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22 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
23 **COUNTY OF LOS ANGELES**

24 Coordination Proceeding
25 Special Title (Rule 1550(b))

26 ANTELOPE VALLEY GROUNDWATER
27 CASES

28 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

**REPLY BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

Date: June 16, 2011
Time: 9:00 a.m.
Dept: 316

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY**

2 Moving parties, Plaintiff Richard Wood and Los Angeles County Waterworks
3 District No. 40, submit the following Reply brief in support of their motion for
4 preliminary approval of the Wood Class Settlement. Various landowner parties
5 (collectively “Objectors”)¹ have filed briefs opposing the settlement, and those arguments
6 are dealt with collectively in the following sections. There has not been any opposition
7 filed by any class members.

8 **A. The Wood Settlement Agreement Does Not Prioritize Pumping Rights**

9 Objectors maintain that the Wood Settlement Agreement (“Settlement”) will force
10 other landowners to reduce their pumping so that each Wood Class Member may pump
11 three acre-feet per year assessment free. Objectors allege the Settlement violates the
12 Court’s Order, which mandates that the Settlement have no effect on the rights of other
13 non-settling parties. Objectors’ claim is based on the unfounded assumption that the
14 Settlement quantifies the rights of each Wood Class Member at three acre-feet per year.
15 This is incorrect. The Settlement allows a Wood Class Member a right to pump (per
16 household) his/her correlative share of eighty-five percent of the Federally Adjusted
17 Native Safe Yield in an amount up to three acre-feet per year free of assessment.
18 (Settlement at 11:4-14.) The Settlement does not guarantee each Class Member a three
19 acre-foot entitlement, as Objectors’ argument incorrectly presumes, and specifically
20 provides for the reduction of Wood Class Member pumping in a manner consistent with
21 California law. (Settlement at 11:26-12:12.) Moreover, in the event overlying pumping
22 exceeds the eighty-five percent share of the federally adjusted native safe yield, the
23 common law of overlying rights and correlative reductions would thus apply and Wood

24 _____
25 ¹ The term “Objector” is used somewhat loosely in this context when referring to the opposing
26 landowner parties, and is not meant to suggest that they are class members, or have standing to
27 object as such. The moving parties contend that only class members have standing to object to
28 the settlement, and specifically reserve their right to advance that argument at later stages in this
action, if necessary. (*San Francisco NAACP v. San Francisco Unified School Dist.* (1999) 59
F.Supp.2d 1021, 1032; *Gould v. Alleco, Inc.* (1989) 883 F.2d 281, 285.)

1 Class Members' pumping would be reduced in accordance with such principles, as
2 further set forth in the Settlement. (Settlement at 10:22-11:4-14.) Finally, the Settlement
3 is structured to enable the Watermaster to reallocate unused water to other overlying
4 landowners. (Settlement at 11:15-24.)

5 Additionally, the amount of pumping attributable to individual Wood Class
6 Members is consistent with de minimis exemptions endorsed by the courts and the
7 legislature in the context of stream and groundwater adjudications. (See *In re the*
8 *General Adjudication of All Rights to Use Water in the Gila River System and Source*
9 (Ariz. 1993) 175 Ariz. 382, 394 [*Gila River*]; see e.g., Wat. Code, §§ 2502, 2503
10 (permitting the exclusion of parties using up to 10 acre-feet annually from surface water
11 adjudications); see Declaration of Eric L. Garner In Support of Motion for Preliminary
12 Approval of Class Settlement.) As this authority instructs, the pumping without
13 assessment recognized in this Settlement is not, despite the Objectors' contentions, an
14 adjudication of water rights in a piecemeal fashion. (*Gila River, supra.*)

15 For the above reasons, Objectors' assertion that the Settlement prioritizes the
16 water rights of settling parties above non-settling parties in derogation of the Court's
17 Order (Reply at 2:3-18) is incorrect.²

18 **B. Water Code Section 106 Applies To Any Domestic User In The Basin,**
19 **Not Just The Wood Class, And No Preferential Treatment Has Been**
20 **Shown To The Class**

21 Objectors assert that the Settlement's reference to Water Code Section 106
22 operates to elevate the Wood Class Members' pumping rights above other overliers in
23 the Basin. (Reply at 2:19-28, 3:1-2.) The Legislatively enacted domestic priority
24 embodied in Water Code section 106 applies throughout California. It was not created
25 by the Settlement and applies regardless of whether the Settlement is approved. The

26
27 ² Some concern has been raised about the size of the Class. After removal of parties who did not
28 meet the class definition and the opt-outs from the initial notice, there are currently about 3,800
parcels in the Class. (McLachlan Decl. ¶ 3.) The number of course may shrink slightly if
additional class members opt out of the settlement.

1 reference to Section 106³ is not preferential Class treatment and Objectors' argument is
2 without merit.

3 However, the suggestion that Water Code section 106 has not been applied in the
4 context of a water right dispute, or is somehow inapplicable to this adjudication, is
5 incorrect. Water Code section 106 contains no limitation as to its applicability, and has
6 been applied in the context of water rights disputes. (*See, e.g. Deetz v. Carter* (1965) 232
7 Cal.App.2d 851, 855 (applying that pursuant to Section 106, domestic use has priority
8 over agricultural use).)

9 **C. The Use of The Class Actions is Both Necessary and Proper**

10 The Objectors advance many legally unsupported arguments that suggest the use
11 of a class action in this context is improper. At bottom, the landowners are arguing that
12 the Court must make a ruling on each individual landowner's water rights, regardless of
13 the size of those rights. The Court rejected that argument in the Willis class settlement,
14 and it should do the same here.

15 As the Court and many of the parties have recognized before, if each of the 65,000
16 or so landowners in the Willis and Wood class were required to prove their water rights
17 on an individual basis, it would be impossible to adjudicate this basin in a comprehensive
18 fashion. It would take years of trial time for each of these landowners to appear and
19 litigate their individual claims against the other parties. Setting aside the question of
20 whether it could even be feasible to name and serve all of these people, the cost of
21 conducting such an individual trial would be staggering, and would far outweigh the
22 value of doing so.

23 In such instance, the only logical solution is classwide treatment of smaller
24 claims. Certainly, in setting up the applicable state constitutional and statutory
25 provisions, the state of California certainly did not have in mind the outcome that the
26

27 ³ Section 106 states: "It is hereby declared to be the established policy of this State that the use
28 of water for domestic purposes is the highest use of water and that the next highest use is for
irrigation."

1 rights to use in a basin or riparian body should not be adjudicated at all if there were too
2 many claimants to manage on an individual basis. All of the applicable policy behind
3 preservation of the resource would be turned on its head if the Court had no ability to
4 aggregate de minimis users, and to employ the class mechanism in a means consistent
5 with California law. Without it, there could be no comprehensive adjudication of this
6 basin.

7 **D. The Settlement Does Not Create a Federal Reserved Right**

8 Objectors contend that the Wood Settlement's prioritization of the United States'
9 federal reserved right is contrary to law and thus not appropriate for approval by this
10 Court. (Reply at 3:3-22.) As Objectors observe, the Settlement acknowledges that the
11 Court may determine that the United States has a right to a portion of the Basin's native
12 safe yield in satisfaction of the United States' federal reserved right claim. (Settlement at
13 5:27-28, 6:1-5, 9:7-18.) The Court is by no means required to establish a federal reserved
14 right, under the terms of the Settlement, it simply provides that if the Court does so, the
15 class members will not object.

16 The Settlement does not bind non-settling parties. It is the Court, and not the
17 Settling Parties, that has the ultimate authority to determine whether a federal reserved
18 right exists in this case, and to further determine the priority of the federal reserved right
19 relative to the water rights of the parties. The Court has not yet ruled on these issues, and
20 the Settlement does not decide these issues.

21 Objectors' arguments are without merit and the Court should preliminary approve
22 the Wood Class settlement.

23 **E. CONCLUSION**

24 For all of the foregoing reasons, Plaintiff Wood and District 40 respectively
25 request that the Court grant this Motion and: (1) preliminarily approve the proposed
26 Agreement; (2) approve the Notice and authorize its dissemination; (3) schedule a
27 fairness hearing on the proposed Agreement; and (4) set forth procedures and deadlines

for Class Members to file objections to the proposed Agreement, as set forth in the Proposed Order submitted herewith.

DATED: June 9, 2011

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

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

DATED: June 9, 2011

BEST BEST & KRIEGER LLP

By: ERIC L. GARNER
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Attorneys for Defendant and Cross-
Complainant LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

PROOF OF SERVICE

I, Stefanie D. Hedlund, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On June 9, 2011, I served the within document(s):

REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.



by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.



I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 9, 2011, at Irvine, California.


Kerry V. Keefe