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6 Palmdale Water District  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
10

11 Coordination Proceeding  
12 Special Title (Rule 1550 (b))

Judicial Council Coordination  
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**  
14 **CASES**

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

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

15 **PUBLIC WATER SUPPLIERS' OBJECTION**  
16 **TO RICHARD WOOD'S PROPOSED**  
17 **NOTICE OF CLASS ACTION**

18 **Date: January 9, 2009**

**Time: 1:30 p.m.**

19 **Place: LASC – Department 1**

20  
21 **TO THE HONORABLE JACK KOMAR AND TO ALL INTERESTED PARTIES:**

22 Palmdale Water District, Los Angeles County Waterworks District No. 40, the city of Lancaster,  
23 the city of Palmdale, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill  
24 Water District, Rosamond Community Services District, and California Water Service Company  
25 ("Public Water Suppliers") object to the proposed notice of class action submitted by Plaintiff Richard  
26 Wood.

27 Specifically, the Public Water Suppliers object to the sentence at the bottom of page 2 of the  
28 notice that reads, "The Public Water Suppliers listed above have filed a lawsuit asserting that they have

1 taken some or all of the water rights previously owned by landowners in the Basin.” The sentence is not  
2 accurate, and it is not stated neutrally.

3 Most of the Wood class action notice tracks the language of the Willis class action notice, which  
4 was negotiated by counsel for both sides and approved by the Court. However, the sentence quoted  
5 above was added to the Wood notice. Counsel have met and conferred and attempted to resolve the  
6 issue, but have been unable to reach a satisfactory resolution.

### 7 8 **THE SENTENCE IS NOT ACCURATE**

9 The first amended cross-complaint of the Public Water Suppliers, filed March 13, 2007, did *not*  
10 allege that they had "taken some or all of the water rights previously owned by landowners in the  
11 Basin." Instead, some of the Public Water Suppliers<sup>1</sup> alleged that they had acquired prescriptive rights  
12 by pumping water from the Basin for reasonable and beneficial purposes, during a period or more than  
13 five years of continuous overdraft. (¶¶ 31, 42.) They did not allege that Cross-Defendants lost any water  
14 rights; instead, they alleged that Cross-Defendants' rights are subordinate to the Public Water Suppliers'  
15 prescriptive rights. (¶ 43.) Moreover, holders of overlying rights potentially “retain their rights by  
16 using them.” (*Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th  
17 1723, 1731.) The Wood class is composed of small pumpers, who by definition pumped during the  
18 alleged prescriptive period.

19 The case law on prescriptive rights does not speak of “taking” water rights. Rather, it uses the  
20 legal concept of “adverse use,” a more complex concept. (*See, e.g., City of Barstow v. Mojave Water*  
21 *Agency* (2000) 23 Cal.4th 1224, 1241.) The Public Water Suppliers do not believe it is necessary to  
22 explain the concept of adverse use in the class notice.

### 23 24 **THE SENTENCE IS NOT NEUTRAL**

25 In addition to the inaccuracy of Plaintiff’s statement, it is not neutrally phrased. The statement  
26 that Public Water Suppliers are “taking” or “stealing” water rights is emotional and inflammatory.

27  
28 <sup>1</sup> The cities of Lancaster and Palmdale subsequently dismissed their cause of action for prescriptive  
rights. Therefore, any statement that all public water suppliers claim prescriptive rights is inaccurate.

1 Plaintiff Wood may indeed believe that the Public Water Suppliers are "taking" or "stealing" his  
2 water rights. The Public Water Suppliers, on the other hand, believe that their pumping of groundwater  
3 to supply their inhabitants is a necessary and appropriate public service. They also believe that they did  
4 not cause the overdraft, but they are acting to preserve the Basin in the long term. Finally, they believe  
5 that they did not "take" anything, but established their own water rights, to which plaintiff and the other  
6 class members failed to object within the statutory period.

7 The class action notice is not the place to air or resolve these competing views. Rather, the class  
8 action notice should be a neutral statement of the nature of the lawsuit.

9  
10 **THE REMAINDER OF THE NOTICE ADEQUATELY DESCRIBES THE ACTION**

11 A neutral statement of the nature of the lawsuit is already in the Wood notice, as it was in the  
12 Willis notice. Later in the same paragraph it states:

13 "Plaintiff Wood brought this action to protect his right and that of other Antelope Valley  
14 landowners to pump and use the water under their properties and to obtain compensation  
15 for any wrongful taking of their property rights. He claims that he and other landowners  
16 have water rights which are superior to the rights of certain public water suppliers (listed  
17 as defendants on page 1) to use that water. The public water suppliers claim that their  
18 historical pumping has given them superior water rights. If the public water suppliers  
19 win, your rights to use the groundwater under your property may be cut back."

20 The Public Water Suppliers contend that this language is a succinct, accurate, and neutral statement of  
21 the dispute.

22 For these reasons, the Public Water Suppliers request the Court to strike the sentence in question  
23 and approve the remainder of the notice.

1 Dated: January 8, 2008

Respectfully submitted,

2 LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

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