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**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

(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

Case No.: BC 391869

**RICHARD WOOD'S REPLY BRIEF  
IN SUPPORT OF RENEWED  
MOTION FOR APPOINTMENT OF  
EXPERT**

Date: April 24, 2009  
Time: 9:00 a.m.  
Dept.: 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In their Opposition, some of the public water suppliers advance a series of baseless  
4 arguments. What is worse, they fail to acknowledge a very real problem facing the Small  
5 Pumper Class and its counsel, a problem that was brought to everyone's attention before  
6 this case was ever filed (*See* May 14, 2008 letter to Judge Komar, Docket No. 1317).  
7 Instead of acknowledging the problem, or posing any sort of viable solution, the public  
8 water suppliers put forth a pile of bad arguments, and pretend that the existence of the  
9 classes is not critical to their goals in this litigation: a comprehensive adjudication  
10 culminating in a judgment solidifying their superior water rights at the expense of  
11 overlying landowners – in this case, small residential users who's land sit outside the  
12 water service areas.

13 The Court should find good cause, appoint the expert as requested, and order the  
14 public water suppliers to create a fund to pay the expert fees.  
15

16 **II. ARGUMENT**

17 **A. THE PUBLIC WATER SUPPLIERS CAN AND SHOULD BE MADE**  
18 **TO PAY FOR AN EXPERT WITNESS FOR THE SMALL PUMPER**  
19 **CLASS**

20 The public water suppliers incorrectly assert there is “no authority for ordering a  
21 civil litigant to pay the adverse party's expert witness costs pending resolution of the  
22 case,” ignoring the express authority cited verbatim in the Motion (Evidence Code  
23 section 731(c)).

24 Again, Section 731 reads as follows:

25 Except as otherwise provided in this section, in all civil actions, the compensation  
26 fixed under Section 730 shall, in the first instance, be apportioned and charged to  
27 the several parties in such proportion as the court may determine and may  
28

thereafter be taxed and allowed in the like manner as other costs.

In this instance, a number of well-healed public agencies have filed an action alleging that they have, in effect, taken the water rights of members of the Small Pumper Class, without compensation. Notwithstanding their public agency status, these entities see set on depriving these taxpaying landowners of a fair day in court. They do not assert that the residential users who comprise the Class possess the ability or the means to adequately defend themselves, or much less to hire the expert necessary for them to defend their paltry water rights in the face of a 60-year prescription claim being advanced by a million dollar team of hired guns. They cannot, and everyone at the table understands that.

To achieve their goal of a comprehensive adjudication under the McCarran Amendment, the water suppliers would have to spend millions of dollars individually naming and serving landowners in the basin. Instead, they have opted to put their full weight and support behind the formation of two plaintiff class actions (that are indeed defensive class actions in all real purposes). To be blunt, the public water suppliers have supported the formation and prosecution of these two classes so that they could save a big pile of money on service costs, while achieving the goal of a comprehensive adjudication.

If these public agencies wish to take without compensation from the members of the Class, they should at least be compelled to do so in fair fight. It is not too much for to ask them to spend some of their cost savings on an expert that will enable the Class to put up a fair fight at trial.

**B. APPOINTMENT OF AN EXPERT AT THIS TIME IS NOT PREMATURE**

The public water suppliers have been pushing this case forward for trial as fast as they can, all the while doing every thing they can to stop the landowners from receiving a full and fair trial, including refusing to engage in proper discovery on nearly every issue

1 of concern to the landowners. The Small Pumper Class needs to begin preparing its self-  
2 help defense now, as that may take a year or more of work to complete. It will take at  
3 least six months to gather and assemble all the necessary information, primarily by way  
4 of questionnaires to the class members, and a considerable amount of time thereafter  
5 working that information into a useable format for trial.

6 Moreover, the interests of the Small Pumper Class are significant here, and they  
7 need to be able to access and consult with an expert in order to prepare for the issue of  
8 safe yield and overdraft, should those come next.<sup>1</sup> It should also be noted, as discussed  
9 further below, that the interests of members of this Class are not similarly aligned with  
10 the other landowners.

11  
12 **C. THE NOTION THAT THE CLASS CAN ADDUCE EVIDENCE TO**  
13 **PROPERLY SUPPORT A “SELF-HELP” DEFENSE WITHOUT AN**  
14 **EXPERT IS RIDICULOUS**

15 The public water suppliers next contend the self-help defense is a factual issue that  
16 is not suited to expert testimony. If they are willing to stipulate that the facts relating to  
17 Richard Wood’s water use will apply to all absent class members, this might be true. But  
18 as they are unwilling to offer that stipulation, the self-help defense remains an  
19 individualized analysis of between 7,500 and 10,000 landowners across a 62 year  
20 prescriptive period. The volume of facts necessary involved is staggering. If we follow  
21 the path suggested by the public water suppliers, and forgo expert assistance, the  
22 presentation of these facts will involve a trial that could last for years. The legal fees to  
23 be incurred by the public water suppliers in such a proceeding would exceed the cost of  
24

25  
26  
27 <sup>1</sup> The public water suppliers continue to suggest that this Motion seeks appointment of a work-  
28 product protected expert. (Opp., 1:24-2:3.) This is incorrect. The expert in question would be  
directed and supervised by the counsel for the Class, but the work would be entirely public.

1 the expert ten times over. Ultimately, this must become a question of not simply justice,  
2 but of economics.

3  
4 **D. THE SMALL PUMPER CLASS MEMBERS DO NOT HAVE THE**  
5 **SAME INTERESTS AS OTHER PRIVATE LANDOWNERS AND**  
6 **DO NOT HAVE ACCESS TO OTHER LANDOWNER EXPERTS**

7 The public water suppliers also contend that the Small Pumper Class should be  
8 adequately represented by the interests of other large landowners and their experts.  
9 While this might be generally true for issues such as overdraft and safe-yield, the  
10 commonalities stop there.

11 It should be no secret that as this matter progresses, the small pumper, who has a  
12 statutory priority *vis a vis* his or her residential use as compared to the farmer, will want  
13 to point his finger at the farmers as the real source of problem (if one is actually shown to  
14 exist). Will those parties be willing to voluntarily share their experts with counsel for the  
15 Small Pumper Class, without compensation?

16 And even if the other landowners were willing to share their experts with the  
17 Class, it is absurd to think that any of them will voluntarily incur the costs to gather and  
18 assemble the data necessary to put on a meaningful self-help defense for the Small  
19 Pumper Class.

20  
21 **E. THE EVIDENCE CODE SECTION 352 ARGUMENT IS**  
22 **IRRELEVANT**

23 The next argument advanced is barely intelligible. It would appear that the water  
24 suppliers have formed the opinion, without having seen any expert designations or having  
25 taken a single expert deposition on the topics of the next trial, that the testimony that  
26 would be adduced by the Court-appointed expert for the Small Pumper Class would be  
27

1 cumulative under Evidence Code sections 352 and 723. (Opp., 3:27-4:4) All this  
2 argument does is underscore the bankruptcy of the opposition to this Motion.

3 As noted above, there is no chance that another landowner party will retain an  
4 expert to build a “self-help” defense for the Small Pumper Class. Indeed, given the cost  
5 of this work, it is very clear there will be only one such expert testifying. Hence, the  
6 testimony cannot be cumulative.

7  
8 **F. THE BENEFIT OF THE CLASS ACTIONS TO THE PUBLIC**  
9 **WATER SUPPLIERS IS MANIFEST AND CANNOT BE DENIED**

10 As noted above, the assertion that this class benefits only the class members is  
11 patently wrong. The only real benefit to the class members is the potential ability to  
12 assert a common self-help defense. If they cannot do that, there is little or no benefit to  
13 this class action, and the class members are likely better off sitting the sidelines. In such  
14 case, the real benefit of maintaining this class is the money saved by the public water  
15 suppliers by not having to individually name and serve all of these landowners. The  
16 small pumpers care nothing of the McCarran Amendment and securing a comprehensive  
17 adjudication. They just want a fair shake at trial.

18  
19 **III. CONCLUSION**

20 The position the water suppliers take by opposing this motion can be plainly  
21 stated as a request that this Court send the small pumpers off to fight a battle they did not  
22 seek, stripped of the ability to put on their one truly meaningful defense: self-help. This  
23 is simply not acceptable, and current class counsel cannot be party to it.

24 What is most conspicuously lacking from the opposition is any acknowledgement  
25 of the real problem this motion seeks to address. If the water suppliers do not want to  
26 pay for an expert witness, but wish to reap the benefits of the class mechanism, then they  
27 are obligated to come forward with some alternative solutions to the problem. They  
28

1 could offer to stipulate to self-help for each of the class members over the course of the  
2 prescriptive period. This, in conjunction with an agreement that the self-reported water  
3 use of class members on questionnaires would be taken at face-value, might enable the  
4 class to continue without an expert (assuming opposition from other parties would not  
5 make such a deal unworkable). Yet, the public water suppliers have made no such offer,  
6 nor offered any other workable solution to the problem.

7  
8 DATED: April 16, 2009

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

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11 By: \_\_\_\_\_ //s//

12 Michael D. McLachlan  
13 Attorneys for Plaintiff  
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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 523 West Sixth Street, Suite 215, Los Angeles, California 90014.

On April 16, 2008, I caused the foregoing document(s) described as **RICHARD WOOD'S REPLY BRIEF IN SUPPORT OF RENEWED MOTION FOR APPOINTMENT OF EXPERT** to be served on the parties in this action, as follows:

- ( X ) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the Antelope Valley Groundwater matter.
- ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:
- ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- ( ) (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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