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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

(Honorable Jack Komar)

Case No.: BC 391869

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
PARTIAL CLASS SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: October 25, 2013
Time: 9:00 a.m.
Dept: TBD

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 25, 2013, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, at 161 North First Street, San Jose, California, in a
4 department to be determined by the Court, Richard Wood California Water Service
5 Company, City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community
6 Services District, Quartz Hill Water District, and Rosamond Community Services District
7 (collectively “Settling Parties”) jointly move for preliminary approval of the Wood Class
8 Settlement.

9 These Settling Parties bring this motion pursuant to California Rules of Court,
10 Rule 3.769.

11 The Motion is based on this Notice, the Memorandum of Points and Authorities,
12 the Declaration of Michael D. McLachlan, the various documents attached thereto, the
13 records and file herein, and on such evidence as may be presented at the hearing of the
14 Motion.

15
16 DATED: October 7, 2013

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

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18
19 By: _____
20 MICHAEL D. MCLACHLAN
21 Attorneys for Plaintiff and the Class

22 DATED: October 7, 2013

LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

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24 By: _____ //s//
25 THOMAS S. BUNN
26 Attorneys for Defendant Palmdale Water District
27 and on behalf of the other Settling Defendants
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR PRELIMINARY APPROVAL OF PARTIAL CLASS SETTLEMENT**

3
4 **I. INTRODUCTION**

5 Plaintiff Richard Wood has entered into a Stipulation of Settlement (“Agreement”) with Defendants Richard Wood California Water Service Company, City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, Quartz Hill Water District, and Rosamond Community Services District (collectively, the “Settling Defendants”), all of whom are referred to as the “Settling Parties,” subject to Court approval, notice to the Class, and a final approval and fairness hearing.

11 Plaintiff requests that the court adopt the Order Granting Preliminary Approval of Class Action Settlement and Directing Notice to the Class, which would: (i) preliminarily approve the proposed Agreement; (ii) approve the form of Notice to the Class and authorize dissemination of the Notice; (iii) set dates and procedures for a fairness hearing on the proposed Agreement; and (iv) set procedures and deadlines for class members to object to the Agreement terms (the proposed Order will be lodged separately).

17 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

18 **A. History of the Wood Class Action**

19 The court is familiar with the history of this action and the details surrounding the Wood Class (the “Class”). Briefly, Plaintiff Richard Wood (“Plaintiff”) filed this action on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who have been pumping less than 25 acre feet year (“afy”) of groundwater from the Antelope Valley Groundwater Basin (“Basin”). Plaintiff filed this action so that he and the members of the Class could continue to extract groundwater from the Basin for reasonable and beneficial use. This action was, in large measure, filed to contest claims of prescriptive rights asserted by the “Settling Defendants”. The court certified the Wood Class Action by Order dated September 2, 2008, in which the court defined the Wood Class as:

1 All private (i.e., non-governmental) persons and entities that
2 own real property within the Basin, as adjudicated, and that
3 have been pumping less than 25 acre-feet per year on their
4 property during any year from 1946 to the present. The Class
5 excludes the defendants herein, any person, firm, trust,
6 corporation, or other entity in which any defendant has a
7 controlling interest or which is related to or affiliated with
8 any of the defendants, and the representatives, heirs,
9 affiliates, successors-in interest or assigns of any such
10 excluded party. The Class also excludes all persons and
11 entities that are shareholders in a mutual water company.

12 Notice of the Pendency of the Wood Class Action was sent by first class mail to
13 all Wood Class Members¹ who could be identified with reasonable effort on or about July
14 7, 2009 and a Summary Notice was published as instructed by the court. The deadline
15 for putative Class Members to exclude themselves (as extended) ended on December 4,
16 2009. Throughout this process, the court made various orders allowing certain parties
17 who had opted-out to rejoin the Class.

18 **B. Wood Class Settlement Agreement Background And Terms**

19 Large settlement negotiations with the parties to the Wood Action have been
20 ongoing since 2009. All parties previously entered into a comprehensive settlement in
21 2011, but that did not obtain Court approval. The Settling Parties in the current
22 settlement agreement commenced settlement negotiations as a group earlier this year, and
23 those discussions were generally consistent with the proceeding efforts after the failed
24 settlement attempt in 2011. As a result of the extensive negotiations, the Settling Parties
25 ultimately agreed upon the terms that form the Wood Class Agreement, attached to the
26 Declaration of Michael D. McLachlan as Exhibit "A".²

27 ¹ If not defined in this Motion, all capitalized references are defined in the
28 Settlement Agreement. (McLachlan Decl., Ex. A.)

² The Settlement agreement has been approved as to form by all counsel, and the
necessary signatures will be obtained at board meetings of the defendants, commencing
tomorrow. Those missing signature pages will be submitted under separate cover.

1 Class Counsel believes that the Wood Class Agreement, and the terms provided
2 therein, are fair to all concerned, including the non-settling parties, although the
3 Agreement does not bind the non-settling parties. Several of the material terms agreed
4 upon in this Agreement are: (1) the Wood Class agrees not to contest the Settling
5 Defendants' estimates of the Basin's Native Safe Yield as long as it is at least 82,300
6 acre-feet of water per year; (2) the Wood Class will not contest the Settling Defendants'
7 right to produce specified quantities of water from the Basin; (3) the Wood Class has a
8 correlative right along with other overlying landowners) to produce at groundwater from
9 the Basin in amount to be determined by the Court in the future; (4) the prescriptive
10 rights of the Settling Defendants, if any, shall not be exercised to diminish the rights of
11 the Wood Class; (5) if the Court imposes a Physical Solution, the Wood Class will be
12 bound by it subject to the terms of the Agreement; (6) in the event of a Physical Solution,
13 Settling Defendants will not object to each Wood Class Member being granted a right to
14 pump up to and including 3 acre-feet for reasonable and beneficial domestic use on their
15 overlying land from the Native Safe Yield; (7) Settling Parties agree that the Wood Class
16 members pumping in excess of 3 acre-feet per year should generally be treated the same
17 as other non-Class Member overlying property owners with respect to the payment of
18 assessments for replacement water; (8) the Wood Class releases the Settling Defendants
19 from taking claims.

20 None of the substantive terms concerning water rights or the potential physical
21 solution are binding on the Court or any of the non-settling parties in these coordinated
22 proceedings. In other words, the Agreement only impacts the rights existing between the
23 Settling Parties, and does not in any way limit the Court's ability to rule on the Class'
24 ultimate water rights, the Settling Defendants' water rights, or any element of a potential
25 physical solution. Although the Agreement does not resolve all of the prescriptive claims
26 pending against the Class, it does substantially reduce those, and is such presents a clear
27 benefit to the Class.

III. ARGUMENT

A. Standard For Preliminary Approval

There is an overriding public interest in settling and quieting litigation, especially class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953.) Court approval is required before any action certified as a class action may be settled or compromised and subsequently dismissed. Cal Rules of Court, Rule 3.769. In deciding whether to approve a class action settlement, the court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

A class action settlement is approved in accordance with a three-step process: (1) preliminary approval of the proposed settlement and proposed notice to settlement class members; (2) dissemination of the notice of the settlement to class members; and (3) the final approval hearing, at which class members may voice their opinion about the settlement; it is also at this time that evidence and argument regarding the fairness, adequacy and reasonableness of the settlement is presented.

The scope of a court's evaluation during the preliminary hearing stage is limited. The purpose of the preliminary evaluation is simply to determine whether the proposed settlement is within the "range of reasonableness" and thus whether it is appropriate to send notice to the class of the proposed settlement terms and conditions and schedule a final settlement hearing. At the final settlement hearing, the court reviews the proposed settlement de novo, and considers in part the class members' opinions about the particular settlement.

A settlement is presumed fair where: (1) "the settlement is reached through arm's length bargaining;" (2) "investigation and discovery are sufficient to allow counsel and the court to act intelligently;" (3) "counsel is experienced in similar litigation;" and (4) "the percentage of objectors is small." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45.) A review of these factors strongly favors preliminary approval of the proposed Settlement in this action.

1 **B. The Proposed Settlement Agreement Is Well Within The Range Of**
2 **Reasonableness And Merits Preliminary Approval.**

3 The proposed Settlement Agreement is well within the “range of reasonableness”
4 and thus merits approval. Although Plaintiff Wood and the Class believe that their
5 claims have merit, they recognize that, proceeding with this litigation carries considerable
6 risk. It is, therefore, in the best interests of Plaintiff and the Class to settle with, and
7 receive reasonable and prompt benefits from, the Settling Defendants.

8 It is elemental that a settlement is a compromise and, thus, does not ordinarily
9 provide a plaintiff with the full relief or recovery originally sought at the time the action
10 was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 (“In the context of a settlement
11 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on
12 the complaint, but rather whether the settlement is reasonable under all of the
13 circumstances.”).) Even under the Agreement, however, the Class will benefit
14 substantially.

15 The Agreement represents a compromise and allows for dismissal of Defendants’
16 prescription claims. It also recognizes resolves as between these parties, many of the
17 issues remaining to be decided, thereby limiting the risk for both sides and decreasing the
18 contested issues before the Court.

19 In sum, given the many risks faced by Plaintiff and the Class in pursuing this
20 litigation, the Agreement represents a reasonable resolution of otherwise complex and
21 strongly contested issues. Had the Class not settled, the resolution of those issues would
22 likely have resulted in a longer and more expensive trial. The Agreement is within the
23 range of reasonableness in light of these circumstances.

24 **C. The Extent Of Discovery Completed And The Stage Of Proceedings**

25 This Agreement is the result of years of discovery and contested law and motion
26 proceedings, all of which educated counsel on both sides as to the strengths and
27 weaknesses of their claims. Class Counsel reviewed and analyzed thousands of pages of
28 documents produced by Defendants, and have engaged in extensive research in relation

1 to the legal and factual issues central to Plaintiff's claims. Class Counsel also has
2 experience in complex class action litigation. Class Counsel was thus well-informed and
3 strategically positioned to negotiate an appropriate settlement agreement, which was
4 negotiated at arms-length over many years' time.

5 **D. The Proposed Notice Fairly Apprises The Class Members of the Terms**
6 **Of The Settlement Agreement And Their Options.**

7 Notice of a class action settlement must "present a fair recital of the subject matter
8 and proposed terms [and provide] an opportunity to be heard to all class members." (See,
9 e.g. *In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d 1353, 1361; see
10 also, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

11 The proposed Notice (Exhibit "B") apprises the Wood Class Members of their
12 rights and how their rights may be exercised. The Notice informs the Wood Class
13 Members of: (i) the persons that qualify as a member of the Wood Class; (ii) the history
14 of the litigation; (iii) the terms of the Agreement; (iv) the binding effect of any Judgment;
15 (v) the right of Wood Class Members to object to any aspect of the Settlement and/or to
16 appear at the fairness hearing and the procedures and deadlines for doing so; (vii) the
17 date, time and location of the fairness hearing; and (viii) how to obtain additional
18 information.

19 The method by which the Notice will be disseminated is also appropriate, as set
20 forth in Section VI.B of the Agreement. The Settling Parties, through a qualified third-
21 party administrator, have agreed to send Notice via the United States Postal Service
22 directly to each of the Class Members (at their last known address), as well as publish a
23 Summary Notice (Exhibit "C") in three widely read newspapers in the area. These
24 actions fully comply with all applicable rules and due process requirements. (See *Linder*
25 *v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.) Class Members wishing to opt-out of the
26 Settlement will have 30 days from mailing of the notice to do so.

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff Wood and the Settling Defendants
3 respectively request that the Court grant this Motion and: (1) preliminarily approve the
4 proposed Agreement; (2) approve the Notice and authorize its dissemination; (3)
5 schedule a fairness hearing on the proposed Agreement; and (4) set forth procedures and
6 deadlines for Class Members to file objections to the proposed Agreement, as set forth in
7 the Proposed Order submitted herewith.

8
9 DATED: October 7, 2013

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

11
12 By: _____
13 MICHAEL D. MCLACHLAN
14 Attorneys for Plaintiff and the Class

15 DATED: October 7, 2013

LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

16
17 By: _____ //s//
18 THOMAS S. BUNN
19 Attorneys for Defendant Palmdale Water District
20 and on behalf of the other Settling Defendants
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