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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 REPLY IN  
SUPPORT OF MOTION FOR ORDER  
AUTHORIZING COURT-  
APPOINTED EXPERT WITNESS  
WORK**

Date: August 30, 2011  
Time: 8:00 a.m.  
Dept.: 316 (Room 1515)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Richard Wood submits the following reply brief in support of his motion to  
3 authorize the court-appointed expert to commence work.

4 Boiled down, the argument offered by the County of Los Angeles is that the case  
5 may settle eventually, mooted the need for the expert work. This suggestion flies in  
6 direct contradiction to what is publicly known to be at the core of the current settlement  
7 conference: the presentation of water use information by the various parties. While class  
8 counsel have submitted to Justice Robie their supposition about what the class water use  
9 may look like, there is no dispute that counsel have no data to support these educated  
10 guesses. If the expert work had been conducted in a timely fashion, that information  
11 would exist and class counsel could present it and negotiate on that basis.<sup>1</sup> There is no  
12 other party to this litigation in this position.

13 The Opposition to this Motion is little more than a cynical attempt to keep the  
14 class in a position that it cannot meaningfully negotiate, so that the water suppliers and  
15 the large overlying users can try to settle around the class. To that end, the water  
16 suppliers have reneged on their agreement to drop their prescription claims against the  
17 class, forcing the class to litigate the matter.<sup>2</sup> They suggest that class counsel should  
18 negotiate against the interests of the class without any real understanding of what those  
19 interests are. The lack of analysis by the court-appointed expert has put class counsel in

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20  
21 <sup>1</sup> The County incorrectly states that class counsel have not been participating the  
22 settlement meetings with Justice Robie. This is incorrect. Class counsel have submitted  
23 their position in detail to Justice Robie in numerous briefs addressing the pertinent topics.

24 <sup>2</sup> After the Court denied the motion for preliminary approval of the settlement, the  
25 agreement was redrafted to remove any allocation of water and any restrictions on the  
26 physical solution. Essentially it ended up looking like the Willis agreement. It was  
27 circulated to all counsel for the water suppliers and all comments were resolved. Just as  
28 it was being prepared for signature, the County ceased all settlement communications and  
refused to respond to any correspondence for about a month now.

1 an utterly untenable negotiating position. This position is worsened by the framework in  
2 which the negotiations must take place.

3 The primary problem facing the settlement process is the fact that the actual  
4 pumping is greatly in excess of the numbers discussed at the phase 3 trial. The actual  
5 pumping exceeds the total safe yield set by the Court by estimated amount of at least  
6 70,000 afy. If the public water suppliers and the United States get all of the water they  
7 are seeking, the remaining pool of water may only be sufficient to satisfy about half the  
8 current pumping. There will be substantial cutbacks for certain. Notwithstanding the  
9 priority right vested in domestic users by Water Code section 106, the agricultural and  
10 industrial users would like the domestic users to cut back on an equal basis with them.<sup>3</sup>  
11 This is not a point that can be negotiated, and certainly not without some real  
12 understanding the Class' water use.

13 Implied in the County's position is the notion that the Court should stay the  
14 litigation. The notion that we should entirely halt the litigation for settlement purposes is  
15 one this Court has heard and rejected on numerous times before. This case is nearly  
16 twelve years old, and has proceeded at a glacial pace. The litigation needs to move  
17 forward. If the case is to settle, that is more likely to occur with press of litigation  
18 ongoing. In order for litigation to proceed (of for the case to settle), class counsel need  
19 the court-appointed expert to make an assessment of the Class' water use.

20 DATED: August 23, 2011

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LAW OFFICE OF DANIEL M. O'LEARY

21  
22 By: \_\_\_\_\_ //s//

23 Michael D. McLachlan  
24 Attorneys for Plaintiff

25 <sup>3</sup> California Water Code section 106 provides: "It is hereby declared to be the  
26 established policy of this State that the use of water for domestic purposes is the highest  
27 use of water and that the next highest use is for irrigation."

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 10490 Santa Monica Boulevard,  
4 Los Angeles, California.

5 On August 23, 2011, I caused the foregoing document(s) described as **RICHARD WOOD'S**  
6 **REPLY IN SUPPORT OF MOTION FOR ORDER AUTHORIZING COURT-**  
7 **APPOINTED EXPERT WITNESS WORK**

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

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

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

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

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

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

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

29 \_\_\_\_\_  
30 //s//  
31 Michael McLachlan