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12	SUPERIOR COURT FOR THE STATE OF CALIFORNIA	
13	COUNTY OF LOS ANGELES	
14	Coordination Proceeding Special Title (Rule 1550(b))	Judicial Council Coordination Proceeding No. 4408
15 16	ANTELOPE VALLEY GROUNDWATER CASES	(Santa Clara Case No. 1-05-CV-049053 Honorable Jack Komar)
17	RICHARD A. WOOD, an individual, on behalf of himself and all others similarly	Case No.: BC 391869
18	situated,	RICHARD WOOD'S BRIEF RE: CONSOLIDATION ORDER
19	Plaintiff,	
20	v.	Date: February 5, 2010 Time: 9:00 a.m. Dept.: 1
21	LOS ANGELES COUNTY	20pm 1
22	WATERWORKS DISTRICT NO. 40; et al.	
23	Defendants.	
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A. Introduction

For many years now, the procedural difficulties of this coordinated proceeding have been provided unending opportunity for the parties to advance various opposing agendas. The net result has been a near stalemate on any meaningful progress on the proceeding.

There is no question that this is one of the more complicated pieces of litigation any of the participants have seen. Indeed, there is little to no published legal precedent directly addressing many of the procedural questions facing the Court. Among those questions is whether the Court can consolidate the class actions with the other non-class cases. The answer to that question is no, but that does not matter ultimately because the goals of the coordinated proceeding can still be achieved.

B. The Classes Cannot Be Consolidated

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

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

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

C. A Comprehensive Adjudication Can be Achieved

At the behest of the Public Water Suppliers, one of the predominant objectives of the case has been to obtain jurisdiction over the federal defendants, pursuant to the McCarran Amendment. This can be accomplished by settling the two class cases resulting in a judgment in this case resolving the prescriptive claims of the Public Water Suppliers, and all other claims as between the class members and the Suppliers. As the amended Proposed Order correctly notes, most of these claims do not impact the rights of the United States. (Order, ¶¶6-7.) Consequently, not only is consolidation improper as a matter of procedure, but it does not accomplish anything (other than adversely impacting the rights of the class members).

The McCarran issue can be adequately resolved as to the classes by a provision in the class judgments giving the Court jurisdiction over the classes to enter a single judgment in the "main consolidated proceeding" reflecting the rights of the class members. In particular, it is contemplated that the class members would be subject to a physical solution in the main action, if that were eventually to materialize. In essence, the class would be subject to a contingent second judgment in the larger proceeding that would reflect the aspects of the settlements with the Public Water Suppliers impacting a comprehensive adjudication of the parties' water rights.

D. Comments on the Proposed Order

The proposed order is an improvement over the first draft, but needs further modification.

On page 2, lines 23 and 24, the order should read: "any such judgment must expressly retain jurisdiction over the settling parties for purposes of incorporating the pertinent provisions of such settlement(s) into a single judgment containing such a physical solution." This change will clarify the fact that the result of settlement would likely be that the class members would be subject to two judgments, if there ultimately is

1	a judgment entered in the "main proceeding." The first class judgments will remain, and		
2	stand in full force and effect; the second judgment will merely incorporate the relevant		
3	terms of the first judgment relating to the comprehensive adjudication.		
4	On page 2, line 27, the Order should be modified to reflect that all non-class		
5	claims are completely consolidated. The same problem appears on page 3, paragraph 3.		
6	Plaintiff also suggests that the paragraphs should be re-numbered, using letters and		
7	numbers, so that the order does not contain two sets of paragraphs numbered 1 to 5, as it		
8	does now. The current numbering will likely confuse the record should this Order be		
9	appealed.		
10	The paragraphs 5 through 8 on pages 3 through 5 appear to be beyond the scope of		
11	the motion in question. Furthermore, the order does not address the form of the pleading		
12	going forward with a consolidated proceeding.		
13			
14	DATED: February 3, 2010 LAW OFFICES OF MICHAEL D. McLACHLAN		
15	LAW OFFICE OF DANIEL M. O'LEARY		
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17	By:		
18	Michael D. McLachlan Attorneys for Plaintiff		
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28	DICHARD WOOD'S PRICE DE. CONSOLERATION OPPER		
	RICHARD WOOD'S BRIEF RE: CONSOLIDATION ORDER		

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 February 3, 2010, I caused the foregoing document(s) described as **RICHARD WOOD'S BRIEF RE: CONSOLIDATION ORDER** 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 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.

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Carol Delgado