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Attorneys for Plaintiff Richard Wood and the Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER
CASES

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

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

Case No.: BC 391869

Plaintiff,

**DECLARATION OF MICHAEL D.
MCLACHLAN RE STATUS OF
SETTLEMENT AND NOTICE OF
JOINDER**

v.

Date: July 15, 2010
Time: 9:00 a.m.
Dept.: telephonic

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

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 Richard Wood and the Small Pumper
5 Class, and am duly licensed to practice law in California.

6 **SMALL PUMPER CLASS ACTION SETTLEMENT**

7 2. In September of 2009, the parties to the Wood and Willis class actions had
8 their initial mediation with Justice Robie. Since that time, and through the early part of
9 this year, the parties negotiated what is essentially a final settlement agreement. That
10 agreement has sat idle for much of this year. I have made numerous inquiries of Best,
11 Best & Krieger and County Counsel over the past months, but there has been no
12 movement toward finalizing settlement.

13 3. It is clear that Waterworks District No. 40 (“Waterworks”) has no interest
14 in settling with the Small Pumper class. To be blunt, I believe most of the efforts over
15 the past year were made largely to appease the request of the Court for settlement talks,
16 with no real intent to resolve the class cases. If this were not the case, I would have
17 expected Waterworks to explain its protracted intransigence. I make these statements
18 only as to the County, as I believe that most of the other public water supplier (“PWS”)
19 defendants genuinely wish to settle with the classes. Unfortunately, Waterworks controls
20 the process and refused to move forward for reasons that are unknown to me.

21 4. The position of class counsel remains unchanged: there is no point to the
22 PWS litigating their legal claims against the classes. The theoretical amount of water
23 rights to be gained by assertion of prescriptive rights against the classes is *de minimis*,
24 and far outstripped in value by the resources that will be consumed in trying the claims.
25 Yet, Waterworks and its counsel insist on litigating the matter.

26 **THE PRINCIPALS’ MEDIATION**

27 5. Over the years of my involvement in this case, I have heard many of the

principals in this litigation individually and collectively express frustration with the perception that the lawyers have often acted to perpetuate the litigation, have taken steps to derail settlement, and in some cases refuse not follow the wishes of their clients in this regard. As the Court is well aware, prior efforts at settlement have failed on several occasions. Last year the principals took the very unusual step of initiating a settlement proceeding in which their lawyers were barred from participating. I have been only one of the three litigation attorneys allowed to participate in the Waldo settlement meetings – the other two being David Zlotnick and Ralph Kalfayan. We have been allowed to participate solely because of our position as class counsel. Because I firmly believe this dispute is not capable of resolution in the Courtroom, and that trials and appeals will drag on for many more years, I have actively participated in this process notwithstanding the fact that it may not directly resolve the class cases absent participation from Waterworks and Littlerock Creek Irrigation District.

6. I have attended numerous of these settlement meetings, and I cannot recall any in which there were less than 25 or 30 representatives in attendance from various Water Suppliers, the Cities of Lancaster and Palmdale, agricultural and industrial interests, as well as both classes.¹ In almost all cases, the representatives at these negotiations have been very high level executives or officers, with the necessary authority to negotiate. I am also informed that it is true that every significant water-using litigant has been represented at these negotiations, except Waterworks District 40 and Littlerock Creek (who is in fact a relatively minor player in the context of total

¹ In the City of Lancaster's case management statement, there is a reference to approximately 87% of the total basin pumping participating in the Waldo process. I am informed this is based on 2009 data obtained from the participants and a variety of other public sources. In some instances estimates were used. The numbers used for Waterworks and Littlerock Creek Irrigation District are 20,000 afy and 1,981 afy, respectively. The amount of water used by the small pumper class was likely overestimated slightly, and some small users may have been omitted from the calculations. Nevertheless, I am informed from a variety of sources that 87% is accurate within a small degree error.

1 pumping).

2 7. For many months in 2009 and early 2010, the principals met to discuss and
3 debate all the various terms of a settlement, using a prior water adjudication agreement
4 as a backbone. In early Spring of this year, the principals retained Jim Waldo and his
5 team to formally direct and mediate the agreement to closure. The group has met
6 continuously every other week on two consecutive days each week. There have literally
7 been hundreds of hours spent in these meetings and related caucuses, and an incredible
8 amount of resources have been consumed in this process.

9 8. Last week, the principals completed their negotiations, resulting in the
10 issuance of a final draft memorandum, referred to as The Antelope Valley Accord. It is
11 a very detailed document,² covering all the points referred to in the City of Lancaster's
12 case management statement, and many others. I have reviewed in detail settlement
13 agreements and stipulated judgments from at least three other Southern California
14 groundwater proceedings, including Santa Maria, and can find no necessary issues that
15 were omitted, other than perhaps specific parameters on the form or releases of legal
16 claims, which has been primarily left to the lawyers for input.

17 9. There have been some statements that the Accord is not based on any
18 science. (*See, e.g.*, Case Management Statement filed by the Lemieux firm.) This is
19 simply incorrect. As part of the principals' mediation process, a Technical Working
20 Group was formed, and produced a variety of reports based on a variety of data from a
21 wide range of reliable sources, including USGS data. These reports were generally
22 targeted at identifying a reliable range for safe yield, and current pumping levels.

23
24
25 ² The final version of the Accord is 20 single-spaced pages, with approximately 223 separate
26 paragraphs and sub-headings, containing nearly 9,000 words. There also many pages of
27 attachment consisting of detailed technical reports used to set the initial safe yield number. It
28 would be hard to argue how a group of non-lawyers could put much more detail into such an
agreement.

1 Because of the importance of these questions, the principals then sought out the opinions
2 of two independent consulting hydrogeologists. These experts were solicited by the
3 Waldo team by way of a request for proposals, and selected based on their experience
4 and qualifications. These experts were asked to review the available information and
5 opine on various questions, including the range of safe yield. The starting safe yield
6 incorporated in the Accord is supported by the average of the two experts' opinions.

7 **A SHORT CONTINUANCE IS WARRANTED**

8 10. The Accord is drafted generally in layman's terms, and will require
9 substantial drafting from lawyers in order to be converted into a signature-ready
10 settlement agreement. I am told by those who have been through this process before that
11 the most optimistic timeframe for completion of this process, given the number or
12 parties and lawyers involved, is 60-days. On that basis, Richard Wood supports a
13 limited trial continuance of 60-days, with a similar continuance for the start expert
14 depositions. If the expert depositions start in a few weeks, they will certainly consume
15 most or all of the time available from the primary lawyers in the case, leaving no time to
16 conduct the necessary drafting of the settlement agreement. These depositions will also
17 make it unlikely that a mediation with Justice Robie can be scheduled. In short, the lack
18 of continuance will probably kill the prospect of settlement.

19 11. This is no longer a case of a united opposition from the Public Water
20 Supplier defendants to a continuance, as evidenced by the joinder of the second largest
21 PWS, Palmdale Water District, and the support of the cities. Indeed, it is expected that
22 the only remaining PWS opposition will come from the Lemieux firm and Best, Best &
23 Krieger, the latter of which find themselves in the rather awkward position of having one
24 client in favor of pursuing the Accord (Rosamond CSD), and one presumably still against
25 it (Waterworks).

26 12. Having essentially completed the Waldo process, the parties to that Accord
27 would now like to take Waterworks up on its proposal to meet in full with Justice Robie,
28

1 to see if a the last remaining parties can be persuaded to join a global settlement. The
2 parties are very close to a global settlement. The failure to attempt to garner
3 participation of the few remaining parties would be a profound waste of a great
4 opportunity to end the litigation. Justice Robie should be given a chance to close the
5 gap. With current backing of many of the Public Water Suppliers

6 **JOINDER**

7 13. The Small Pumper Class joins in the case management statement of the
8 City of Lancaster, with the limited exception that class counsel believes the continuance
9 should be clearly defined and a new trial date set now so that a full measure of pressure
10 remains on parties to get an agreement executed with due speed. Given that 90 days
11 falls squarely on the holidays, I suggest 60 to 70 days so that phase III could be tried at
12 the beginning of December, 2010.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed this 13th day of July, 2010, at Los Angeles,
16 California.

17 _____ //s//

18 Michael D. McLachlan
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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 10490 Santa Monica Blvd., Los Angeles, California 90025.

On July 13, 2009, I caused the foregoing document(s) described as **DECLARATION OF MICHAEL D. MCLACHLAN RE STATUS SETTLEMENT AND JOINDER** 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//
Carol Delgado