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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 *CORRECTED*
CASE MANAGEMENT STATEMENT

Date: March 22, 2010
Time: 9:00 a.m.
Dept.: 1

1 Plaintiff Richard Wood respectfully submits this brief in the hope that the Court
2 will reconsider the impact of recent rulings on the Small Pumper Class (the “Class”).

3 **1. The Case Cannot Proceed to a Phase 3 Trial Without the Work of the**
4 **Court-Appointed Expert Being Presented As Evidence**

5 The contemplated posture of this case at the Phase 3 trial deprives the Small
6 Pumpers’ Class of the necessary adequacy of representation. The inadequacy of
7 representation arises from the Court’s decision not to allow the court-appointed expert to
8 do the work necessary to assess the class’ water use. This decision, in the context of this
9 case as currently postured, will violate the due process rights or the absent class
10 members.

11 Prior to notice being provided to the class, class counsel insisted, quite vigorously,
12 that an expert be appointed under Evidence Code section 730 to ensure that class counsel
13 could properly represent the interest of the class. The class members are largely indigent,
14 and have no mechanism for funding their own expert. Class counsel cannot do so
15 because they are prohibited from recovering such expert costs in this context unless
16 appointed by the Court. Because the interests of the class dictated the retention of an
17 expert to perform work related to assessing the water usage of the class members and the
18 class, the Court appointed an expert.

19 By way of its recent ruling refusing to authorize the work of the court-appointed
20 expert, the Court effectively reversed its prior ruling appointing the expert. This decision
21 is highly prejudicial to the interests of the class, and likely prevents the class from going
22 forward in these proceedings.

23 The fact that there has been no assessment of the individual or collective pumping
24 of the Small Pumper Class is not in dispute. Plaintiff can cite to no contrary statement in
25 any filing in this case, nor has any contrary representation been made by any attorney to
26 these proceedings. There similarly appears to be no disagreement on the proposition that
27 in order to determine the safe yield of the basin, evidence will have to be submitted

1 relative to the water use of the Small Pumpers.

2 Clearly this work will have to be done. As the Court has opined, the burden to do
3 that work falls on the Water Suppliers. Thus, it appears that instead of paying the neutral
4 court-appointed expert to make assessment, the Water Suppliers will end up paying Mr.
5 Scalaminini and company to cook up an opinion on the water use of the Class, which will
6 likely come into evidence un rebutted. Presumably, to reach the ultimate finding on the
7 question of whether the basin is in overdraft, the Court will need to make a finding of fact
8 as to the water usage of the Small Pumpers class. That factual finding will then be law of
9 the case.

10 When the Small Pumpers endeavor to assert their self-help defense in later phases
11 of this trial, they will be limited by that finding of fact, in whatever timeframe it may
12 apply. Hence, the likely outcome will be that the Water Suppliers will not have saved
13 any money on expert fees related to this issue, but they will have purchased the ability to
14 have their own advocates set the number as they deem fit.

15 Under this scenario, Plaintiff and his counsel cannot adequately represent the
16 interests of the class, rendering the ultimate judgment meaningless if challenged.
17 Without adequate representation, a resolution of class claims “cannot satisfy due process
18 as to all members of the class.” (*Hesse v. Sprint Corporation* (March 11, 2010) 2010 WL
19 790340 *4 (citing *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812).) “To
20 satisfy constitutional due process concerns, absent class members must be afforded
21 adequate representation before entry of a judgment which binds them.” (*Hanlon v.*
22 *Chrysler Corp.* (9th Cir. 1992) 150 F.3d 1011, 1020.) For due process to obtain, the class
23 representative must be able to vigorously prosecute the action on behalf of the class.
24 (*Ibid.*)

25 Richard Wood cannot adequately represent the interest of the class at the Phases 3
26 trial. Either the court-appointed expert should be permitted to do the contemplated work,
27 or the class should be decertified.

1 **2. The Existing Notice Does Not Provide Adequate Notice of this**
2 **Consolidated Action**

3 Plaintiff must also comment on the assertion in the Water Suppliers filing of today
4 that the class members have been given adequate notice of this newly consolidated
5 proceeding. This assertion is absurd, and one need look no further than the notice itself,
6 which states in relevant part:

7 **WHAT IS THIS CASE ABOUT?**

8 Under California law, property owners have the right to pump and use
9 groundwater (water underneath the surface) on their land. In this case,
10 however, the naturally available supply of water in the Basin may not be
11 adequate to satisfy everyone who wants to use that water. Plaintiff Richard
12 Wood brought this action to protect his right and that of other Antelope Valley
13 landowners to pump and use the water under their properties and to obtain
14 compensation for any wrongful taking of their property rights. Mr. Wood
15 claims that he and other landowners have water rights which are superior to the
16 rights of certain public water suppliers to use that water. If the public water
17 suppliers win, your rights to use the groundwater under your property may be
18 cut back. The Court has not yet ruled on these claims.

19 (Small Pumper Class Notice, p.2 (emphasis added).)

20 It is perfectly clear that the Small Pumper Class lawsuit is targeted at defeating the
21 claims of prescription asserted by small group of Water Suppliers. Plaintiff did not seek
22 out a basin-wide adjudication, did not request a physical solution, did not sue the United
23 States or any other overlying landowner, and certainly no notice to that effect has been
24 provided. By the very definition of consolidation in this context, one cannot credibly
25 argue that the order of “complete consolidation” has not changed the nature of this
26 proceeding as it affects the legal rights of the Class.

1 If the case is to proceed as consolidated, new notice must be given to the class
2 members, and the court-appointed expert must be allowed to commence his work.

3
4 DATED: March 19, 2010

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

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6
7 By: _____//s//

8 Michael D. McLachlan
9 Attorneys for Plaintiff
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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 March 19, 2010, I caused the foregoing document(s) described as **RICHARD WOOD'S**
6 ***CORRECTED CASE MANAGEMENT STATEMENT*** to be served on the parties in
7 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.

22 _____ //s//
23 Ana Horga