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

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.

Case No.: BC391869

(related to JUDICIAL COUNCIL  
COORDINATION PROCEEDING No.  
4408; Santa Clara Case No. 1-05-CV-  
049053, Honorable Jack Komar)

**NOTICE OF MOTION AND MOTION  
TO FOR CLASS CERTIFICATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: August 11, 2008  
Time: 9:00 a.m.  
Place: LASC Dept. 1

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 11, 2008 at 9:00 a.m. in Department 1 of  
3 the Los Angeles County Superior Court, plaintiff Richard A. Wood, by and through his  
4 attorneys, will move and hereby does move this Court pursuant to Section 382 of the  
5 California Code of Civil Procedure and Cal. Rules Ct., Rule 1854(a)(1) for an order  
6 certifying a class defined as follows:

7 All private (i.e., non-governmental) persons and entities that own real property  
8 within the Basin, as adjudicated, and that have been pumping on their property  
9 within the five year period preceding the filing of this action. The Class excludes  
10 the defendants herein, any person, firm, trust, corporation, or other entity in which  
11 any defendant has a controlling interest or which is related to or affiliated with any  
12 of the defendants, and the representatives, heirs, affiliates, successors-in-interest or  
13 assigns of any such excluded party. The Class also excludes all persons and  
14 entities to the extent their properties are connected to a municipal water system,  
15 public utility, or mutual water company from which they receive water service, as  
16 well as all property pumping 25 acre-feet per year or more on an average annual  
17 basis during the class period.

18 Plaintiff will also move that he be designated as the lead plaintiff and that his  
19 attorneys be designated as the lead counsel for the class.

20 This motion is made on the grounds that the elements of C.C.P. § 382 can be  
21 satisfied in that there are both 1) an ascertainable class and 2) a well-defined community  
22 of interest in questions of law and fact among the members of that class.

23 This motion is based upon the files and records of this case, this notice of motion  
24 and motion, the allegations in the First Amended Complaint on file herein, the  
25 memorandum of points and authorities filed in support of this motion, the Declaration of  
26 Michael D. McLachlan filed herewith, and such other documentary and testimonial  
27 evidence as shall be submitted to this Court and argued at the hearing on this matter.  
28

1 DATED: June 20, 2008

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

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4 By: \_\_\_\_\_//s//  
5 Michael D. McLachlan  
6 Attorneys for Plaintiff  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard A. Wood (“Wood”) filed this class action on June 2, 2008 on  
4 behalf of a class of water-pumping Antelope Valley landowners who were not then  
5 represented in this water rights adjudication. He filed a First Amended Complaint  
6 (“FAC”) on June 20, 2008, which defined the class as follows:

7 All private (i.e., non-governmental) persons and entities that own real property  
8 within the Basin, as adjudicated, and that have been pumping on their property  
9 within the five year period preceding the filing of this action. The Class excludes  
10 the defendants herein, any person, firm, trust, corporation, or other entity in which  
11 any defendant has a controlling interest or which is related to or affiliated with any  
12 of the defendants, and the representatives, heirs, affiliates, successors-in-interest or  
13 assigns of any such excluded party. The Class also excludes all persons and  
14 entities to the extent their properties are connected to a municipal water system,  
15 public utility, or mutual water company from which they receive water service, as  
16 well as all property pumping 25 acre-feet per year or more on an average annual  
17 basis during the class period.

18 Because the legal and factual issues in this case impact a large class of persons  
19 identically, and because there is a need for a comprehensive adjudication of the water  
20 rights in the Basin, this case is ideally suited for class treatment.

21  
22 **II. THE ALLEGATIONS**

23 Wood’s First Amended Complaint seeks an adjudication of the rights of overlying  
24 landowners pumping at smaller volume (defined as less than 25 acre-feet per year on  
25 average). He alleges as follows:

26 The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic  
27 Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert.  
28 The Basin is bounded on the northwest by the Garlock fault zone at the base of the

1 Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the  
2 San Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that  
3 form a groundwater divide and on the north by various geographic features that separate  
4 it from the Fremont Valley Basin. (¶ 8.)

5 Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the  
6 Basin's recharge comes from runoff from the surrounding mountains and hills – in  
7 particular, from the San Gabriel and Tehachapi Mountains and from hills and ridges  
8 surrounding other portions of the Valley. The Basin's natural recharge averages  
9 approximately 48,000 acre feet per year. (¶ 9.)

10 The Basin has two main aquifers – an upper aquifer, which is the primary source  
11 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the  
12 Basin have been productive and have met the needs of users in conjunction with other  
13 sources of water, including the State Water Project. In recent years, however, population  
14 growth and agricultural demands have led to increased pumping and declining  
15 groundwater levels, particularly along Highway 14. That has caused subsidence of the  
16 ground surface in certain parts of the Valley. Although the Basin is in an overdraft  
17 condition, rights to the Basin's groundwater have not been adjudicated and there are no  
18 present legal restrictions on pumping. Each of the Defendants is pumping water from the  
19 Basin and/or claims an interest in the Basin's groundwater. (¶¶ 10-11.)

20 Various water users have instituted suit to assert rights to pump water from the  
21 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal  
22 purveyors have brought suit asserting that they have prescriptive rights to pump water  
23 from the Basin, which they claim are paramount and superior to the overlying rights of  
24 Plaintiff and the Class. Those claims threaten Plaintiff's right to pump and use the water  
25 underlying his property. Moreover, by taking water in reliance on those erroneous  
26 claims, Defendants have decreased the amount of available water in the Basin and made  
27 it more difficult for Plaintiff and the Class to use that water. (¶ 12.)  
28

1           The First Amended Complaint seeks damages, and declaratory and injunctive  
2 relief defining the Class’ rights to use the Basin’s groundwater, and challenging the  
3 public water authorities’ claims to prescriptive rights to such water, which they claim are  
4 superior to the rights of Plaintiff and the Class.

### 6   **III.    ARGUMENT**

#### 7       **A.    CLASS CERTIFICATION MOTION IS AUTHORIZED**

8           Wood brings this motion under Cal. Rules of Ct., Rule 1854(a)(1), which  
9 authorizes any party to file a motion to certify a class. Wood is a member of the Class  
10 and seeks to protect the interests of small landowners in the Basin, like himself, in  
11 connection with this adjudication of the water rights in the Antelope Valley.

#### 12       **B.    CALIFORNIA CLASS ACTION STANDARDS**

13           Section 382 of the Code of Civil Procedure authorizes a class action suit “when  
14 the question is one of a common or general interest, of many persons, or when the parties  
15 are numerous, and it is impracticable to bring them all before the court . . .” (C.C.P. §  
16 382; *see also Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d  
17 1263, 1270 (*citing, Richmond v. Dart Industries, Inc.* (1981), 29 Cal.3d 462, 470 and  
18 *Miller v. Woods* (1983) 148 Cal.App.3d 862, 872).)

19           Although Section 382 lacks precise statutory requirements, it has been construed  
20 to require the showing of: (1) an ascertainable class; and (2) a well-defined community of  
21 interest in questions of law and fact among the members of that class. (*Reyes, supra*, 196  
22 Cal.App.3d at 1270 (*citing, Richmond, supra*, 29 Cal.3d at 470, *Occidental Land, Inc. v.*  
23 *Superior Court* (1976) 18 Cal.3d 355, 360; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d  
24 695, 704, and *Stephens v. Montgomery Ward & Co.* (1987) 193 Cal.App.3d 411, 417).)

25           In addition, the California Supreme Court has directed state courts to follow the  
26 procedures set forth in Federal Rule of Civil Procedure 23 (“Rule 23”), whenever  
27 California authority is lacking. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447,  
28 453; *see also, Reyes, supra*, 196 Cal.App.3d at 1270-1271 (*citing Richmond, supra*, 29

1 Cal.3d at 469-470, fn.7; *Green v. Obledo*, (1981) 29 Cal.3d 126, 145-146; *Vasquez v.*  
2 *Superior Court*, (1971) 4 Cal.3d 800, 821; and *Schenider v. Vennard*, (1986) 183  
3 Cal.App.3d 1340, 1345).)

4 In conducting its analysis, the court must avoid reviewing the merits of the  
5 underlying action and focus strictly on the prerequisites of class certification. (*Reyes*,  
6 *supra*, 196 Cal.App.3d at 1271 -1272 *citing*, *Stephens, supra*, 193 Cal.App.3d at 418;  
7 *Eisen v. Carlisle and Jacqueline* (1974) 417 U.S. 156, 178).) Moreover, the court should  
8 look to the allegations of the complaint and the declarations of the plaintiffs and the  
9 attorneys for the plaintiff class in determining certification. (*Reyes, supra*, 196  
10 Cal.App.3d at 1272 (*citing, Richmond, supra*, 29 Cal.3d at 478).)

### 11 **C. THE SIZE OF THE CLASS SUPPORTS CLASS CERTIFICATION**

12 Section 382 is disjunctive in that it authorizes a representative suit if 1) those to be  
13 represented are “many” and have a common or general interest in the questions presented  
14 by the complaint or 2) it is impracticable to bring “numerous” parties before the court.  
15 (*Bowles v. Superior Court*, (1955) 44 Cal.2d 574, 587 [citations omitted] (emphasis  
16 added).)

17 Under either standard, the size of the class makes class certification appropriate.  
18 The Class here is comprised of a large number of property owners believed to total  
19 approximately 7,500. Joinder of these persons would be impracticable. Also, the  
20 questions presented by the complaint are common to these “many” persons, as discussed,  
21 *infra*, in Section E.

### 22 **D. THE CLASS IS ASCERTAINABLE**

23 Whether a class is ascertainable is determined by examining (1) the class  
24 definition, (2) the size of the class, and (3) the means available for identifying class  
25 members. (*Reyes, supra*, 196 Cal.App.3d at 1274 (*citing, Vasquez, supra*, 4 Cal.3d at  
26 821-822, and *Miller, supra*, 148 Cal.App.3d at 873). The determination of whether the  
27 class is ascertainable is relatively simple. (*Richmond, supra*, 29 Cal.3d at 478.)  
28

1 Wood seeks to certify a class composed of property owners who can be identified  
2 from County tax and property records. Based on this definition, the class members are  
3 readily identifiable -- putative class members, the Court, and the parties can easily  
4 determine whether or not someone is a member of the class.

5 **E. THE CLASS SATISFIES THE COMMUNITY OF INTEREST**  
6 **REQUIREMENTS**

7 The community of interest requirement consists of three factors: “(1) predominant  
8 common question of law or fact; (2) class representatives with claims or defenses typical  
9 of the class; and (3) class representatives who can adequately represent the class.”  
10 (*Reyes, supra*, 196 Cal.App.3d at 1271 (citing, *Richmond, supra*, 29 Cal.3d at 470;  
11 *Miller, supra*, 148 Cal.App.3d at 874).)

12 **1. The Claims of the Designated Class Representative are Common**  
13 **to the Members of the Classes**

14 Common issues are found to predominate where the common issues would be the  
15 principal issues in any individual action, both in terms of time to be expended in their  
16 proof and of their importance, and where, if a class suit is not permitted, a multiplicity of  
17 legal actions dealing with identical basic issues would be required to permit recovery.  
18 (*Vasquez, supra*, 4 Cal.3d at 810.)

19 The requirement of a community of interest does not depend upon an identical  
20 recovery, and the fact that each member of the class must prove a separate claim to a  
21 portion of any recovery by the class is not a bar to class certification. (*Vasquez, supra*, 4  
22 Cal.3d at 809; *City of San Jose, supra*, 12 Cal.3d at 459.)

23 The questions of law and fact common to all the members of the Class include,  
24 *inter alia*, the following:

- 25 1. The relative priorities of the competing claimants to the Basin’s water.
- 26 2. The amount of water that can be safely withdrawn from the Basin.
- 27 3. The extent and efficacy of any efforts by the municipal purveyors to perfect  
28 prescriptive rights to the Basin’s water.



1 In short, the entire focus of this case is on the relative rights that the Class of  
2 “small pumping” landowners have to use the Basin’s water as compared to the rights of  
3 the municipal purveyors and overlying landowners who are not currently pumping water.  
4 These material questions of law and fact are common to all members of the Class.

5 **2. The Claims of the Designated Class Representative Are Typical**  
6 **of the Members of the Class**

7 Wood’s claims satisfy the typicality requirement because they arise from the same  
8 event or course of conduct that gives rise to claims of other class members and the claims  
9 are based on the same legal theories. (*Schwartz v. Harp*, (C.D. Cal. 1985) 108 F.R.D.  
10 279, 282.) “Typicality” does not mean that all the claims asserted by the class must be  
11 identical. (*Weinberger v. Thornton*, (S.D. Cal. 1986) 114 F.R.D. 599, 603.) The test,  
12 generally, is whether other members have the same or similar injury, whether the action  
13 is based on conduct that is not unique to a single class member, and whether other class  
14 members have been injured by the same conduct. (*Ibid.*) Wood meets this test.

15 **3. The Designated Class Representative Will Adequately Represent**  
16 **the Class**

17 The U.S. Supreme Court, in interpreting Rule 23(a) for adequate representation,  
18 requires that (1) the interests of the representative plaintiff coincide with those of the  
19 class; (2) the representative plaintiff vigorously prosecute the claims on behalf of the  
20 class; and (3) counsel for the representative plaintiff be qualified, experienced and  
21 generally able to conduct the litigation. (*Eisen v. Carlisle and Jacqueline*, (1974) 417  
22 U.S. 156, 159 (“[O]nly a conflict that goes to the very subject matter of the litigation will  
23 defeat a party’s claim of representative status.”); *Richmond, supra*, 29 Cal.3d at 470.)

24 The discussion above setting forth the presence of common questions of law or  
25 fact and the typicality of his claims establishes that Wood’ interests coincide with those  
26 of the rest of the Class. There is no evidence that Wood has any antagonistic interests  
27 which go to the subject matter of this action. Moreover, Wood intends to vigorously  
28 prosecute the claims on behalf of the class.

1 In addition, Wood' counsel are experienced in complex class action litigation.  
2 The experience of Plaintiff's counsel and the commitment of the designated Class  
3 representative to prosecute this action vigorously should leave no doubt that Wood is an  
4 adequate class representative.

5  
6 **IV. CONCLUSION**

7 The critical issues in this case revolve around the rights of competing claimants to  
8 make use of the groundwater in the Antelope Valley Basin. Because the rights of  
9 pumping overlying landowners are necessarily shared, this case is well suited for class  
10 action certification. Plaintiff respectfully requests that the Court certify the class as to all  
11 causes of action, designate Richard A. Wood as the lead plaintiff, and designate his  
12 counsel as class counsel.

13  
14 DATED: June 20, 2008

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

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16  
17 By: \_\_\_\_\_ //s//

18 Michael D. McLachlan  
19 Attorneys for Plaintiff  
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PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **NOTICE OF MOTION AND MOTION TO FOR CLASS CERTIFICATION;**  
**MEMORANDUM OF POINTS AND AUTHORITIES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.

\_\_\_\_\_/s/\_\_\_\_\_  
Carol Delgado