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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

**REPLY BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT; MOTION TO
STRIKE**

Date: March 26, 2015
Time: 10:00 a.m.
Dept: Room 222

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Richard Wood and the Small Pumper Class submit the following
3 reply brief in response to objections to the Small Pumper Class Settlement filed
4 by the Willis Class and Phelan Pinon Hills Community Services District
5 (“Phelan”).

6 Plaintiff also requests that the Court strike: (1) the Willis Class’ “Alternative
7 Proposed Physical Solution” on the ground that it is not properly before the Court
8 on a notice motion; (2) the Willis Class’ “Schedule of Objections and
9 Inconsistencies to the Stipulated Proposed Physical Solution” on the ground that
10 it is nothing more than a second opposition brief filed without leave of Court.

11 **A. The Willis Class Objections are Premature**

12 The question before the Court on the Motion for Preliminary Approval is
13 whether the settlement is fair to the class members. Willis Class has not raised
14 any objections that the settlement is unfair to the Small Pumper Class Members,
15 nor does it have standing to do so. Willis as only argued that the underlying
16 global Stipulation of Settlement is unfair to the Willis Class. The proper time for
17 the hearing of the Willis Class’ objections is at the prove-up hearing for the
18 Stipulated Judgment and Physical Solution, which the Court has set for August 3,
19 2015. (First Amended Case Management Order, ¶ 6.)

20 **B. Phelan’s Objections Are Not Well Taken**

21 Phelan argues that terms of its 2013 settlement agreement with the Small
22 Pumper Class prevent the Class from pursuing the current settlement. However,
23 the very language that Phelan cites defeats this assertion:

24 The Wood Class agrees not to contest each Settling Defendant’s right to
25 pump the following amounts annually from the Native Safe Yield free of
26 any replacement water Assessment, but only if competent evidence is
27 presented to and incorporated by the Court in the Final Judgment . . .”
28 (Miliband Decl., Ex. A (Wood Class Stipulation of Settlement, October 17, 2013))

1 at 8:16-19.)

2 The second clause of this sentence makes clear that the first clause is only
3 valid if the Court incorporates Phelan's water rights in the Final Judgment. The
4 Court has not done so. Hence, there is nothing in this language that prevents the
5 Small Pumper Class from pursuing the current settlement. It should also be
6 noted that the Small Pumper Class did not contest Phelan's position at its trial in
7 2014, and Phelan lost its claims.

8 Phelan also suggests that the 2013 Small Pumper Class Settlement in
9 insulates it from having to pay a replacement assessment. Again, that is wrong.
10 That prior settlement agreement states that "[t]he Settling Defendants agree to
11 provide or purchase Imported Water for all groundwater pumping that exceeds a
12 Settling Defendant's share of the Native Safe Yield, or pay a Replacement
13 Assessment to the Watermaster so that the Watermaster may purchase Imported
14 Water to recharge the Basin." (Wood Class Stipulation of Settlement, October 17,
15 2013, at 12:23-26.) And so, if Judgment is entered stating that Phelan has no
16 right to pump from the native safe yield, the Court can require Phelan to pay a
17 replacement assessment.¹

18 In the 20-13 Settlement, Phelan also recognized that it's claimed water
19 right was in no way binding on the Court. (*Id.* at 10:25-26.) And, Phelan
20 specifically acknowledged that the 2013 settlement would be incorporated into a
21 physical solution by the Court. (*Id.* at 11:23-26.)

22 In sum, there is nothing in the 2013 Settlement that acts as a bar to the
23 current settlement, or impairs this Court's ability to enter a physical solution.

24
25 ¹ Phelan seems to imply that the quantity of the water right it seeks, as
26 reflected in the 2013 settlement, was in some fashion binding. The 2013
27 Agreement "In the event that the Court enters findings of fact that vary from the
28 estimated amounts that the Settling Parties have agreed to for purposes of this
Stipulation the Court's findings will be determinative and will supplant the
amounts set forth in this Stipulation."

1 DATED: March 19, 2015

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4 By: _____
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6 Attorneys for Plaintiff and the Class
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