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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 OPPOSITION
TO MOTION TO CONOLIDATE**

Date: August 17, 2009
Time: 10:00 a.m.
Dept.: 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The public water suppliers (“PWS”) have filed a procedurally defective motion to
3 consolidate that must be denied.

4 **A. The Motion Should be Denied Because It Fails to Comply With the**
5 **Procedural Requirements for a Motion to Consolidate**

6 As argued in more detail in the Objection to Hearing on Motion to Transfer and to
7 Consolidate for All Purposes, filed Diamond Farming *et al.*, the Motion fails meet the
8 mandatory procedural prerequisites of Rule of Court 3.350. By failing to meet the
9 requirements to identify the various actions and parties, the moving parties have forced
10 the Court and the Opposing parties to try to sort through the staggering mess of pleadings
11 in this coordinated proceeding. On this basis alone, the Motion must be denied.

12 The Motion fails to address the specific pleadings, or the parties involved, leaving
13 the Court with little indication as to what would result from complete consolidation.
14 Complete consolidation results in a merger of the pleadings and actions. (*Weil & Brown,*
15 *California Civ. Proc. Before Trial* (Rutter 2009), ¶ 12:341.1; *Hamilton v. Asbestos Corp.,*
16 *Ltd.* (2000) 22 Cal.4th 1127, 1147.) What parties would be plaintiffs in the consolidated
17 actions, who would be defendants and who would be cross-defendants, if anyone? What
18 claims would be asserted, and how would they be pleaded? If the PWS’ first-amended
19 cross-complaint is to remain the center of the action, what is its case number? At present,
20 this cross-complaint does not even have a case number.¹ The Court must have answers to
21 all of these questions before considering such a motion.

22 If the Court was inclined for some reason to entertain this Motion, it should make
23 the moving parties re-file the Motion so that all of the procedural prerequisites are met.
24 However, as set forth below, as well as in the brief submitted cross-defendants U.S.

25
26
27 ¹ The PWS have been serving the recently added 1500-plus Roe Defendants (the *Willis*
28 opt outs) with a summons with no case number at all. They are using a summons that the
LASC clerk apparently issued with just “JCCP 4408” listed on it. This is a coordination
number, not a case number.

1 Borax *et al.*, there is no point in a further motion to consolidate because such a motion
2 would be futile in any event.

3
4 **B. Complete Consolidation Cannot be Granted as to the Classes**

5 The classes cannot be completely consolidated with the other cases because they
6 are complex cases, and because they do not share the same parties or claims as the
7 plethora of actions flowing from the “main action.”

8 By their very nature, the class actions are complex, and cannot be consolidated
9 under the applicable procedural law. (*Weil & Brown, California Civ. Proc. Before Trial*
10 (*Rutter* 2009), ¶¶ 12:345, 12:405; C.C.P. §§ 403 and 404.) There is no precedent for
11 merging a class action into a non-class case, and the Motion makes no suggestion as to
12 how that would work mechanically, even assuming it was permitted under the applicable
13 procedural statutes, which it is not.

14 “Complete consolidation may be ordered where the parties are identical and the
15 causes of action could have been joined.” (*Weil & Brown*, ¶ 341.1.) Richard Wood is
16 not a party to the PWS’s cross-complaint, nor any other complaint or cross-complaint in
17 this case. The same is true of the 5,000 to 10,000 absent class members. The only parties
18 common to the various actions are the water purveyors, which are plaintiffs in the main
19 proceeding – or at least all but some represented by the Lemieux firm – and defendants in
20 each of the class cases.

21 Furthermore, the claims asserted by the Classes are greatly divergent from those
22 asserted in the other cases. Richard Wood asserts essentially two groups of claims, one
23 aimed at defeating the prescriptive rights of the PWS and quieting title, and another set
24 for monetary damages for the taking of his water, and that of the class members. Wood
25 asserts no claims for a basin-wide adjudication, nor has he brought suit against any
26 federal defendants. The Small Pumper class seeks limited relief against a narrow set of
27 defendants.

28 The Class complaints of course also contain unique class allegations that must

1 remain intact. The suggestion that the classes can simply added to the first amended
2 cross-complaint as a Roe defendant is wrong. A plaintiff class cannot be sued as though
3 it were a distinct legal entity, and the various class members could not be sued as a
4 defense class without sufficient notice to the class satisfying the procedural due process
5 requirements. The PWSs did obtain an order certifying a defense class in 2007, but
6 elected not to pursue that. They cannot remedy that decision through consolidation.

7
8 **C. Conclusion**

9 The question of consolidation is not one of regarding the exercise of judicial
10 discretion. The law simply does not allow complete consolidation under the facts
11 presented.

12 This outcome, however, does not necessarily mandate dismissal of the PWS
13 action. While it would appear to foreclose jurisdiction over the federal cross-defendants
14 under the McCarran Amendment, this action can proceed without the United States. The
15 Court should consider dismissing the United States, so that the rest of this coordinated
16 proceeding can move forward to trial.

17
18 DATED: August 3, 2009

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

19
20
21 By: _____//s//
22 Michael D. McLachlan
23 Attorneys for Plaintiff
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27
28

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 August 3, 2009, I caused the foregoing document(s) described as **RICHARD WOOD'S
6 OPPOSITION TO MOTION TO CONOLIDATE**

7 to be served on the parties in this action, as follows:

8 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa
9 Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley
10 Groundwater matter.

11 () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and
12 processing of documents for mailing. Under that practice, the above-referenced
13 document(s) were placed in sealed envelope(s) addressed to the parties as noted above,
14 with postage thereon fully prepaid and deposited such envelope(s) with the United States
15 Postal Service on the same date at Los Angeles, California, addressed to:

16 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other
17 overnight delivery service, for delivery on the next business day. Each copy was
18 enclosed in an envelope or package designed by the express service carrier; deposited in a
19 facility regularly maintained by the express service carrier or delivered to a courier or
20 driver authorized to receive documents on its behalf; with delivery fees paid or provided
21 for; addressed as shown on the accompanying service list.

22 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of
23 facsimile transmission of documents. It is transmitted to the recipient on the same day in
24 the ordinary course of business.

25 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the above is true and correct.

27 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of
28 America that the foregoing is true and correct.

//s//
Carol Delgado