

1 Michael D. McLachlan (State Bar No. 181705)  
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
3 523 West Sixth Street, Suite 215  
4 Los Angeles, California 90014  
5 Telephone: (213) 630-2884  
6 Facsimile: (213) 630-2886  
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)  
9 **LAW OFFICE OF DANIEL M. O'LEARY**  
10 523 West Sixth Street, Suite 215  
11 Los Angeles, California 90014  
12 Telephone: (213) 630-2880  
13 Facsimile: (213) 630-2886  
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES**

18 RICHARD A. WOOD, an individual, on  
19 behalf of himself and all others similarly  
20 situated,

21 Plaintiff,

22 v.

23 LOS ANGELES COUNTY  
24 WATERWORKS DISTRICT NO. 40; et al.

25 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 EX PARTE  
APPLICATION FOR CONTINUANCE  
OF TRIAL DATE**

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, in Department 1 of the Los  
3 Angeles Superior Court, located at 111 N. Hill Street, Los Angeles, California 90012,  
4 plaintiff Richard A. Wood will apply ex parte for an order resetting the Phase 2 trial into  
5 Phase 2A, to take place beginning October 6, 2008, and Phase 2B, to take place following  
6 Phase 2A under the timing and procedural guidelines set forth in the [Proposed] Case  
7 Management Order submitted on August 1, 2008.

8 The Phase 2A trial would involve the preliminary adjudication of issues relating to  
9 the existence and definition of hydrologic sub-basins within the area of adjudication (“the  
10 basin”). The Phase 2B trial would involve the safe yield of the basin and whether the  
11 basin has been or currently is in a state of overdraft.

12 This Application is necessary because the current schedule for a Phase 2 trial  
13 combining the 2A and 2B issues in October 2008 puts plaintiff Richard A. Wood and the  
14 potential classmembers he may/will represent in a position of serious prejudice. Among  
15 other things, plaintiff Wood’s class certification motion is set for hearing on August 11,  
16 2008 and some uncertainty exists regarding the precise scope and size of the class. The  
17 putative members of Wood’s class, referred to as the class of small pumpers, will not and  
18 cannot receive notice of the adjudication of their rights in a Phase 2 trial prior to the  
19 current trial date of October 6, 2008. Moreover, because of an agreement among counsel  
20 for the small pumpers and counsel for the main water purveyors, the Wood class has yet  
21 to receive documents that are necessary to prepare expert witnesses for testimony on  
22 substantive issues, i.e., those that this Application seeks to reserve for the Phase 2B trial.

23  
24 DATED: July 31, 2008

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

25  
26  
27 By: \_\_\_\_\_ //s//  
Michael D. McLachlan  
Attorneys for Plaintiff  
28

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     THE CLASS OF SMALL PUMPERS REQUIRES RELIEF FROM THE**  
3       **EXISTING PHASE 2 TRIAL DATE.**

4           There are approximately 7,500 landowners in the Antelope Valley area of  
5 adjudication who qualify as small pumpers of groundwater whose rights will be  
6 conclusively determined in this case. They have not been represented or subject to the  
7 Court's jurisdiction to date. That will change once the Court rules of plaintiff Richard A.  
8 Wood's motion for class certification on August 11, 2008. But however the Court  
9 eventually defines the class of small pumpers, the class will not have a fair opportunity to  
10 prepare for a substantive trial in October, given the complexity of the issues and the need  
11 for expert testimony.

12           Thus, Wood's counsel has submitted a proposed Case Management Order that  
13 breaks the Phase 2 trial into two discrete and defined components: a Phase 2A to take  
14 place on the current Phase 2 trial date of October 6, 2008, and a Phase 2B to take place  
15 on a schedule determined by the outcome of Phase 2A. The Phase 2A trial would be  
16 limited to a determination of sub-basins within the area of adjudication; substantive  
17 issues would be deferred to Phase 2B, when the Court has jurisdiction over all  
18 landowners in the area of adjudication.

19           This proposal will mitigate the prejudice to the class of small pumpers from not  
20 having an opportunity to conduct discovery, and hire and prepare expert witnesses to date  
21 in the areas of safe yield and overdraft.

22           Thus, if other jurisdictional concerns and discovery issues do not make an October  
23 trial date non-viable, the Court should issue an order adopting the trial schedule set forth  
24 in the proposed Case Management Order. If an October trial on sub-basins  
25

26   **II.    THE WOOD CLASS FACES PREJUDICE IF REQUIRED TO TRY**  
27       **SUBSTANTIVE ISSUES IN OCTOBER 2008**  
28

1 Even assuming the Court certifies a class of small pumpers on August 11, and  
2 class notice can be served by August 15, the small pumpers would face prejudice in  
3 proceeding to a trial on the issues of safe yield and overdraft in October. Among other  
4 problems, the small pumper class has deferred document discovery to enable the water  
5 purveyors to respond to discovery served by the Willis class. The small pumper class  
6 has, within the past two weeks, obtaining access to the document database used to create  
7 the Antelope Valley Technical Committee Report, the analysis of which has just begun.  
8 And the small pumper class has not been able to intelligently interview potential expert  
9 witnesses until very recently.

10 The water purveyors have had two years to prepare for the Phase 2 trial; the class  
11 of small pumpers would have two months, under the current scheduling scenario. This  
12 disparity in time is made more acute by the fact that the small pumper class has not been  
13 certified; class counsel do not know the scope of the class they will represent at trial.  
14 This necessarily impacts their ability to invest the time and money required to prepare for  
15 a document-intensive and expert-driven trial that will affect the substantive rights of the  
16 classmembers.

17 The proposed case management order was drafted to accommodate the interests of  
18 the landowners, the water purveyors, and the Court. It allows an important determination  
19 to be made in the Phase 2A trial in October, but defers the issues that require (1) the  
20 jurisdictional presence of all landowners in the area of adjudication, and (2) the full and  
21 informed involvement of expert witnesses for each of the competing interests.

22 Thus, plaintiff Wood requests that the Court grant this Application and adopt his  
23 proposed Case Management Order.

24 **III. DEFERRING SAFE YIELD AND OVERDRAFT TO PHASE 2B**  
25 **RESOLVES CONCERNS RAISED BY THE UNITED STATES AND**  
26 **PRIVATE LANDOWNERS.**

27 Were the Court to adopt the proposed Case Management Order, several additional  
28 problems would disappear. First, the Federal Government would not object to a non-

1 comprehensive adjudication of the sub-basin issue in October. It would object to a non-  
2 comprehensive adjudication of safe yield and overdraft, based on the jurisdictional  
3 requirements of the McCarron Act. The proposal to split the Phase 2 trial into Phases 2A  
4 and 2B would allow the Court (and parties) to fashion a complete and comprehensive  
5 definition for the classes of small pumpers and dormant pumpers, allow time for service  
6 of class notice, and satisfy the Government's procedural concerns.<sup>1</sup>

7 Second, the proposal would resolve the potential problems caused by combining a  
8 sub-basin determination with the adjudication of safe yield and overdraft. If the Court  
9 determines that sub-basins exist, the parties' trial presentation on safe yield and overdraft  
10 could be dramatically affected.<sup>2</sup> For example, if different areas within the area of  
11 adjudication recharge from distinct sources, the safe yield and overdraft analyses would  
12 be dependent on source.

13 This discussion leaves out significant problems with ongoing discovery, some  
14 potentially related to the Phase 2A trial. The small pumpers class attorneys have  
15 withheld their discovery until a resolution is reached on the extensive discovery  
16 propounded by the *Willis* class. Counsel for the small pumpers is just recently informed  
17 that significant problems exist with the outstanding discovery. Further consideration  
18 must be given to the recent revelation at the last case management conference that the  
19 prescriptive period may cover as much as sixty or more years. Existing discovery largely  
20 covers a significantly smaller period of time. Additional discovery is being prepared to  
21 cover the larger time period that will be addressed at the Phase 2A trial. This may  
22 potentially make it difficult to conduct that trial in October.

---

27 1 In moving forward toward substantive adjudications, the Court should also consider the  
28 fact that this is not a consolidated proceeding, but rather merely coordinated.

<sup>2</sup>This is not an empty concern. There are differing contentions regarding the existence of sub-basins.

1 **IV. CONCLUSION**

2 For the foregoing reasons, plaintiff Richard A. Wood, on behalf of himself and  
3 other similarly situated, respectfully requests the Court grant this Application and adopt  
4 the trial schedule set forth in his proposed Case Management Order, assuming the Court  
5 finds that other issues such as jurisdiction and discovery issues do not make a Phase 2A  
6 trial feasible in October. If not, the CMO schedule should be revised.

7  
8 DATED: August 4, 2008

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

9  
10  
11 By: \_\_\_\_\_ //s//

12 Michael D. McLachlan  
13 Attorneys for Plaintiff  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
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

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 EX PARTE APPLICATION FOR CONTINUANCE OF TRIAL DATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 4, 2008 at Los Angeles, California.

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