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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 RESPONSE TO  
AGWA'S MOTION TO DECERTIFY  
CLASS**

Date: May 6, 2009  
Time: 9:00 a.m.  
Dept.: 17C

1 AGWA moves to decertify or amend the class definition of the Small Pumper  
2 Class. The Small Pumper class counsel agree that, as currently defined, the class may  
3 include parties with potentially adverse interests. The problem is that nobody knows (1)  
4 how much groundwater the average domestic pumper uses or (2) how many domestic  
5 pumpers reside in the area of adjudication. Based on an informal survey, Mr. Wood and  
6 his counsel believe that the average use is significantly higher than the 1 acre-foot/year  
7 value cited in AGWA's motion. Wood and his counsel also believe that the number of  
8 potential class members is far less than the 15,000 people currently set to receive class  
9 notice.<sup>1</sup>

10 The more imminent and possibly intractable problem is that the Small Pumper  
11 class will not be able to get solid answers to these questions because it has been starved  
12 of resources. Indeed, the Court's ruling on Mr. Wood's motion for appointment of an  
13 expert will effectively prevent a meaningful investigation of class size and the volume of  
14 classwide pumping until after the Phase III trial.<sup>2</sup> In the mind of class counsel, this fact  
15 weighs in favor of decertifying the class.

16 The problem faced by class counsel is that without an expert to participate in the  
17 overdraft determination, the pumping rights of class members will be permanently  
18 impaired. At the risk of some oversimplification, the determination of overdraft will  
19 require that parties to produce evidence of total pumping in excess of the area of  
20 adjudication's safe yield. The total pumping is the sum of pumping for municipal,  
21 industrial, agricultural, and domestic use, along with whatever miscellaneous pumping is  
22 occurring. The members of the Small Pumper class contribute to the total amount of  
23 domestic (and, if AGWA is to be believed, agricultural) pumping. Whatever this  
24  
25

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26 1 Two days ago, Los Angeles Waterworks District No. 40 informed class counsel that it has  
27 ballooned the number of potential class members from approximately 8,000 (where it had been  
28 estimated for a year or more) to 15,000. This compounds core problems with the class. Richard  
Wood will address these matters further in his *ex parte* application to be heard on May 6, 2009.

1 contribution is, the amount would establish the amount of self-help available to the class,  
2 i.e., the amount of pumping safe from the prescription claims of the public water  
3 purveyors.

4       Whatever that amount might be, the Small Pumper class clearly cannot rely on the  
5 experts retained by other landowners. As evidenced by this motion and other recent  
6 filings, the other landowners do not want the Small Pumper class present in this  
7 proceeding at all and have become increasingly hostile to its continued existence.<sup>3</sup> Their  
8 experts will be incentivized to attribute pumping to uses other than small domestic use,  
9 because they are interested in protecting the pumping rights of other landowners against  
10 prescription claims. In the Phase III trial, if the evidence supports a finding of overdraft,  
11 the agricultural pumpers will advocate that they have been pumping a greater volume of  
12 water for reasonable and beneficial uses than other overlying owners, and vice versa. No  
13 landowner would seek to minimize their pumping volume in an overdrawn basin because  
14 any physical solution will ultimately force users to scale down from some baseline  
15 pumping volume.

16       So without an expert in the Phase III trial, the Small Pumper class will get  
17 whipsawed by competing experts, all of whom will interpret whatever data exists to  
18 minimize pumping by the small domestic pumpers. Thus, when the Court eventually lifts  
19 its stay order on the appointment of an expert, there may already exist a factual finding  
20 concerning the ceiling amount of water available to the class's self-help defense.

21       Under this scenario, the small pumpers cannot be adequately represented as a  
22 class, regardless of class definition. Thus, if the class is to participate in the Phase III  
23 trial without an expert, it should be decertified.

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27 2 The Court granted Wood's motion for appointment of an expert, but stayed the order until after  
28 the Phase III trial on safe yield and overdraft. For reasons explained below, this ruling subjects  
that Wood class to the possibility of prejudice in the Phase III trial.

1 DATED: May 1, 2009

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

4 By:                     //s//                    

5 Daniel M. O'Leary  
6 Attorneys for Plaintiff

27  
28 3 This hostility will increase when the other landowners learn that the Wood class may end up  
having twice as many members as anticipated.

1 **PROOF OF SERVICE**

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

5 On May 1, 2009, I caused the foregoing document(s) described as **RICHARD WOOD'S**  
6 **RESPONSE TO AGWA'S MOTION TO DECERTIFY CLASS**  
be served on the parties in this action, as follows:

- 7 ( X ) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa  
8 Clara County Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the Antelope Valley  
Groundwater matter.
- 9 ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and  
10 processing of documents for mailing. Under that practice, the above-referenced  
11 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:
- 12 ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other  
13 overnight delivery service, for delivery on the next business day. Each copy was  
14 enclosed in an envelope or package designed by the express service carrier; deposited in a  
15 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.
- 16 ( ) (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of  
17 facsimile transmission of documents. It is transmitted to the recipient on the same day in  
the ordinary course of business.
- 18 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that  
19 the above is true and correct.
- 20 ( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of  
21 America that the foregoing is true and correct.

22 \_\_\_\_\_  
23 //s//  
24 Carol Delgado