

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
17
18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
19 **COUNTY OF LOS ANGELES**

20 Coordination Proceeding
21 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

22 ANTELOPE VALLEY GROUNDWATER
23 CASES

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

24 RICHARD A. WOOD, an individual, on
25 behalf of himself and all others similarly
26 situated,

Case No.: BC 391869

27 Plaintiff,

**DECLARATION OF MICHAEL D.
MCLACHLAN IN SUPPORT OF EX
PARTE APPLICATION FOR ORDER
STAYING CLASS NOTICE AND
LIFTING STAY ON COURT
APPOINTED EXPERT**

28 v.

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

**Date: May 6, 2009
Time: 9:00 a.m.
Dept.: 17c (telephonic)**

Defendants.

1 I, Michael D. McLachlan, declare:

2 1. I make this declaration of my own personal knowledge, except where stated
3 on information and belief, and if called to testify in Court on these matters, I could do so
4 competently. I am counsel of record of record for the claimants, and am duly licensed to
5 practice law in California.

6 2. On June 17, 2008, Stephanie Hedlund e-mailed me the initial draft
7 proposed list of small pumpers. At all times since then, Mrs. Hedlund, an associate in
8 Best, Best & Krieger ("BBK"), has represented to me that she was and is principally in
9 charge of assembling the class lists.

10 3. This class was certified in August of 2008, and further efforts to define the
11 class continued. On January 22, 2009, at the direction of the Court, I met with William
12 Leever of Wildermuth Environmental to review his work assisting in assembling a list
13 class for the Small Pumper Class. Wildermuth has been solely charged with gathering
14 raw data for landowners in the adjudication area meeting certain parameters. Mr. Leever
15 stated that he gathered data along following parameters:

- 16 a. He generated a list of all landowners owning property that sits outside the
17 current service areas of the various public water suppliers, and narrowed
18 this list down to only those parcels that were shown on public records to be
19 improved. The assumption here is that if a property is outside the water
20 service areas and improved, then that property must be actively using
21 groundwater, or likely was at sometime in the past.
- 22 b. Mr. Leever obtained a list of all customers inside the water service areas for
23 Los Angeles Waterworks District 40, Rosamond, and California Water
24 Service Company,¹ and compared those against all landowners inside those

25
26
27 ¹ At that time, Mr. Leever stated that a number of the public water suppliers did not provide him
28 with their customer lists, so he was unable to perform this analysis for those purveyors. The
status of this issue remains unclear.

1 districts. The assumption here was that if an improved property was inside
2 a water district but was not receiving water, that property was serviced by a
3 well.

4 4. As of January 22, 2009, Mr. Leever stated that he had turned his data over
5 to BBK, including data on potential class members inside the service areas, who was then
6 process it in some fashion to make it useable for mailing. At that time and continuing up
7 until last Thursday, April 30, all information from BBK and its consultants was that the
8 additional pumpers inside the service areas would be a few hundred in number.

9 5. As often as practicable, I have tried to be involved in the class list assembly
10 process. Those efforts have been routinely ignored or thwarted by the public water
11 suppliers, and more specifically counsel for Los Angeles Waterworks District No. 40,
12 BBK. My concerns have been borne by my observation that the interests of the public
13 water suppliers in achieving their jurisdictional goals in the fastest and most inexpensive
14 manner would necessarily encourage them to overload the classes with parties that may
15 not meet the class definitions, to the detriment of the real class members. This concern
16 now appears to be well-founded.

17 6. Over the past months, I, along with counsel for the Willis class, have made
18 numerous written inquiries of counsel for Los Angeles Waterworks District No. 40 for
19 information regarding the processing of the Willis claim forms and the assembly of the
20 Small Pumper class list. On March 10, 2009, I wrote an email to Ms. Hedlund asking for
21 a status update (Exhibit 1). I never received a response to this e-mail in any form. On
22 March 23, 2009, Ralph Kalfayan sent a similar e-mail, again no response was received
23 (Exhibit 2). On April 8, 2009, I sent a letter to Jeffrey Dunn by facsimile again
24 demanding information on this subject (Exhibit 3). There was no response to this letter
25 whatsoever. During this timeframe, I also made at least one direct demand to Mr. Dunn
26 that my office be brought up to speed and he informed me that some would taken care of
27 this. It never was.

1 7. On April 23, Mr. Dunn filed a declaration stating that the Small Pumper
2 class database would be completed on or before April 28, 2009. This declaration alludes
3 to the review of “approximately 15,000 entries,” but no mention is made of the class
4 sized doubling to that number. (Decl. of Jeffrey V. Dunn Re Status of Class Notice,
5 April 23, 2009, 4:11-12.) At the April 24, 2009, hearing, in response to my complaints
6 about having been excluded from the class list assembly process, Mr. Dunn stated to the
7 Court there were “8,000 addresses that we had identified as being potentially put [SIC]
8 Wood Class Members.” (Hearing transcript, April 24, 2009, 56:7-8.) There was no
9 mention at that hearing of the class mailing soon going out to over 15,000 parcels. Mr.
10 Dunn also suggested that he had in fact been keeping class counsel informed on the
11 progress of the work done on the small pumper class list. This was, at best, a
12 misrepresentation.

13 8. On April 27, 2009, I again demanded the production of the class list, and
14 the opportunity to review the relevant response forms from the Willis class (Exhibit 4).
15 I still have received no response on the latter request. However, on April 28, Ms.
16 Hedlund sent me four Excel spreadsheets containing BBKs proposed noticees for the
17 Small Pumper Class (Exhibit 5).

18 9. On the afternoon of April 25, I had a conference call with Ms. Hedlund
19 and Mr. Dunn during which she explained what each of the four databases contained. At
20 that time, I learned for the first time that the number of parcels on the class list had
21 grown to approximately 15,000 – from what had always been estimated to be about half
22 that number. I was obviously a bit shocked by this development.

23 10. I was informed the bulk of the new additions to the list were parcels inside
24 the public water supply service areas, on a database called “FinalNCOA”. This database
25 contains 9556 entries, although many represent the same parcel (generally jointly owned
26 by a husband and wife).

27 11. On Saturday May 2, 2009, I travelled to the Antelope Valley and visited a
28

1 number of the parcels listed on the NCOA list. The following is a summary of what I
2 found, omitting no properties that I visited:

3 a. The database lists numerous properties on Martha Drive in
4 Lancaster, a residential tract development of small single family homes on small lots. I
5 spoke to Jolene Harris, who purported to be the owner of 636 Martha Court. She stated
6 that she recently acquired this foreclosed property and that the water service had been
7 turned off. She stated that the property did not have a well, and was on municipal water
8 service. (Exhibit 7.)

9 b. I visited 1306 West Avenue J4, Lancaster. This development is a
10 two story condominium building with more than ten units. I spoke to one of the
11 residents who informed me that the building was on municipal water service, and that
12 unit 1306 had been vacant for many months. (Exhibit 8.)

13 c. The parcel at 44111 N. Division Street, in Lancaster is occupied by
14 High Desert Engineering Contractors. It was not open, but I could see no signs of a
15 water tank on the property. On May 4, I spoke to a staff person by telephone. She stated
16 that she had never heard of a well on the property. I am endeavoring to confirm this
17 with the business owner. (Exhibit 9.)

18 d. 44604 Lowtree, Lancaster: On May 1, Richard Wood spoke to
19 Wayne Ulberg, the owner of the property, who state that he had owned the property
20 since it had been built, and there had never been a well on the property. I visited this
21 property and it is a single family residence in a tract development, with small lots.

22 e. There are numerous properties listed on 18th Street West, 20th Street
23 West, and Lancaster Boulevard, in Lancaster that are part of the Lancaster Water
24 Company, a mutual water company. I spoke Jamie House at 44635 18th Street West,
25 who confirmed that their house receives all of its water from this mutual water company.
26 I also spoke to Ms. Rhonda Yanutik at 1834 West Lancaster Blvd., who informed me
27 that her residence was also part of this mutual water company.

1 f. There are a number of houses in the new development adjacent to
2 the Rancho Vista Golf Course in Palmdale that are listed on the database. What is odd
3 is this is a very large development, and only some of the houses are found in the
4 database. For example, the database lists many houses on Mountain Shadows Court
5 (3606, 3612, 3618, 3624, 3625, 3631, 3642, 3643, 3649). (Exhibit 10.) There are
6 dozens of houses on Tournament Drive but only a few appear in the database (3308,
7 3549, 3610, 3652, 3704). I could find no indication of any water tanks on these
8 properties, although it is theoretically possible they are part of mutual water company (in
9 which case they should be excluded).


10 12. A review of the "FinalNCOA database" alone reveals the following
11 proposed class members, among numerous others, that are dubious if not facially
12 improper (with NCOA row number): LA City Dept of Water and Power (4103);
13 Lancaster Water Company (62, 4153); Joshua Acres Mutual Water Company (7731);
14 Antelope Valley Water Company (23); Landale Mutual Water Company (223);
15 Antelope Park Mutual Water Company (614); City of Los Angeles (7770, 7791, 8121);
16 Bolthouse Properties LLC (1126, 1127); Van Dam farm (7119-7132); Diamond Farming
17 Company (2129).

18 13. The other databases are similarly flawed. For example,
19 "Wood_Class_Final_Feb0209" contains listings for: City of Los Angeles (33); Tejon
20 Ranch (640; 3507-09); Antelope Valley East Kern Water Agency (1066; 3021); Pulte
21 Home Corp. (1498-1500, 1881); KB Home (1503-04, 1652-3, 1679, 1682, 1736, among
22 many others); Mettler Valley Mutual Water Company; WL Anaverde Associates LLC
23 (2844); Antelope Valley Water Storage LLC (3105, 3154; Bolthouse Properties LLC
24 (3127); Copo de Oro Land Company (3424); Juniper Hills Community Association
25 (3717); and US Borax Inc. (4034).

26 14. Since receiving the lists, I have continued to request information from
27 BBK, to no avail. I sent the e-mail attached as Exhibit 6 to Mr. Dunn and Ms. Hedlund
28

1 on April 30, and again on May 2. I have yet to receive a response to the questions raised
2 in these e-mails. Absent a very clear court order, I do not believe BBK will cooperate
3 with class counsel in a manner that will enable this class to be properly formed.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed this 4th day of May, 2009, at Los Angeles,
6 California.

7 
8 _____
Michael D. McLachlan

Mike McLachlan

From: Mike McLachlan [mike@mclachlanlaw.com]
Sent: Tuesday, March 10, 2009 10:30 AM
To: 'Stefanie Hedlund'
Cc: 'Dan O'leary'
Subject: Class update

Stefanie, can I get an update on the processing of the Willis forms, and the assembly of the small pumper database? I guess a time estimate to complete those would suffice.

Mike McLachlan
Law Offices of Michael D. McLachlan, APC
523 West Sixth Street, Suite 215
Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
mike@mclachlanlaw.com

Mike McLachlan

From: Ralph Kalfayan [Ralph@kkbs-law.com]
Sent: Monday, March 23, 2009 9:07 AM
To: Stefanie Hedlund; Daniel Roberts
Cc: Jeffrey Dunn; mike@mclachlanlaw.com; David Zlotnick
Subject: av

Stef, can we get a status of on the following: (1) your processing of response forms; (2) whether all PWS provided you with the list of customers to ensure notice was mailed to all unconnected landowners within service area, (3) number of opt outs thus far, (4) number of un-deliverables, and (5) status of segregating databases into Willis and Wood class.
Thanks

Ralph B. Kalfayan

Krause, Kalfayan, Benink & Slavens
625 Broadway, Suite 635
San Diego, Ca 92101
Phone: 619-232-0331
Fax: 619-232-4019
Email: rkalfayan@kkbs-law.com

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LAW OFFICES OF MICHAEL D. McLACHLAN

A PROFESSIONAL CORPORATION

523 WEST SIXTH STREET, SUITE 215

LOS ANGELES, CA 90014

PHONE 213-630-2884 FAX 213-630-2886

E-MAIL mike@mclachlanlaw.com

April 8, 2009

VIA FACSIMILE

Jeffrey Dunn
Best, Best & Krieger
5 Park Plaza, Suite 1500
Irvine, CA 92614

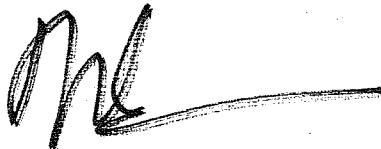
Re: Antelope Valley Groundwater Litigation

Dear Jeff:

As I have indicated several times before, although the notice for the Small Pumper class has been approved, class counsel does not approve of the dissemination of this notice pending the resolution of our motion to withdraw and decertify this class, which motion will be heard in late May. This motion of course may be obviated by a successful resolution to our motion for a court-appointed expert, set to be heard on April 24. However, if the water suppliers elect to oppose this motion, we will be forced to file the motion to withdraw prior to the April 24 hearing to address the likely query by the Court as to the prompt issuance of the long-delayed notice in this case.

To that end, counsel for both classes have made numerous attempts over the last month to get a status update on the Willis class processing and the assembly of the Wood class list. I would appreciate it if you could provide that information, including a time estimate for completion of these projects.

Very truly yours,

A handwritten signature in black ink, appearing to be 'McLachlan', with a long horizontal flourish extending to the right.

Michael D. McLachlan

Cc: Dan O'Leary (via e-mail)
Ralph Kalfayan (via e-mail)
David Zlotnick (via e-mail)

* * * Communication Result Report (Apr. 8. 2009 6:23PM) * * *

1)
2)

Date/Time: Apr. 8. 2009 6:22PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
4901 Memory TX Antelope	819492600972	P. 2	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection

Law Offices of Michael D. McLachlan, APC

523 West Sixth Street
Suite 215
Los Angeles, California 90014
Phone: (213) 630-2884; Fax: (213) 630-2886

FACSIMILE TRANSMITTAL COVER SHEET

NUMBER OF PAGES: 2 (including cover sheet)

DATE: April 8, 2009

TO	FAX NUMBER	PHONE NUMBER
Jeffrey Dunn, Best Best & Krieger	949-260-0972	949-263-2600

FROM: Mike McLachlan

SUBJECT: Antelope Valley Groundwater Litigation

COMMENTS/INSTRUCTIONS:

The information contained in this facsimile transmission may be confidential, attorney work product, and protected by the attorney-client privilege. If you are not the intended recipient, please deliver the transmission immediately to its intended recipient. If you have received this facsimile transmission in error, please call the telephone number listed at the top of this page, collect, to arrange for return of the transmission to the Law Office of Daniel M. O'Leary.

Mike McLachlan

From: Mike McLachlan [mike@mclachlanlaw.com]
Sent: Monday, April 27, 2009 1:53 PM
To: 'Jeffrey Dunn'; 'Stefanie Hedlund'
Cc: 'Dan Oleary'
Subject: Small pumper list

Please email us the current version of the list. I would like to talk to whomever is the PMQ regarding the events referred to in the last few paragraphs of Jeff's last declaration. We would like to speak directly to the title company person, and again to Mr. Leever if he was involved in any meaningful way with the recent changes to the list.

I also would like to see the responses of all those who identified themselves as small pumpers on the Willis form.

Mike McLachlan
Law Offices of Michael D. McLachlan, APC
523 West Sixth Street, Suite 215
Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
mike@mclachlanlaw.com

Mike McLachlan

From: Mike McLachlan [mike@mclachlanlaw.com]
Sent: Wednesday, April 29, 2009 11:41 AM
To: 'Stefanie Hedlund'; 'Jeffrey Dunn'
Cc: 'Dan Oleary'; 'Eric Garner'
Subject: RE: Small pumper list

Stephanie,

As I stated in Court last week, I would like to talk to you directly to get a summary of what has been done. It would also be helpful to understand what these 4 spreadsheets represent. This assumes that you have been the one running this effort over the past two months, if not let me know who I should be speaking with. Thanks,

Mike McLachlan
Law Offices of Michael D. McLachlan, APC
523 West Sixth Street, Suite 215
Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
mike@mclachlanlaw.com

-----Original Message-----

From: Stefanie Hedlund [mailto:Stefanie.Hedlund@bbklaw.com]
Sent: Tuesday, April 28, 2009 5:58 PM
To: Jeffrey Dunn; mike@mclachlanlaw.com
Cc: Dan Oleary; Eric Garner
Subject: RE: Small pumper list

Mike,

Roya Kotobi at First American can be reached at 714.250.6565. She will be happy to explain how we obtained missing addresses using APNs.

Attached is a zip of the potential Wood Class members. I am still waiting for you to provide the content for the website. Could we set up a call tomorrow? I'd like to get the website content as soon as possible so our IT people can finalize the website for your review prior to mailing the Class notice. Also, could you please email me the final Wood Class notice?

Thanks,
Stefanie

Stefanie Hedlund
for Best Best & Krieger

-----Original Message-----

From: Jeffrey Dunn
Sent: Tuesday, April 28, 2009 3:57 PM
To: 'mike@mclachlanlaw.com'; Stefanie Hedlund
Cc: 'Dan Oleary'

Subject: RE: Small pumper list

Mike: Stefanie will send the list to you and will arrange for a call/meeting with the title company person. You should hear from her tomorrow. Thanks.

Jeffrey V. Dunn, Esq.
Best Best & Kreiger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
(949) 263-2600 (Main)
(949) 263-2616 (Direct)
(949) 260-0972 (Facsimile)
jeffrey.dunn@bbklaw.com

-----Original Message-----

From: Mike McLachlan [<mailto:mike@mclachlanlaw.com>]
Sent: Monday, April 27, 2009 1:53 PM
To: Jeffrey Dunn; Stefanie Hedlund
Cc: 'Dan Oleary'
Subject: Small pumper list

Please email us the current version of the list. I would like to talk to whomever is the PMQ regarding the events referred to in the last few paragraphs of Jeff's last declaration. We would like to speak directly to the title company person, and again to Mr. Leever if he was involved in any meaningful way with the recent changes to the list.

I also would like to see the responses of all those who identified themselves as small pumpers on the Willis form.

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Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
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Mike McLachlan

From: Mike McLachlan [mike@mclachlanlaw.com]
Sent: Thursday, April 30, 2009 8:19 AM
To: 'Stefanie Hedlund'; 'Jeffrey Dunn'
Cc: 'Dan Oleary'; 'Eric Garner'
Subject: class lists

Stephanie, When properties with improved values were identified, was there any threshold value used, or was it anything included that was not a zero value?

And these lists would appear to contain the mutual water customers. Did you get a customer/shareholder list from Bob Dougherty? Because those people need to be removed from the list.

And Jeff, per our call of yesterday, we will get back to you by tomorrow on our preliminary gameplan. I would appreciate your client's position on some investigation into the class. I don't think anyone believes there is anywhere near 15,000 small pumper wells. Given the ramifications of that number, I think we have to assess some different options if this class is to go forward. Input from your side is of course welcome.

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523 West Sixth Street, Suite 215
Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
mike@mclachlanlaw.com

Mike McLachlan

From: Mike McLachlan [mike@mclachlanlaw.com]
Sent: Saturday, May 02, 2009 6:49 AM
To: 'Stefanie Hedlund'; 'Jeffrey Dunn'
Cc: 'Dan Oleary'; 'Eric Garner'
Subject: RE: class lists

I do not believe we have had a response on any of the questions below.

Mike

-----Original Message-----

From: Mike McLachlan [mailto:mike@mclachlanlaw.com]
Sent: Thursday, April 30, 2009 8:19 AM
To: 'Stefanie Hedlund'; 'Jeffrey Dunn'
Cc: 'Dan Oleary'; 'Eric Garner'
Subject: class lists

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And these lists would appear to contain the mutual water customers. Did you get a customer/shareholder list from Bob Dougherty? Because those people need to be removed from the list.

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523 West Sixth Street, Suite 215
Los Angeles, CA 90014
(213) 630-2884
(213) 630-2886 fax
mike@mclachlanlaw.com

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 May 4, 2009, I caused the foregoing document(s) described as **DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF *EX PARTE* APPLICATION FOR ORDER STAYING CLASS NOTICE AND LIFTING STAY ON COURT APPOINTED 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.scefilings.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//

Michael McLachlan