS PREVIOUSLY MADE UP IN SAN JOSE
26 WITH REGARD TO SMALL WATER COMPANIES.

27 THE FEES THAT WE -- CAL WATER WILL HAVE TO
28 PAY IN THIS CASE WILL BE BORNE BY ITS 600 CUSTOMERS. I

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROOM 222

HON. JACK KOMAR, JUDGE

IN RE)

ANTELOPE VALLEY GROUNDWATER CASES.)

) CASE NO. JCCP4408

) REPORTER'S

) CERTIFICATE

_____)

I, RHONA S. REDDIX, OFFICIAL REPORTER OF
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES, 1 THROUGH 31, COMPRISE A FULL, TRUE AND
CORRECT TRANSCRIPT OF THE REPORTED PROCEEDINGS TAKEN IN
THE ABOVE ENTITLED CAUSE ON MAY 25, 2016.

DATED THIS 3RD OF JUNE, 2016.

Rhona S. Reddix

_____, CSR, RPR, CRR, RMR #10807
OFFICIAL REPORTER