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Attorneys for Plaintiff

**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

Case No.: BC391869

**RICHARD WOOD'S *EX PARTE*  
APPLICATION TO CONTINUE  
RETURN FLOW QUANTITY PORTION  
OF PHASE 5 TRIAL**

Date: January 28, 2014

Time: 8:30 a.m.

Place: telephonic (Courtcall)

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 28, 2014, at 8:30 a.m., Plaintiff  
3 Richard Wood will present the Court with an ex parte application for an order continuing  
4 the quantity of return flow issue of the Phase 5 trial to another date.

5 The hearing on this application will occur telephonically through Courtcall.

6  
7 DATED: January 28, 2014

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

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10 By: \_\_\_\_\_  
11 Michael D. McLachlan  
12 Attorneys for Plaintiff  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff presents this *Ex Parte* Application to request a continuance of a limited  
4 portion of the Phase 5 trial: the question of the quantity of return flows (and any  
5 testimony offered by District 40's expert Dennis Williams relative to his modeling work).

6 District 40 has failed to comply with expert disclosure requirements, the Phase 5  
7 Case Management Order relative to expert witness issues, and one of its expert, Dennis  
8 Williams, has failed to produce the most essential portions of the work-product he  
9 generated in forming the opinions he plans to offer at the Phase 5 trial. Specifically, Dr.  
10 Williams conducted modelling work, but has not produced the model, its input files,  
11 output data and related work-product, and apparently some materials obtained from Dr.  
12 Williams has not submitted to a meaningful deposition, and all parties have been  
13 deprived of the right to effectively cross-examine him at trial.

14 For this reason, the quantification portion of the return flow phase of trial should  
15 be continued to a later date sufficient to allow the production of the material in question,  
16 the analysis of those materials by qualified expert(s), and the subsequent completion of  
17 Dr. Williams' deposition. If the motion to continue the trial on this issue is not granted,  
18 then fundamental fairness and the basic rules of discovery require that Dr. Williams'  
19 testimony be excluded in its entirety. (*See* Motion in Limine for Order Excluding  
20 Evidence of Modeling by Dennis Williams [filed January 24, 2014, Docket No. 8086].)

21 **II. RELEVANT FACTS**

22 On November 18, 2013, counsel for the public water suppliers designated Dennis  
23 Williams, P.E., as an expert witness in the Phase V trial in this matter. With that  
24 designation, the water suppliers provided no expert reports.<sup>1</sup> The Declaration of Jeffrey  
25 V. Dunn in support of the PWS's expert designation stated the scope of Dr. Williams'

26 \_\_\_\_\_  
27 <sup>1</sup> "The expert witness designation shall include a copy of any discoverable reports  
28 currently with his or her designation." (McLachlan Decl., Ex. 1 (Case Management  
Order For Phase 5 and 6 Trials), ¶ 5.)

1 testimony would be as follows: “Dr. Williams may be called to offer testimony  
2 concerning return flows, and the characteristic, structure, hydrologic conditions of the  
3 groundwater underlying the Basin.” (McLachlan Decl. Ex. 2, (Declaration of Jeffrey V.  
4 Dunn attached to Public Water Suppliers’ Notice of Designation of Expert Witnesses), ¶  
5 7.) The designation of Dr. Williams contains no indication that he would produce  
6 evidence on modeling of the Basin, or any groundwater modeling at all. (McLachlan  
7 Decl., Exhibit 2, at ¶ 7.)

8 Dr. Williams was deposed on January 16, 2014, and testified that his opinions with  
9 respect to Phase V are based entirely on modeling work he had conducted over the past  
10 year and one half. (McLachlan Decl., at ¶ 5, Ex. 3.) This model was obtained by D40 in  
11 2012 from the United States Geological Survey (“USGS”). (McLachlan Decl., at ¶ 5.)  
12 According to Dr. Williams, after obtaining the model from USGS in 2012, his office and  
13 that of Mr. Scalmanini and his staff made substantial changes to the model in order to  
14 make it conform to the Phase III Summary Expert Report. (*Ibid.*) However, prior to or at  
15 the time of his deposition, Dr. Williams did not produce the model, its input files, the  
16 output data and related work-product, and apparently, the material received from  
17 Luhdorff & Scalmanini. (*Ibid.*)

18 Notwithstanding sustained attempts to obtain all of these materials over the past  
19 two weeks, none of them have been produced to date. (McLachlan Decl. ¶¶ 6-7, Ex. 4.)

### 20 **III. ARGUMENT**

21 One of the principal purposes of civil discovery is to do away with the “sporting  
22 theory of litigation - namely, surprise at trial.” (*Chronicle Pub. Co. v. Superior Court*  
23 (1960) 54 Cal.2d 548, 561.) The purpose is accomplished by giving “greater assistance to  
24 the parties in ascertaining the truth and in checking and preventing perjury....”  
25 (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376.) In other words, pretrial  
26 discovery is designed to take the “game” out of pretrial preparation. (*Ibid.*)

27 A request for a trial continuance may properly be made on an ex parte basis.  
28 (California Rules of Court, 3.1332(b).) A request for a continuance of the trial date must

1 be supported by an affirmative showing of good cause. (C.R.C. 3.1332(c). Where such  
2 showing is made, a request for a continuance should be granted. (*See, e.g.*, Estate of  
3 Meeker (1993) 13 Cal. App. 4th 1099, 1105.) In determining whether good cause exists,  
4 a trial court may consider: (1) the proximity of the trial date; (2) whether there was any  
5 previous continuance, extension of time, or delay of trial due to any party; (3) the length  
6 of the continuance requested; (4) the availability of alternative means to address the  
7 problem that gave rise to the motion or application for a continuance; (5) the prejudice  
8 that parties or witnesses will suffer as a result of the continuance; (6) if the case is  
9 entitled to a preferential trial setting, the reasons for that status and whether the need for a  
10 continuance outweighs the need to avoid delay; (7) the court's calendar and the impact of  
11 granting a continuance on other pending trials; (8) whether trial counsel is engaged in  
12 another trial; (9) whether all parties have stipulated to a continuance; (10) whether the  
13 interests of justice are best served by a continuance, by the trial of the matter, or by  
14 imposing conditions on the continuance; and (11) any other fact or circumstance relevant  
15 to the fair determination of the motion or application. (CRC 3.1332(d)(1)-(11).)

16 On the facts set forth above, there is no need for an exhaustive analysis of all of  
17 these factors. It would be fundamentally unfair to permit the modelling work in question  
18 to be presented at trial without the opposing parties having had all of the materials  
19 underlying those opinions, as well as the opportunity to consult with appropriate experts,  
20 to complete the Williams deposition, and to present such responsive expert testimony as  
21 may be necessary. For this reason, the question of return flow quantification should be  
22 carved out of the current Phase 5 trial and continued to a future date to be determined.

23  
24 DATED: January 28, 2014

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

25  
26 By: \_\_\_\_\_

27 Michael D. McLachlan  
28 Attorneys for Plaintiff

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1. I am one of the appointed class counsel for the Small Pumper Class, and am duly licensed to practice law in California. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

3. Attached as Exhibit 2 is a true and correct copy of the public water supplier expert designation of November 18, 2013. With that designation, the water suppliers provided no expert reports.

5. At deposition (which was not concluded), Dr. Williams testified that his opinions with respect to Phase V are based entirely on modeling work he had conducted over the past year and one half. This model was obtained by D40 in 2012 from the United States Geological Survey (“USGS”). According to Dr. Williams, after obtaining the model from USGS in 2012, his office and that of Mr. Scalmanini and his staff made substantial changes to the model in order to make it conform to the Phase III Summary Expert Report. However, prior to or at the time of his deposition, Dr. Williams did not produce the model, its input files, the output data and related work-product, and apparently, the material received from Luhdorff & Scalmanini.

6. During the deposition, there was substantial meeting and conferring among counsel about this issue. Starting on January 21, 2014, I continued the meet and confer process in person. That series of correspondence is attached collectively hereto as Exhibit 4.

7. Notwithstanding sustained attempts to obtain all of these materials over the past two weeks, none of them have been produced to date. I have agreed to abide by certain restrictions over the use of the original USGS input files, but still have not received the remaining portions of Dr. Williams' file or the his model.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28<sup>th</sup> day of January, 2014, at Los Angeles, California.

Michael D. McLachlan

# **Exhibit 1**



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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  
  
Lead Case No. BC 325201  
  
Case No.: BC 391869  
  
~~[proposed]~~ **CASE MANAGEMENT  
ORDER FOR PHASE 5 AND PHASE 6  
TRIALS**

1 IT IS HEREBY ORDERED:

2 1. The Phase 5 Trial will commence at 9:00 a.m. on February 10, 2014, in  
3 Room 222 of the Superior Court of the County of Los Angeles, located at 111 North Hill  
4 Street, Los Angeles, California or such other location as ordered by the court. The trial  
5 will continue for one week.

6 2. The Phase 5 Trial is limited to the issues of federal reserved water rights  
7 and claimed rights to return flows from imported water. As to return flows from  
8 imported water, the trial will determine who has the right to recapture and use return  
9 flows that result from water imported into the Antelope Valley Area of Adjudication, as  
10 well as the amount or percentage of return flows that augment the groundwater basin  
11 due to the imported water. The Phase 5 Trial will commence with the federal reserved  
12 water rights issues followed immediately by evidence related to such return flow issues.

13 3. The Phase 6 Trial will commence on August 4, 2014 and will continue for  
14 two weeks. The Phase 6 trial will determine claims to prescriptive rights and defenses  
15 thereto. Phase 6 may involve other issues which may be determined following the  
16 hearing on certain proposed motions to be submitted to the court.

17 4. The Court sets the following schedule for the Phases 5 and 6 trials:  
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19

PHASE 5 SCHEDULE	
DATE	EVENT
11/13/2013	Summary judgment motions filing deadline
11/1/2013	Deadline to file Notice of Intention to Participate in Phase 5 Trial and Designation of Percipient Witnesses for case in chief
11/18/2013	Deadline to designate expert witnesses
12/9/2013	Deadline to designate supplemental experts
12/27/2013	Oppositions to summary judgment deadline
1/03/2014	Replies in support of summary judgment deadline

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1/10/2014	Hearing on summary judgment motions
1/10/2014	Discovery cut-off (expert witness depositions excepted)
1/17/2014	Expert witness depositions completion deadline
1/23/2014	Witness and exhibit lists posted
1/24/2014	Motions in limine deadline
1/31/2014	Trial Brief deadline
1/31/2014	Opposition to motions in limine deadline
2/03/2014	Parties exchange trial exhibits
2/05/2014	Replies in support of motions in limine deadline
2/10/2014	<b>TRIAL</b>

<b>PHASE 6 SCHEDULE</b>	
<b>DATE</b>	<b>EVENT</b>
2/01/2014 through 3/01/2014	Discovery hiatus for Phase 6 discovery due to Phase 5 trial
4/18/2014	Summary judgment motion filing deadline
4/30/2013	Deadline to file Notice of Intention to Participate in Phase 5 Trial and Designation of Percipient Witnesses for case in chief
6/02/2014	Deadline to designate expert witnesses
6/23/2014	Deadline to designate supplemental experts
6/19/2014	Oppositions to summary judgment motion deadline
6/27/2014	Replies in support of summary judgment motion deadline
7/03/2014	Hearing on summary judgment motions
7/03/2014	Discovery cut-off (expert depositions excepted)
7/21/2014	Expert witness deposition completion deadline
7/17/2014	Witness and exhibit lists deadline

7/18/2014	Motions in limine deadline
7/25/2014	Trial brief deadline
7/25/2014	Opposition to motions in limine deadline
7/28/2014	Parties exchange trial exhibits and jury instructions
7/30/2014	Replies in support of motions in limine deadline
8/04/2014	<b>TRIAL</b>

5. Expert witnesses shall be designated by the dates noted in the schedules above. Expert witness designations shall comply with all Code of Civil Procedure requirements and include a statement as to the expert witness's deposition availability. The expert witness designation shall include a copy of any discoverable reports concurrently with his or her designation.

6. All parties designating expert or non-expert witnesses for the Phase 5 Trial are directed to meet and confer in person and/or by telephone by December 1, 2013, to develop a schedule for the taking of depositions of all designated witnesses. Counsel for the Los Angeles County Waterworks District No. 40 is directed to provide telephone conference information to the parties by posting the same to the Court's website by October 4, 2013. Similar telephone conference(s) shall take place in the same manner for the supplemental expert witnesses, if necessary.

7. All parties designating expert or non-expert witnesses for the Phase 6 Trial are directed to meet and confer in person and/or by telephone by June 15, 2014, to develop a schedule for the taking of depositions of all designated witnesses for the Phase 6 trial. Counsel for the Los Angeles County Waterworks District No. 40 is directed to provide telephone conference information to the parties by posting the same to the Court's website by June 1, 2014. Similar telephone conference(s) shall take place in the same manner for the supplemental expert witnesses, if necessary. The telephone conferences are to develop schedules to complete depositions before the deposition deadlines.

1           8.     A party failing to participate in the telephone scheduling conferences or  
2 who refuses to schedule its witnesses for deposition shall be deemed to have waived the  
3 right to coordinate scheduling, and may thereafter have their witness' deposition set at  
4 the convenience of participating scheduling parties on 15 days' notice pursuant to the  
5 Court's Electronic Filing and Service Order. To the extent that parties are unable to  
6 reach agreement as to any deposition, the Court will conduct a telephonic meet and  
7 confer to be scheduled at the earliest time convenient to the Court.

8           9.     The parties shall produce all documents relevant to that witnesses'  
9 testimony prior to the witness' deposition.

10          10.    The parties are directed to utilize the assistance of a liaison committee as a  
11 means of attempting to resolve issues quickly and informally, and to streamline the  
12 presentations at trial. The existence of this committee, however, shall not deprive any  
13 other party from raising issues or concerns to the other parties.

14          11.    All designated witnesses shall be available and prepared to provide  
15 deposition testimony, absent other agreement, as noted in the above schedules. The  
16 parties shall make every effort to complete the depositions of the initially designated  
17 expert witnesses in time for the depositions of the supplemental experts to take place  
18 before the discovery cut-off directed above. More than one deposition may be scheduled  
19 to take place on the same day, but only if such depositions will not occur  
20 simultaneously.

21          12.    All expert witness deponents are directed to produce their file on this  
22 matter, and any other requested materials for inspection at least three business days  
23 before the date set for the deposition at the expert's place of business or such location as  
24 the parties may agree. Such materials may be produced in electronic format.

25          13.    Written discovery, including requests for admission, form interrogatories,  
26 document production requests, etc., may commence immediately for both Phase 5 and  
27 Phase 6. Parties are directed to coordinate these efforts with similarly situated parties.

28          14.    The parties are directed to meet and confer concerning any discovery

1 dispute before contacting the Court and before filing any discovery motion. If such  
2 attempts prove unsuccessful, the Court will conduct a further meet and confer, either by  
3 telephone or in person as the Court may direct. The parties will provide the Court with a  
4 letter in advance setting forth the text of any written discovery requests and responses  
5 thereto that are in dispute, or other information that will assist the Court in conducting  
6 the meet and confer. The parties should contact the Court's clerk to schedule any such  
7 meet and confer. The Court expects that all discovery disputes will be resolved through  
8 the meet and confer process. Any party may thereafter apply *ex parte* for an order  
9 shortening time and specially setting a motion to compel for hearing by providing notice  
10 thereof pursuant to the Electronic Filing and Service Order.

11 15. Any party intending to participate in the Phase 5 and/or Phase 6 trials must  
12 post a Notice of Intention to Participate by November 1, 2013 and April 30, 2014,  
13 respectively. Excuse from this requirement may be given upon a showing of good  
14 cause.

15 16. The parties, when posting witness and exhibit lists, shall provide the name  
16 of each witness, a short summary of testimony expected to be elicited, and a testimony  
17 time estimate. The exhibit list shall be sufficiently specific as to enable the other parties  
18 to identify the exhibit prior to trial. Exhibits shall be sequentially numbered for each  
19 party, starting with the Arabic number 1. The parties shall continue with the numbering  
20 system utilized in Phase 4.

21 17. The parties shall coordinate with one another to determine the actual date  
22 and time of the witnesses' testimony at trial. Any other documents not previously  
23 produced, but which are intended to be used at trial, shall be made available as soon as  
24 practicable.

25 18. Allied parties are strongly encouraged to file joint briefs.

26 19. Any motion to exclude witnesses or exhibits, or other motions *in limine*,  
27 will be heard at the commencement of the trial for each respective part of Phases 5 and  
28 6. Any such moving papers, opposition papers, including evidentiary objections, or

1 evidentiary objections to evidence submitted in opposition, and reply papers shall be  
2 filed and posted as noted in the timeline, above.

3 20. Should any party elect to use a third party provider to assist in the  
4 projection or presentation of evidence, that party shall permit said third party provider to  
5 contract with any other party for the use the same services provided. Third party  
6 providers, in any event, shall work together to coordinate the use of equipment.

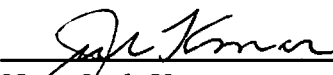
7 21. Any party desiring to monitor the Phase 5 or 6 trials by telephone may do  
8 so through CourtCall, but will not be allowed to question witnesses or participate in oral  
9 argument via Courtcall. No party or other person may electronically or otherwise record  
10 such proceedings.

11 22. The Court shall be provided with courtesy copies of all exhibits, except  
12 those pertaining to impeachment, preferably in three-ring notebooks with numbered  
13 dividers, as noted in the timeline, above. Counsel are directed to coordinate this project  
14 with one another.

15 23. Prior to the commencement of each day of trial, counsel shall confer as to  
16 the order of the next day's witnesses, and shall advise the Court of the same at the  
17 commencement of that day of trial.

18 24. The Court will consider whether to request closing trial briefs as the Phase  
19 5 and 6 trials proceed.

20  
21  
22 Dated: Oct 22, 2013

  
23 Hon. Jack Komar  
24 Judge of the Superior Court  
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## **Exhibit 2**



1 JEFFREY V. DUNN, Bar No. 131926  
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Attorneys for Cross-Complainant  
6 Los Angeles County Waterworks District No. 40

**EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103**

7 OFFICE OF COUNTY COUNSEL  
COUNTY OF LOS ANGELES  
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Principal Deputy County Counsel  
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11 Telephone: (213) 974-8407  
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12 Attorneys for Los Angeles County Waterworks  
District No. 40

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER  
CASES

Judicial Council Coordination Proceeding  
No. 4408

17 Included Actions:

CLASS ACTION

18 Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Los  
Angeles, Case No. BC 325201;

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar

19 Los Angeles County Waterworks District  
20 No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Kern, Case  
21 No. S-1500-CV-254-348;

PUBLIC WATER SUPPLIERS' NOTICE OF  
DESIGNATION OF EXPERT WITNESSES;  
DECLARATION OF JEFFREY V. DUNN

22 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
23 Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
24 California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668;

25 RICHARD WOOD, on behalf of himself  
26 and all other similarly situated v. A.V.  
Materials, Inc., et al., Superior Court of  
27 California, County of Los Angeles, Case  
28 No. BC509546.

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2  
3 PLEASE TAKE NOTICE that pursuant to the provisions of California Code of Civil  
4 Procedure § 2034.010, et. seq., Los Angeles County Waterworks District No. 40, Littlerock Creek  
5 Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District,  
6 North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company,  
7 Big Rock Mutual Water Company, Rosamond Community Services District, the City of  
8 Lancaster, Palmdale Water District, Quartz Hill Water District, the City of Palmdale, and  
9 California Water Service Company ("Public Water Suppliers"), by and through their attorneys of  
10 record, hereby exchange, the following: (1) a list containing the name and address of each person  
11 whose expert opinion testimony that the parties expect to offer at trial, whether orally or by  
12 deposition testimony; and (2) an expert witness declaration for each such person pursuant to Code  
13 of Civil Procedure Sections 2034.210, subdivision (b), and 2034.260, subdivision (c).  
14 Additionally, Public Water Suppliers reserve the right to use previously submitted expert  
15 testimony from trial phases I, II, III, and IV.

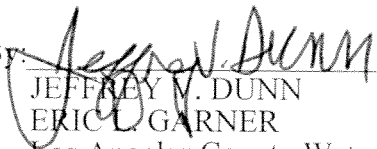
16 Public Water Suppliers designate the following expert witnesses based upon the  
17 allegations and contentions known to them at this time. Should new allegations and contentions  
18 be made, Public Water Suppliers reserve the right to designate and call at the time of trial such  
19 other expert witnesses as may be appropriate. The expert witnesses Public Water Suppliers  
20 intend to call are as follows:

- 21 1. Dennis Williams  
22 GeoScience Support Services, Inc.  
23 620 W. Arrow Highway, Suite 2000  
La Verne, California 91750  
Telephone: (909) 451-6650
- 24 2. Robert Beeby  
25 Beeby Engineering, Inc.  
26 200 Longhorn Lane  
Ojai, California 93023-4203  
Telephone: (805) 646-8652

Public Water Suppliers reserve the right to call rebuttal expert witnesses once the expert witnesses of other parties have been designated, deposited, or have testified at the time of trial.

Dated: November 18, 2013

BEST BEST & KRIEGER LLP

By:   
JEFFREY V. DUNN  
ERIC L. GARNER  
Los Angeles County Waterworks District  
No. 40

**DECLARATION OF JEFFREY V. DUNN**

I, Jeffrey V. Dunn, declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for the Los Angeles County Waterworks District No. 40 ("District No. 40").

3. District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Rosamond Community Services District, the City of Lancaster, Palmdale Water District, Quartz Hill Water District, the City of Palmdale, and California Water Service Company ("Public Water Suppliers") intend to offer at trial, either orally or by deposition testimony the following experts: Dr. Williams and Mr. Beeby.

4. All experts named have agreed to testify as expert witnesses at the Phase 5 trial.

5. Attached to this declaration as Exhibit "1" are the resumes of Dr. Williams and Mr. Beeby.

6. Dr. Williams is the founder and president of GEOSCIENCE Support Services, Inc., and has over 40 years of experience in groundwater hydrology. During that time he has directed geohydrologic investigations domestically and worldwide which includes the design and construction supervision of over 800 deep large-scale municipal and irrigation water supply wells. Dr. Williams has taught graduate level courses in geohydrology and groundwater modeling since 1980 and is currently directing research on groundwater and wells at University of Southern California's geohydrologic laboratory. Dr. Williams is the author of over thirty publications on groundwater and wells and is the principal author of the Handbook of Ground Water Development (John Wiley & Sons, 1990). Dr. Williams is a California Professional Geologist (No. 461), certified California Hydrogeologist (No. 139) and a certified Ground Water Hydrologist (American Institute of Hydrology, No. 355).

1           7.       Dr. Williams may be called to offer testimony concerning return flows, and the  
2 characteristics, structure, hydrologic conditions of the groundwater underlying the Basin. Dr.  
3 Williams will be available to provide rebuttal testimony.

4           8.       Mr. Beeby is currently the principal of Beeby Engineering, Inc., and has  
5 approximately 50 years of engineering experience in project planning and management of water  
6 resources for a wide range of clients, including agricultural and urban water purveyors, power  
7 providers, federal, state and local governmental agencies. He has served as principal-in-charge  
8 and directed technical studies related to the adjudication of groundwater pumping rights of  
9 several groundwater basins; served on Technical Expert Committees appointed to develop the  
10 factual aspects of groundwater basins under court adjudication; directed studies leading to water  
11 management programs/exchanges between agricultural and urban interest; developed regional  
12 plans for management of surface and groundwater resources; directed studies relating to technical  
13 and economic feasibility of agricultural water projects; and has managed the preliminary design  
14 and construction phases of major water resource facilities.

15           9.       Since 1980, Mr. Beeby has provided expert witness testimony in numerous  
16 proceedings relating to land, water use, groundwater adjudications and water rights. He has  
17 testified before a Special Master appointed by the Supreme Court, the California State Water  
18 Resources Control Board, and court groundwater adjudications, such as the Santa Maria Valley  
19 Groundwater Cases. Mr. Beeby is a registered civil engineer in California, Arizona, and  
20 Washington. Mr. Beeby is also a State of California registered agricultural engineer.


21           10.      Mr. Beeby may be called to offer testimony regarding return flows in the Antelope  
22 Valley. Mr. Beeby may be called to offer testimony to rebut testimony of other experts.

23           11.      Dr. Williams and Mr. Beeby are sufficiently familiar with the pending action to  
24 submit a meaningful oral deposition concerning their respective testimony, including their expert  
25 opinions and the basis of their opinions.

26           12.      Dr. Williams' hourly fee for depositions and trial testimony is \$500.00 plus travel  
27 time. Mr. Beeby's hourly fee for deposition and trial testimony is \$340.00 plus travel time.

28           I declare under penalty of perjury under the laws of the State of California that the

foregoing is true and correct. Executed this 18<sup>th</sup> day of November, 2013 at Irvine, California.

  
Jeffrey V. Dunn

26345.00000\8405363.1

**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On November 18, 2013, I served the within document(s):

**PUBLIC WATER SUPPLIERS' NOTICE OF DESIGNATION OF EXPERT WITNESSES;  
DECLARATION OF JEFFREY V. DUNN**

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2013, at Irvine, California.

  
Kerry V. Keefe

## **Exhibit 3**



Michael D. McLachlan (State Bar No. 181705)  
**LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
10490 Santa Monica Boulevard  
Los Angeles, California 90025  
Telephone: (310) 954-8270  
Facsimile: (310) 954-8271  
mike@mclachlanlaw.com

Daniel M. O'Leary (State Bar No. 175128)  
**LAW OFFICE OF DANIEL M. O'LEARY**  
10490 Santa Monica Boulevard  
Los Angeles, California 90025  
Telephone: (310) 481-2020  
Facsimile: (310) 481-0049  
dan@danolearylaw.com

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

Lead Case No. BC 325201

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

Case No.: BC 391869

**NOTICE OF DEPOSITION OF  
DENNIS WILLIAMS**

Plaintiff,

v.

Date: January 16, 2014  
Time: 10:00 a.m.

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

Defendants.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 16, 2014 at 10:00 a.m., Plaintiff  
3 Richard Wood will take the oral deposition of Dennis Williams at Veritext, 707 Wilshire  
4 Boulevard, Suite 3500, Los Angeles California, 90017.

5 PLEASE TAKE NOTICE that the deposition will be recorded stenographically  
6 and on videotape. The recording may include the use of realtime, or similar method,  
7 allowing for the instant visual display of the testimony.

8 PLEASE TAKE FURTHER NOTICE that Plaintiff demands the production of the  
9 following documents prior to or at the start of the deposition, to be produced in legible  
10 paper format or as electronic files, in the manner in which they are kept in the usual  
11 course of business:

## 12 DEFINITIONS

13 “BASIN” shall be defined as on and below the ground surface within the  
14 jurisdictional area defined by the court in this matter by order dated March 16, 2007.

15 “DOCUMENT” shall be defined as and have the same broad meaning as it has in  
16 California Evidence Code section 250 and Code of Civil Procedure section 2031.010 et  
17 seq., and includes documents, papers, books, accounts, letters, records, photographs,  
18 objects, and all other tangible things. It includes all forms of written communication. It  
19 specifically includes all originals, copies, duplicates, drafts, or other recordings of any  
20 written, graphic or otherwise, recorded matter, however produced or reproduced, whether  
21 inscribed by hand or by mechanical, electronic, microfilm, photographic, phonic, or by  
22 any other means. It includes abstracts; address books; advertisements; affidavits or  
23 statements; agreements; analyses of any kind; appointment books; architectural  
24 blueprints; balance sheets; bids; billings; books or records of account; purchase orders;  
25 work papers; brochures; bulletins; calendars; charts; checks and canceled checks;  
26 computer cards; runs and printouts; contracts; correspondence; data processing input and  
27 output; data sheets; desk calendars; diagrams; diaries; directories; discs; drawings;  
28 estimates; expense account records; experts’ reports and/or studies; financial statements

1 or calculations; graphs; house publications; income statements; inspection records,  
2 sheets and reports; interoffice and intra-office communications; invoices; job descriptions  
3 or assignments; journals; letters; licenses; lists; manuals; maps; memoranda; minutes or  
4 records of any kind; notations; notes; notebooks; opinions; permits; photographs;  
5 pictures; plans; projections; promotional materials; press releases or clippings;  
6 publications; punch cards; procedures; questionnaires and answers to them; quotations;  
7 records and recordings of any kind; renderings; reports of any kind; rework instructions,  
8 orders, and procedures; routing slips; schedules; sound recordings; specifications;  
9 statistical analyses; stenographers' notebooks; studies of any kind, analyses, forecasts,  
10 and evaluations; subcontracts; summaries; surveys; tables, indices, and lists; tabulations;  
11 tallies; tapes; telegrams; cables; telephone messages, telephone logs, and telephone  
12 billings and statements; teletype and telex messages; trade letters; transcripts, minutes,  
13 reports, and recordings of telephone or other conversations, interviews, conferences,  
14 committee meetings, or other meetings; undertakings; video tapes; vouchers; and  
15 working drawings, papers, and files.

16 "YOU" or "YOUR" shall mean the deponent to whom the requests for production  
17 of documents is propounded, and shall also include all representatives and agents of the  
18 deponent.

19 "DISTRICT NO. 40" shall mean Los Angeles County Waterworks District No. 40  
20 and shall include all representatives and agents of Los Angeles County Waterworks  
21 District No. 40, predecessors or successors in interest, and all other persons, individuals,  
22 and/or entities acting or purporting to act on behalf of respondent to this notice.

### 23 24 **REQUESTS FOR PRODUCTION**

25 All documents produced by DISTRICT NO. 40 pursuant to a verified response to  
26 the Discovery Order for Phase 4 Trial issued by the Honorable Jack Komar dated  
27 December 12, 2012, and posted to the Santa Clara Superior Court website for the  
28 Antelope Valley Groundwater Adjudication, are excluded from this request.

1           **Request for Production Number 1.**

2           Produce any and all DOCUMENTS sent by YOU to DISTRICT NO. 40 related to  
3 your retention as an expert witness for the subject matter of Phase V of this matter—  
4 specifically, claimed rights to return flows from imported water and the amount or  
5 percentage of return flows that augment the Basin due to the imported water.

6           **Request for Production Number 2.**

7           Produce any and all DOCUMENTS sent by DISTRICT NO. 40 to YOU related to  
8 your retention as an expert witness for the subject matter of Phase V of this matter—  
9 specifically, claimed rights to return flows from imported water and the amount or  
10 percentage of return flows that augment the Basin due to the imported water.

11          **Request for Production Number 3.**

12          Produce YOUR entire file and all correspondence related to YOUR proposed  
13 testimony as an expert in the Phase 5 trial in this matter.

14          **Request for Production Number 4.**

15          Produce all reports, conclusions, opinions, and drafts of the same prepared by  
16 YOU or others under YOUR direction pertaining to YOUR proposed testimony as an  
17 expert in the Phase 5 trial.

18          **Request for Production Number 5.**

19          Produce YOUR current curricula vitae.

20          **Request for Production Number 6.**

21          Produce all DOCUMENTS authored and/or received by YOU regarding the  
22 amount of municipal stormwater and wastewater that reaches the Basin's groundwater as  
23 return flows.

24          **Request for Production Number 7.**

25          Produce all DOCUMENTS reviewed by YOU in forming your opinion regarding  
26 the amount of municipal stormwater and wastewater that reaches the Basin's  
27 groundwater as return flows.

1           **Request for Production Number 8.**

2           Produce all DOCUMENTS authored and/or received by YOU regarding the  
3 amount of applied State Water Project Water that reaches the Basin's groundwater as  
4 return flows.

5           **Request for Production Number 9.**

6           Produce all DOCUMENTS reviewed by YOU in forming your opinion regarding  
7 the amount of applied State Water Project Water that reaches the Basin's groundwater as  
8 return flows.

9           **Request for Production Number 10.**

10          Produce all DOCUMENTS supporting DISTRICT NO. 40's claimed right to use  
11 return flows from State Water Project Water.

12          **Request for Production Number 11.**

13          Produce all DOCUMENTS authored and/or received by YOU regarding the  
14 amount of water applied to agriculture in the Basin that reaches the Basin's groundwater  
15 as return flows.

16          **Request for Production Number 12.**

17          Produce all DOCUMENTS reviewed by YOU in forming your opinion regarding  
18 the amount of water applied to agriculture in the Basin that reaches the Basin's  
19 groundwater as return flows.

20          Expert witness fees will be tendered at the time of the commencement of the  
21 deposition pursuant to California Code of Civil Procedure section 2034.430, et seq.

22  
23  
24 DATED: January 2, 2014

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

25  
26  
27 By: \_\_\_\_\_  
28 Michael D. McLachlan  
Attorneys for Plaintiff

## **Exhibit 4**

LAW OFFICES OF MICHAEL D. McLACHLAN

---

A PROFESSIONAL CORPORATION  
10490 SANTA MONICA BOULEVARD  
LOS ANGELES, CA 90025  
PHONE 310-954-8270 FAX 310-954-8271  
E-MAIL mike@mclachlanlaw.com

January 21, 2014

**VIA ELECTRONIC SERVICE**

Jeffrey V. Dunn  
Best, Best & Krieger  
5 Park Plaza, Suite 1500  
Irvine, CA 92614

***Re: Antelope Valley Groundwater Litigation, JCCP 4408  
Richard A. Wood. v. Los Angeles Waterworks Dist. No. 40 et al.***

Dear Jeff:

I write to follow up on our meet and confer process last Thursday relative to the anticipated expert testimony of Dennis Williams. Dr. Williams did not produce the core of his expert file, including among others, the model, the input files, the materials received from Luhdorff & Scalaminini, and the output files from the model runs conducted by his office (in addition to his inability to offer meaningful testimony on many aspects of this work). The production of Dr. Williams in this fashion violates both the Case Management Order for 5 and the rules for expert discovery set forth in Section 2034 of the Code of Civil Procedure.

By this further meet and confer letter, I ask District 40 and the others designating him to agree to withdraw Dr. Williams as an expert. If you will not, then we will file a motion to have his testimony excluded.

Very truly yours,



Michael D. McLachlan

cc: All Parties (*via electronic service*)

## Mike McLachlan

---

**From:** Jeffrey Dunn <jeffrey.dunn@BBKLAW.COM>  
**Sent:** Wednesday, January 22, 2014 3:58 PM  
**To:** Robert Kuhs (rgkuhs@kuhsparkerlaw.com); Mike McLachlan; Michael T Fife (mfife@bhfs.com) (mfife@bhfs.com); Wes Miliband (wmiliband@awattorneys.com) (wmiliband@awattorneys.com); Imcelhaney@bmblawoffic.com  
**Cc:** Wellen, Warren  
**Subject:** AV Adjudication Proceedings - USGS MODFLOW files

Counsel,

As we discussed during the deposition last Thursday, District No. 40 has been working on making computer USGS MODFLOW files available.

You can contact me via email to make arrangements to obtain a copy of all of the USGS Modflow model files inputted by Dr. Williams. You will need to make an agreement that the produced files cannot be modified, changed or altered.

Jeff.

Jeffrey V. Dunn, Esq.  
Best Best & Krieger LLP  
18101 Von Karman Avenue, Suite 1000 | Irvine, CA 92612  
Direct: (949) 263-2616 | Cell: (714) 926-5491 | [jeffrey.dunn@bbklaw.com](mailto:jeffrey.dunn@bbklaw.com)

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LAW OFFICES OF MICHAEL D. McLACHLAN

A PROFESSIONAL CORPORATION  
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LOS ANGELES, CA 90025  
PHONE 310-954-8270 FAX 310-954-8271  
E-MAIL mike@mclachlanlaw.com

January 24, 2014

**VIA ELECTRONIC SERVICE**

Jeffrey V. Dunn  
Best, Best & Krieger  
5 Park Plaza, Suite 1500  
Irvine, CA 92614

**Re: *Antelope Valley Groundwater Litigation, JCCP 4408***  
***Richard A. Wood. v. Los Angeles Waterworks Dist. No. 40 et al.***

Dear Jeff:

This shall memorialize our discussion of yesterday regarding the issues surrounding Dr. Williams' deposition last week. In clarification of your email of Wednesday (attached for those not copied), you are producing all of the input files, but not the USGS Modflow model itself. I believe you indicated that there were four categories of input files, which I am slightly unclear on, but understand that they will contain the original USGS files for the Antelope Valley as well as the modified versions created by Dr. Williams and his staff.

Your statement regarding an agreement not to modify the files is only limited to the original USGS files, and arises out of concern that someone might change them and later represent that the USGS work was something other than what it originally was. I am fine with that agreement, limited only to those files. Please draw that up at your earliest convenience.

You will produce the output files from the model runs conducted by his office and the data plotting work-product. You are still looking into the question the materials received from Luhdorff & Scalaminini relating to his revised groundwater pumping work (and anything else).

I remain seriously concerned about the timing problems this situation presents, given the proximity to the trial date. I invite your input on that.

Very truly yours,



Michael D. McLachlan

cc: All Parties (*via electronic service*)

## Mike McLachlan

---

**From:** Jeffrey Dunn <jeffrey.dunn@BBKLAW.COM>  
**Sent:** Wednesday, January 22, 2014 3:58 PM  
**To:** Robert Kuhs (rgkuhs@kuhsparkerlaw.com); Mike McLachlan; Michael T Fife (mfife@bhfs.com) (mfife@bhfs.com); Wes Miliband (wmiliband@awattorneys.com) (wmiliband@awattorneys.com); lmcclhaney@bmbllawoffic.com  
**Cc:** Wellen, Warren  
**Subject:** AV Adjudication Proceedings - USGS MODFLOW files

Counsel,

As we discussed during the deposition last Thursday, District No. 40 has been working on making computer USGS MODFLOW files available.

You can contact me via email to make arrangements to obtain a copy of all of the USGS Modflow model files inputted by Dr. Williams. You will need to make an agreement that the produced files cannot be modified, changed or altered.

Jeff.

Jeffrey V. Dunn, Esq.  
Best Best & Krieger LLP  
18101 Von Karman Avenue, Suite 1000 | Irvine, CA 92612  
Direct: (949) 263-2616 | Cell: (714) 926-5491 | [jeffrey.dunn@bbklaw.com](mailto:jeffrey.dunn@bbklaw.com)

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## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Saturday, January 25, 2014 7:48 AM  
**To:** 'Jeffrey Dunn'; Robert Kuhs (rgkuhs@kuhsparkerlaw.com); Michael T Fife (mfife@bhfs.com) (mfife@bhfs.com); Wes Miliband (wmiliband@awattorneys.com) (wmiliband@awattorneys.com); Imcelhaney@bmblawoffic.com  
**Cc:** Wellen, Warren; Richard Zimmer; Sloan, William M.; Dan Oleary  
**Subject:** RE: AV Adjudication Proceedings - USGS MODFLOW files

Jeff,

I am in receipt your letter of late yesterday afternoon, which I find to be quite disingenuous and unproductive.

Dr. Williams in fact produced a single notebook that any of us could take with us, and claims to have put most but not all of the remaining printed materials in the two boxes onto a disc -- a disc which he admitted did not contain the core of his work-product on this case. All I said on Thursday is that I would look at the disc to find out if the small packet of L&S materials Lee had copied were found on the disc. The witness was unclear as to what all he received from L & S, and it is quite clear this document cannot be all that consisted of the work that firm did with regard to the revised pumping. The larger problem is that Dr. Williams could not give a clear answer to that question -- one that you have now had over a week to answer but have not.

The statement that "the digital model input and output files are available and have been available since Wednesday" is both wrong, and not terribly helpful. All of us on the opposite side of the table made it clear that we wanted the witness' complete file, including all of the model files and the rest. It is not opposing counsels job to come get it; it is your job to produce them (in this case at some point prior to the deposition per the CMO, and then again at the deposition). Further, you did not offer to make the output files available until Thursday, and have yet to produce those materials in any forum. Finally, in the deposition you indicated that we would have to sign some sort of agreement whereby we would agree not to 'modify the input files.' Are you now waiving that agreement? If not, then were you planning on producing the files prior to giving us the agreement?

As to the rough transcript for Dr. Williams, I have been trying to get a copy of it from Veritext since Thursday, and they have to this point not provided it.

If you are going to insist on presenting the model at trial, we are going insist on full and fair opportunity at discovery and cross-examination. The suggestion that Dr. Williams submitted to a meaningful deposition is simply wrong, for numerous reasons generally discussed before. I think this is a case where it may be helpful to produce his lead modeler for deposition after we have had time to assess the materials.

At the Court's next convenience, I am going to make an ex parte application to continue the trial, at least as to return flows, and to seek advice from the Judge on the underlying discovery issues here. Meanwhile, if you want to produce the balance of Dr. Williams' files, you may send them to my office.

## Mike McLachlan

Law Offices of Michael D. McLachlan, APC  
10490 Santa Monica Boulevard  
Los Angeles, CA 90025  
Office: 310-954-8270  
Fax: 310-954-8271

---

**From:** Jeffrey Dunn [<mailto:jeffrey.dunn@BBKLAW.COM>]

**Sent:** Wednesday, January 22, 2014 3:58 PM

**To:** Robert Kuhs ([rgkuhs@kuhsparkerlaw.com](mailto:rgkuhs@kuhsparkerlaw.com)); Mike McLachlan; Michael T Fife ([mfife@bhfs.com](mailto:mfife@bhfs.com)) ([mfife@bhfs.com](mailto:mfife@bhfs.com)); Wes Miliband ([wmiliband@awattorneys.com](mailto:wmiliband@awattorneys.com)) ([wmiliband@awattorneys.com](mailto:wmiliband@awattorneys.com)); [lmcelhaney@bmblawoffic.com](mailto:lmcelhaney@bmblawoffic.com)

**Cc:** Wellen, Warren

**Subject:** AV Adjudication Proceedings - USGS MODFLOW files

Counsel,

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Jeff.

Jeffrey V. Dunn, Esq.  
Best Best & Krieger LLP  
18101 Von Karman Avenue, Suite 1000 | Irvine, CA 92612  
Direct: (949) 263-2616 | Cell: (714) 926-5491 | [jeffrey.dunn@bbklaw.com](mailto:jeffrey.dunn@bbklaw.com)

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