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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

16 **ANTELOPE VALLEY GROUNDWATER**
17 **CASES**

Included Actions:

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

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

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

25 *Rebecca Lee Willis v. Los Angeles County*
26 *Waterworks District No. 40, et al.*, Superior Court
of California, County of Los Angeles, Case No.
BC364533

27 *Richard Wood v. Los Angeles County Waterworks*
28 *District No. 40, et al.*, Superior Court of
California, County of Los Angeles, Case No.
BC391869

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

REPLY IN SUPPORT OF LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40'S NOTICE OF
ELECTION AND HEARING;
SUPPLEMENTAL DECLARATION OF
SARAH CHRISTOPHER FOLEY

Date: September 8, 2016

Time: 10:00 a.m.

Dept.: Room 222 (LASC)

1 Contrary to the Wood Class’ contention, Los Angeles County Waterworks District No.
2 40’s (“District No. 40”) Notice of Election for Periodic Payments is timely and proper under
3 Government Code section 984,¹ and a ten-year payment period is appropriate for the award of
4 attorney fees to the Wood Class counsel.

5 **I. SECTION 984 APPLIES TO CLAIMS FOR MONEY OR DAMAGES AGAINST**
6 **GOVERNMENT ENTITIES**

7 California courts have held that the title of California Torts Claims Act applies to claims
8 for either money or damages against governmental entities. (E.g., *Baines Pickwick v. City of Los*
9 *Angeles* (1999) 72 Cal.App.4th 298, 304 [“Even a cursory review of the statutory scheme makes
10 it obvious the Legislature did not intend to exempt contract claims from the claims presentation
11 requirements. With certain exceptions not applicable here, no suit for ‘money or damages’ may
12 be brought against a local public entity until a written claim therefor has been presented to the
13 public entity and either has been acted upon or is deemed to have been rejected.”].) “In short,
14 unless specifically excepted, any action for money or damages, whether sounding in tort, contract
15 or some other theory, may not be maintained” until the plaintiffs have complied with the Act.
16 (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 642; *Gatto*
17 *v. County of Sonoma* (2002) 98 Cal.App.4th 744, 763 [“the Legislature intended all claims for
18 money or damages against a public entity to be governed by the statutory procedure ‘unless
19 specifically exempted.’”] [quoting *Gehman v. Superior Court* (1979) 96 Cal.App.3d 257, 262].)
20 For that reason, courts have referred to the Act as the “Government Claims Act.” (*Hart v. County*
21 *of Alameda* (1999) 76 Cal.App.4th 766, 774, fn. 2 [“Although this statute is more commonly
22 known as the California Tort Claims Act, we agree with those courts that have suggested this
23 label is misleading and have instead adopted the more accurate Government Claims Act
24 identification.”].)

25 Here, the Wood Class sought money and damages against District No. 40. In fact, three
26 of the five Wood Class causes of action are for money or damages. (Supplemental Declaration of
27 Sarah Christopher Foley (“Foley Suppl. Decl.”) at Ex. 3, pp. 15-16 [the Wood Class sought

28 ¹ Unless otherwise indicated, all section references are to Government Code.

1 “economic and compensatory damages,” “damages from the public entity defendants in the full
2 amount that will compensate Plaintiff and the Class for past and future takings by those
3 Defendants and damages for past and future property infringement,” and “costs of this suit,
4 including reasonable attorneys’ and experts’ fees and other disbursements.”.) The fact that the
5 Wood Class also sought declaratory and equitable relief does not exempt the Wood Class from
6 the Government Claims Act. (*Loehr, supra*, 147 Cal.App.3d at pp. 1080-81; *Gatto, supra*, 98
7 Cal.App.4th at pp. 762-64.) Nor is it relevant that the only monetary award the Wood Class
8 obtained is attorney’s fees. (See *Gatto, supra*, 98 Cal.App.4th at p. 763 [Government Claims Act
9 applies even though the attorney’s fees award (\$23,700) was disproportionate to the damages
10 obtained (\$1,000)].)

11 The Wood Class request for attorney fees is a demand for money, and the Government
12 Claims Act applies to demands for money from local public entities. (*Alliance Financial, supra*,
13 64 Cal.App.4th at p. 642.) The Court awarded attorney fees based on, amongst others, a
14 contractual theory of recovery.² (See Foley Decl. at Ex. 1 at p. 7 [“While the PWS contend that
15 the facts in this case do not provide a basis for an award of fees and costs under CCP 1021.5 and
16 that neither the Wood Class nor the Willis Class is a prevailing party, at least as to the Wood
17 Class fees and costs, the court concludes that the PWS are obligated for reasonable fees and costs
18 based upon the language in the stipulation and as well based upon 1021.5 of the CCP and the
19 prevailing party doctrine as discussed below.”].)

20 It is important to note that the Wood Class does not and cannot cite a single authority that
21 section 984 does not apply to an award for attorneys’ fees.

22 The Wood Class wrongly interprets *Lozada v. City and County of San Francisco* (2006)
23 145 Cal.App.4th 1139, 1160, to suggest that Government Claims Act can never apply to disputes
24 concerning attorneys’ fees. In *Lozada*, plaintiff alleged violations of the California Public Safety
25 Officers’ Procedural Bill of Rights Act (“POBRA”) and sought civil penalties, actual damages,
26 and attorneys’ fees, in addition to declaratory and injunctive reliefs. The Court of Appeal

27 ² District No. 40 nevertheless reserves its arguments that (1) Code of Civil Procedure section
28 1021.5 alone governs the Wood Class’ attorneys’ fee request, and (2) alternatively, a contractual
obligation to pay attorneys fees, if any, only arises if 1021.5 applies.

1 affirmed the trial court’s order granting summary of adjudication against plaintiff on the ground
2 that plaintiff failed to file a claim pursuant to the Government Claims Act. (*Id.* at p. 1147.)

3 The *Lozada* case did not progress beyond a motion for summary adjudication so the issue
4 of whether a public agency may elect to make periodic payments for an attorneys’ fee award was
5 not before the court. The issue before the *Lozada* court was whether a claim for attorneys’ fees,
6 amongst other claims for money and damages that arise from the same underlying facts, by itself,
7 triggered claim filing requirements under the Government Tort Claims Act as an initial matter.
8 Under those facts, the *Lozada* court held that “the recovery of attorney fees . . . [is] not a separate
9 item of monetary relief or damages” from plaintiff’s other claims, and “the claim for attorney fees
10 cuts neither for nor against application of the claim filing requirement as to the action as whole.”
11 (*Id.* at p. 1160.)

12 As the *Lozada* court noted, “[t]he intent of the [Government Claims Act] is not to expand
13 the rights of plaintiffs in suits against governmental entities, but to confine potential
14 governmental liability to rigidly delineated circumstances: immunity is waived only if the various
15 requirements of the act are satisfied.” (*Lozada, supra*, 145 Cal.App.4th at p. 1173 [quoting
16 *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 741].) It is neither logical nor
17 equitable to waive District No. 40’s immunity under the Government Claims Act, and then deny
18 that such waiver ever existed once District No. 40 elects to make payments under section 984.

19 Here, the Wood Class sought money and damages from District No. 40, and the Wood
20 Class action is subject to the Government Claims Act. District No. 40 may elect to make its
21 payments on a periodic basis because section 984, subdivision (d), applies to monetary claims.
22 To hold otherwise would contravene the intended purposes of Government Claims Act and
23 section 984.

24 **II. THE MONETARY THRESHOLD FOR DISTRICT NO. 40’S PERIODIC**
25 **PAYMENT ELECTION IS \$1,450,000**

26 Section 984, subdivision (d), sets forth a threshold amount that an award against a public
27 agency must minimally be for the public agency to elect periodic payment. “Effective January 1,
28 1996, that amount shall be seven hundred twenty-five thousand dollars (\$725,000), and thereafter,

1 the seven hundred twenty-five thousand dollar (\$725,000) amount shall be increased 5 percent on
2 January 1 of each year.” (Gov. Code § 984, subd. (d).)

3 The Wood Class contends that the 5% annual increase in the threshold amount should be
4 compounded yearly, resulting in a threshold amount of \$1,923,640.84. This interpretation of
5 section 984 contradicts the plain reading of the statute, which does not require the amount to be
6 compounded. (See *In re Corrine W.* (2009) 45 Cal.4th 522, 529 [in interpreting statutes, courts
7 must “begin with the statute’s plain language, as the words the Legislature chose to enact are the
8 most reliable indicator of its intent”].) A leading treatise similarly concludes that the amount is
9 not compounded. (Ahart & Paris, California Practice Guide: Enforcing Judgments and Debts
10 (The Rutter Group 2016) paragraph 6:56.12, page 6A-33 [the threshold is \$1,450,000 and is
11 “calculated by increasing the \$725,000 1996 threshold amount by 5%, or \$36,250, on January 1
12 of each year commencing 1997”]³.)

13 In lieu of applicable legal authority, the Wood Class erroneously contends that District
14 No. 40 is judicially estopped from asserting that \$1,450,000 is the threshold amount because
15 District No. 40 and certain other public water suppliers previously misapplied the 5% increase
16 and miscalculated the threshold amount to be higher in their notice of election to make periodic
17 payments on the Willis Class judgment.

18 As the Wood Class noted in its opposition, the purpose of the judicial estoppel doctrine is
19 to “prevent[] fraud on the courts.” (Opposition at 7:20 [quoting *M. Perez Co., Inc. v. Base Camp*
20 *Condominiums Assn. No. One* (2003) 111 Cal.App.4th 456, 463]; see also, *Jackson v. County of*
21 *Los Angeles* (1997) 60 Cal. App. 4th 171, 181 [“The doctrine of judicial estoppel, sometimes
22 referred to as the doctrine of preclusion of inconsistent positions, is invoked to prevent a party
23 from changing its position over the course of judicial proceedings when such positional changes
24 have an adverse impact on the judicial process”] [emphasis added] [quoting *Russell v. Rolfs* (9th
25 Cir. 1990) 893 F.2d 1033, 1037].) Here, there is no showing that District No. 40 committed a
26 fraud or is attempting to defraud the Court. Any alleged mathematical calculation of a higher

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28 ³ The relevant portion of the treatise is attached hereto as Exhibit 4 to the Supplemental Foley Declaration.

1 threshold by District No. 40 and certain public water suppliers in 2011 did not harm or otherwise
2 impact the Wood Class. Certainly, District No. 40 certainly did not benefit from any alleged
3 miscalculation nor was the Court defrauded.

4 Lastly, District No. 40's "position" is neither "contrary" to nor "inconsistent" with the
5 position taken by certain public water suppliers in 2011. In fact, without compounding the annual
6 increase, the threshold in 2011 would be \$1,268,750 – an amount public water suppliers easily
7 surpassed. Thus, while the calculations of the threshold are different, they would not have
8 resulted in contrary positions or different results.

9 **III. DISTRICT NO. 40 TIMELY FILED ITS NOTICE OF ELECTION**

10 District No. 40 filed and served its Notice of Election and Hearing on August 12, 2016 –
11 which is 28 days from date the fee order was served and 56 days from the date the fee order was
12 entered. (Foley Suppl. Decl. at Ex. 5.) Consequently, District No. 40's notice is timely. (Rules
13 of Court, Rule 3.1802, subd. (a).)

14 **IV. THERE IS NO REQUIREMENT THAT DISTRICT NO. 40 ESTABLISH**
15 **HARDSHIP IN ORDER TO MAKE PAYMENTS OF ATTORNEYS' FEES OVER**
16 **TEN YEARS UNDER SECTION 984**

17 Unlike section 970.6, a showing of hardship is not required for a government entity to
18 make payments of attorneys' fees over a period of ten years under section 984. The only
19 requirement is that the amount owed has to be over a certain dollar threshold. The statute's
20 public policy recognizes budgetary constraints that public agencies may have in paying large
21 judgments. In short, section 984 acknowledges that large judgments are *de facto* hardships for
22 government entities, and no other showing is required.

23 Moreover, any hardship that the Wood Class counsel may claim is mitigated by section
24 984's requirement to pay 50 percent of the amount owed as soon as the amounts become due.
25 (Gov. Code § 984, subd. (d).) Additionally, the Wood Class counsel has settled its attorney fees
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claims with certain other public water supplier, and presumably, received their settlement payments.⁴

V. CONCLUSION

For the reasons stated above and in its Notice of Election, District No. 40 respectfully requests that the Court order periodic payments as detailed in the accompanying proposed order.

Dated: August 31, 2016

BEST BEST & KRIEGER LLP

By: 

ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

⁴ The Wood Class’ partial settlement in 2014 resulted in an award of \$719,892.29 in attorney fees and \$17,037.71 in costs.

DECLARATION OF SARAH CHRISTOPHER FOLEY

1
2 1. I am an attorney at law, licensed to practice in California. I am one of the
3 attorneys for the Los Angeles County Waterworks District No. 40 (“District No. 40”). I make
4 this declaration of my own knowledge, and if called as a witness, I could testify competently to
5 all facts set forth herein.

6 2. Attached hereto as Exhibit 3 is a true and correct copy of the Wood Class’ First
7 Amended Class Action Complaint.

8 3. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from Ahart &
9 Paris, California Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2016), with
10 the relevant provision highlighted.

11 4. Attached hereto as Exhibit 5 is a true and correct copy of the conformed copy of
12 District No. 40’s Notice of Election and Hearing.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed August 31, 2016 at New Orleans, LA.

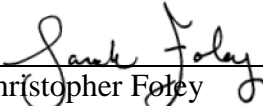
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17 _____
18 Sarah Christopher Foley

EXHIBIT 3

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15 Attorneys for Plaintiff

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

18 Plaintiff,

19 v.

20 LOS ANGELES COUNTY WATERWORKS
21 DISTRICT NO. 40; CITY OF LANCASTER;
22 CITY OF LOS ANGELES; CITY OF
23 PALMDALE; PALMDALE WATER
24 DISTRICT; LITTLEROCK CREEK
25 IRRIGATION DISTRICT; PALM RANCH
26 IRRIGATION DISTRICT; QUARTZ HILL
27 WATER DISTRICT; ANTELOPE VALLEY
28 WATER CO.; ROSAMOND COMMUNITY
SERVICE DISTRICT; MOJAVE PUBLIC
UTILITY DISTRICT; CALIFORNIA WATER
SERVICE COMPANY and DOES 1 through
100;

Defendants.

Case No.: BC391869

(related to JUDICIAL COUNCIL
COORDINATION PROCEEDING No. 4408;
Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

REQUEST FOR JURY TRIAL

1 Plaintiff, Richard A. Wood, by his counsel, alleges on information and belief as follows:

2 **I.**

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this action on behalf of himself and the class of certain other
5 private landowners in the Antelope Valley (as defined below) seeking a judicial determination of
6 their rights to use the groundwater within the Antelope Valley Groundwater Basin (“the Basin”).
7 In addition, Plaintiff seeks damages and just compensation for himself and the Class arising from
8 the government entity defendants taking and interfering with plaintiff’s and the Class’ property
9 rights. This action is necessary in that defendants assert a common law prescriptive right to the
10 groundwater in the Basin which right they claim is superior to that of Plaintiff and the Class. By
11 definition, a prescriptive right requires a wrongful taking of non-surplus water from the Basin, in
12 an open, notorious, continuous, uninterrupted, hostile and adverse manner to the original owner
13 for the statutory period of five years. To the extent defendants fail to prove any element of
14 prescription or the evidence shows that defendants have indeed taken non-surplus water in
15 derogation of the rights of overlying landowners, plaintiff’s and the Class’s property interests
16 have been damaged and/or infringed.

17 2. As overlying landowners, Plaintiff and the Class have a property right in the water
18 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin’s
19 groundwater. To the extent the Government entity defendants assert rights to that ground water
20 or have taken non-surplus groundwater in derogation of the rights of the overlying landowners.
21 Plaintiff and the Class are entitled to damages and just compensation under the Fifth and
22 Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the
23 California Constitution.

24 **II.**

25 **JURISDICTION AND VENUE**

26 3. This Court has jurisdiction over this action pursuant to the California
27 Constitution, Article XI, § 10 and under California Code of Civil Procedure (“CCP”) § 410.10.
28

1 F. Defendant ANTELOPE VALLEY WATER CO. is an entity that pumps
2 and/or provides groundwater from the Basin.

3 G. Defendant ROSAMOND COMMUNITY SERVICE DISTRICT is an
4 entity that pumps and/or provides groundwater from the Basin.

5 H. Defendant MOJAVE PUBLIC UTILITY DISTRICT is a public agency
6 that pumps and/or provides groundwater from the Basin.

7 I. Defendant CALIFORNIA WATER SERVICE COMPANY is a California
8 Corporation that pumps and/or provides groundwater from the Basin and is added herein
9 as Doe 1. Defendants A-I shall collectively be referred to as "Appropriators."

10 J. Defendant CITY OF LANCASTER is a municipal corporation located
11 within the County of Los Angeles.

12 K. Defendant CITY OF PALMDALE is a municipal corporation located
13 within the County of Los Angeles.

14 L. DOE DEFENDANTS 1 through 100. Plaintiff alleges on information and
15 belief that at all relevant times DOE DEFENDANTS 1 through 100, inclusive, are
16 persons or entities who either are currently taking or providing water from the Basin or
17 claim rights to take groundwater from the Basin. Plaintiff is presently unaware of the
18 true names and identities of those persons sued herein as DOE Defendants 1 through 100
19 and therefore sues these Defendants by these fictitious names. Plaintiff will amend this
20 Complaint to allege the Doe Defendants' legal names and capacities when that
21 information is ascertained.

22 **IV.**

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

24 8. The Antelope Valley Groundwater Basin is part of the South Lahontan
25 Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave
26 Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the
27 Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San
28 Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a

1 groundwater divide and on the north by various geographic features that separate it from the
2 Fremont Valley Basin.

3 9. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the
4 Basin's recharge comes from runoff from the surrounding mountains and hills – in particular,
5 from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other
6 portions of the Valley.

7 10. The Basin has two main aquifers – an upper aquifer, which is the primary source
8 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin
9 have been productive and have met the needs of users in conjunction with other sources of water,
10 including the State Water Project.

11 11. In recent years, however, population growth and urban demands have led to
12 increased pumping and declining groundwater levels. Plaintiff and the Class are informed and
13 believe that at some yet unidentified point in the past, the Appropriators began to extract
14 groundwater from the Antelope Valley to a point above and beyond an average annual safe yield.
15 Plaintiff and the Class are further informed and believe that future population growth and
16 demands will place increased burdens on the Basin. If the trend continues, demand may exceed
17 supply which will cause damage to private rights and ownership in real property. Presently, the
18 rights to the Basin's groundwater have not been adjudicated and there are no legal restrictions on
19 pumping. Each of the Defendants is pumping water from the Basin and /or claims an interest in
20 the Basin's groundwater. Despite the actual and potential future damage to the water supply and
21 the rights of owners of real property within the Valley, the Appropriators have knowingly
22 continued to extract groundwater from the Basin, and increased and continue to increase their
23 extractions of groundwater over time. The Appropriators continued the act of pumping with the
24 knowledge that the continued extractions were damaging, long term, the Antelope Valley and in
25 the short term, impairing the rights of the property owners.

26 12. Plaintiff and the Class are informed and believe that the Appropriators may have
27 pumped water in excess of the safe yield with the knowing intent and belief that they could take
28 by claim of prescription, without compensation, the water rights of all landowners overlying the

1 Antelope Valley. Additionally, all Appropriators continued to pump ever increasing quantities
2 of groundwater, knowing that even if their prescriptive claims failed, they could preserve the
3 right to continue their pumping under a claim of an intervening public use. Despite the knowing
4 intent to take the overlying property landowners' rights, no Appropriator took any steps to
5 inform or otherwise notify Plaintiff or the Class of their adverse and hostile claim or that their
6 pumping of groundwater was an invasion of and a taking of the landowners' property rights.

7 13. None of the Appropriators have invoked the power of eminent domain nor paid
8 any compensation to overlying owners of land located within Antelope Valley for the property
9 rights they have knowingly taken.

10 14. Various water users have instituted suit to assert rights to pump water from the
11 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators
12 have brought suit asserting that they have prescriptive rights to pump water from the Basin,
13 which they claim are paramount and superior to the overlying rights of Plaintiff and the Class.
14 Those claims threaten Plaintiff's right to pump water on his property.

15 15. In 1983, Plaintiff purchased his ten (10) acre property in the Antelope Valley to
16 serve as his sole residence, which has continued to be the case to date. The most important and
17 fundamental aspect of his purchase was the property right to use water below his land. At all
18 relevant times, Plaintiff has extracted and used groundwater from beneath his property for
19 standard residential purposes. Plaintiff's right to use water below the surface of the land is a
20 valuable property right. Without the right to use the water below his property, the value of
21 Plaintiff's land is substantially reduced.

22 16. Plaintiff is informed and believes that defendant Appropriators have extracted so
23 much water from the Basin, by extracting non-surplus water that exceeds a safe yield for a period
24 as yet undetermined, that his ability to pump water is threatened. Plaintiff is further informed
25 and believes that the water level has fallen to such an unreasonable level that his property right in
26 the use of the water has been infringed or extinguished and his interest in the real property has
27 been impaired by the diminution of its fair market value. The Appropriators have made it
28 economically difficult, if not impossible, for his to exercise his future right to use the water

1 because they have extracted too much water from the supply in the Basin. His water rights and
2 the value in the real property have been damaged and will continue to be damaged unless this
3 court intervenes on his behalf and on behalf of all class members.

4 17. Plaintiff brings this action on behalf of the following class:

5 All private (i.e., non-governmental) persons and entities that own real property
6 within the Basin, as adjudicated, and that have been pumping on their property within the five
7 year period preceding the filing of this action. The Class excludes the defendants herein, any
8 person, firm, trust, corporation, or other entity in which any defendant has a controlling interest
9 or which is related to or affiliated with any of the defendants, and the representatives, heirs,
10 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes
11 all persons and entities to the extent their properties are connected to a municipal water system,
12 public utility, or mutual water company from which they receive water service, as well as all
13 property pumping 25 acre-feet per year or more on an average annual basis during the class
14 period.

15 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's
16 claims are typical of the claims of the members of the Class. Plaintiff and members of the class
17 have sustained damages arising out of the conduct complained of herein.

18 19. Plaintiff will fairly and adequately protect the interests of the members of the
19 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class
20 members he seeks to represent. Plaintiff has retained competent counsel experienced in class
21 action litigation to ensure such protection.

22 20. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of
24 no difficulty that will be encountered in the management of this litigation that would preclude its
25 maintenance as a class action.

26 21. There are common question of law and fact as to all members of the Class, which
27 predominate over any questions affecting solely individual members of the Class. Specifically,
28 the Class members are united in establishing (1) their priority to the use of the Basin's

1 groundwater given their capacity as overlying landowners; (2) the determination of the Basin's
2 characteristics including yield; (3) adjudication of the Public Water Suppliers' groundwater
3 rights including prescriptive rights; (4) determination of a physical solution to water shortage
4 conditions including all parties' rights to store and recover non-native water in the Basin; (5) a
5 taking, if any, under the U.S. and California Constitution; (6) damages for trespass, interference,
6 nuisance and conversion; (7) due process violations; and (8) availability of injunctive relief.

7
8 **FIRST CAUSE OF ACTION**

9 **(For Declaratory Relief Against All Defendants)**

10 22. Plaintiff realleges and incorporates herein by reference each of the allegations
11 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
12 as follows:

13 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights
14 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
15 beneficial uses on their respective properties.

16 24. Plaintiff is informed and believes, and on the basis of that information and belief
17 alleges, that each of the defendants presently extracts and/or purveys groundwater from the Basin
18 and/or asserts rights to that groundwater which conflict with the overlying rights of Plaintiff and
19 the Class.

20 25. Plaintiff is informed and believes and, on the basis of that information and belief,
21 alleges that each of the Defendants extracts groundwater primarily for non-overlying use – i.e.,
22 for use on properties other than the property on which the water is extracted. In addition, certain
23 of those defendants have asserted that they hold prescriptive rights to such water which they
24 claim are superior to the rights of Plaintiff and the Class.

25 26. Plaintiff's and the Class' present overlying uses of the Basin's
26 groundwater are superior in right to any non-overlying rights held by the Appropriator
27 Defendants.

28 27. Plaintiff's and the Class' overlying rights need to be apportioned in a fair and

1 equitable manner among all persons holding rights to the Basin's water.

2 28. Plaintiff and the Class seek a judicial determination that their rights as overlying
3 users are superior to the rights of all non-overlying users and that they have correlative rights vis-
4 a-vis other overlying landowners.

5 29. Plaintiff and the Class further seek a judicial determination as to the priority and
6 amount of water that all parties in interest are entitled to pump from the Basin.

7 30. By virtue of their property ownership, Plaintiff and the Class hold rights to utilize
8 or derive benefit from the storage capacity of the Basin. Plaintiff and the Class seek a judicial
9 determination as to priority and ownership of those rights. In addition, Plaintiff and the Class
10 contend that California Water Code Sections 55370, 22456, and 31040 limit the method, manner
11 and mode by which Appropriators may acquire private property and requires payment of
12 compensation through eminent domain proceedings. Plaintiff and the Class seek a declaration of
13 rights with respect to the constitutionality and applications of these Statutes.

14 **SECOND CAUSE OF ACTION**

15 **(Against All Defendants to Quiet Title)**

16 31. Plaintiff realleges and incorporates herein by reference each of the allegations
17 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
18 as follows:

19 32. Plaintiff and the Class own land overlying the Antelope Valley alluvial
20 groundwater basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and
21 reasonably use groundwater on their land.

22 33. Plaintiff and the Class herein request a declaration from the Court quieting title to
23 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

24 **THIRD CAUSE OF ACTION**

25 **(Against All Defendant Appropriators For Damages Pursuant to**
26 **The California Constitution Takings Clause)**

27 34. Plaintiff realleges and incorporates herein by reference each of the allegations
28

1 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
2 as follows:

3 35. Article 1 Section 19 of the California Constitution provides as follows:

4 Private Property may be *taken or damaged* for public use only when just
5 compensation, ascertained by a jury unless waived, has first been paid to, or
6 into court for, the owner.

7 The scope of compensable injury to property is broader in California than other States or
8 under the U.S. Constitution. It includes a “taking” or “damage” to property. Here, Plaintiff’s
9 and the Class’ interests have been infringed by the defendants. On information and belief,
10 defendant Appropriators have extracted and will continue to extract non-surplus groundwater
11 from the Basin in excess of a safe yield. Defendants allege that the production forms the basis of
12 their claim for prescriptive rights. Defendants’ extraction of water above a safe yield has made it
13 more difficult and expensive for Plaintiff and the Class to use the water under their properties
14 and constitutes an invasion of Plaintiff’s property interests and therefore a taking in violation of
15 the California Constitution. On information and belief, Plaintiff’s and the Class’ properties have
16 been injured in the form of degradation of the water level and degradation of the quality of the
17 water, in addition to the actual taking of non-surplus water.

18 36. The public entity Defendants claim priority rights to take and use the Basin’s
19 groundwater by “prescription” and as a matter of public interest and need.

20 37. If and to the extent the public entities are granted rights to use the Basin’s
21 groundwater with priority to the rights held by Plaintiff and other overlying landowners, Plaintiff
22 and the Class are entitled to just and fair compensation pursuant to Article 1, Section 19 of the
23 California Constitution for the diminution in fair market value of the real property. If and to the
24 extent the public entities are not granted rights to use the Basin’s groundwater with priority to the
25 rights held by Plaintiff and other overlying landowners, Plaintiff and the Class are entitled to just
26 and fair compensation pursuant Article 1, Section 19 of the California Constitution for wrongful
27 taking of water rights.

28

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendant Appropriators For Damages Pursuant to**
3 **The United States Constitution Takings Clause)**

4 38. Plaintiff realleges and incorporates herein by reference each of the allegations
5 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
6 as follows:

7 39. This cause of action is brought to recover damages against the Appropriators for
8 violation of Plaintiff's and the Class's right under the 5th and 14th Amendments of the U.S.
9 Constitution through the Appropriator's taking of private property for public use without paying
10 just compensation and depriving them of both substantive and procedural due process of law.

11 40. The Appropriators, and each of them are, and at all times mentioned in this
12 second amended complaint were, governmental entities with the capacity to sue and be sued.
13 The Appropriators, and each of them, were, at all times mentioned in this second amended
14 complaint, acting under color of state law.

15 41. At a yet unidentified historical point in time, the Appropriators began pumping
16 water from the Antelope Valley as permissive appropriators. Over the course of time, it is
17 believed that the aggregate amount of water being extracted from the Valley began to exceed the
18 safe yield. Each Appropriator continued to pump and increased its pumping of groundwater
19 believing that given the intervention of the committed public use, no injunction would issue to
20 restrain and/or compel the Appropriator to reduce its dependence upon such groundwater. Each
21 Appropriator contends that despite its status as a governmental entity, it can nonetheless take
22 private property for a public use under a theory of prescription and without compensation. Each
23 Appropriator did not undertake any affirmative action reasonably calculated and intended to
24 provide notice and inform any affected landowner of its adverse and hostile claim.

25 42. Plaintiff is informed and believes and thereon alleges that he was denied due
26 process of law prior to the taking of his property. This violation was a direct result of the
27
28

1 knowing customs, practices, and policies of the Appropriators to continue to pump in excess of
2 the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
3 increasing intervening public use and dependence, without acceding to Constitutional limits.

4 43. The customs, practices, and policies of the Appropriators to prescript or adversely
5 possess the property rights of property owners and/or to establish a nonenjoinable intervening
6 use amounted to deliberate indifference to the rights of persons who stand to lose their rights to
7 extract water from the Antelope Valley for use on their property through the actions of each
8 Appropriator and all of them.

9 44. As a direct and proximate result of the acts of the Appropriators, Plaintiff and the
10 Class have suffered injury, loss, and damage, including a cloud upon the title to their real
11 property, a reduction in value, and the loss of rights in the future to extract and use groundwater
12 from the Valley.

13 **FIFTH CAUSE OF ACTION**

14 **(Public and Private Nuisance Against All Defendant Appropriators)**

15 45. Plaintiff realleges and incorporates herein by reference each of the allegations
16 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
17 as follows:

18 46. The Appropriators' extractions of groundwater from the supply constitute a
19 continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that
20 the Appropriators have interfered with the future supply of available water that is injurious to
21 Plaintiff's and the Class' rights to freely use and exercise their overlying property rights to
22 extract groundwater from the Basin. The Appropriators are attempting, through the combined
23 efforts of their pumping groundwater to take, and or alter, overlying property rights to use and
24 access the Antelope Valley supply.

25 47. The Appropriators, and each of them, have continued to and have increased their
26 pumping, despite the knowledge of the damage caused by pumping. The Appropriators have
27 refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply
28 of water. This nuisance affects a substantial number of persons in that the Appropriators claim

1 that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a
2 chronic decline in water levels and the available natural water supply will be chronically
3 depleted. If the present trend continues, demand will continue to exceed supply which will
4 continue to cause a reduction in the long term supply. Additionally, the continued pumping by
5 the Appropriators under these conditions will result in the unlawful obstruction of the overlying
6 landowner's rights to use the water supply in the customary manner.

7 48. The Appropriators, and each of them, have threatened to and will, unless
8 restrained by this court, continue to pump groundwater in increasing amounts, and each and
9 every act has been, and will be, without the consent, against the will, and in violation of the
10 rights of plaintiff and the Class.

11 49. As a proximate result of the nuisance created by the Appropriators, and each of
12 them, plaintiff and the Class have been, and will be, damaged in a sum to be proven at trial.

13 50. In maintaining this nuisance, the Appropriators, and each of them are, and have
14 been, acting with full knowledge of the consequences and damage being caused and their
15 conduct is willful, oppressive, malicious and designed to interfere with and take plaintiff's right
16 to freely access the water supply in its customary manner.

17 **SIXTH CAUSE OF ACTION**

18 **(Trespass Against All Defendant Appropriators)**

19 51. Plaintiff realleges and incorporates herein by reference each of the allegations
20 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
21 as follows:

22 52. On information and belief, each Defendant alleges that it has produced more
23 water from the Basin than it has a right to produce as an Appropriator. Defendants allege that
24 this production forms the basis for their claims of prescriptive rights. To the extent that the
25 alleged production in excess of rights actually occurred, this alleged production of water
26 constitutes a trespass against plaintiff and the Class.

27 53. Defendants' use of the Basin's water has interfered with and made it more
28 difficult for plaintiff and the Class to exercise their rights.

1 **NINTH CAUSE OF ACTION**

2 **(Against All Defendants For Injunctive Relief)**

3 61. Plaintiff and the Class reallege and incorporate herein by reference each of the
4 allegations contained in the preceding paragraphs of this Complaint, and further allege against
5 Defendants as follows:

6 62. As overlying landowners, Plaintiff and the Class have superior rights to take and
7 make reasonable and beneficial use of the Basin's groundwater.

8 63. By pumping and selling water from the Basin, Defendants have interfered with
9 and made it more difficult for Plaintiff and the Class to exercise their rights to use that
10 groundwater. If allowed to continue, Defendants' pumping from and depletion of the Basin's
11 groundwater will further interfere with Plaintiff's and the Class's ability to exercise their lawful
12 and superior rights as overlying landowners to make reasonable use of the Basin's groundwater.

13 64. Plaintiff and the Class have no adequate remedy at law.

14 65. Unless the Court enjoins or limits Defendants production of water from the Basin,
15 Plaintiff and the Class will suffer irreparable injury in that they will be deprived of their rights to
16 use and enjoy their properties.

17
18 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
19 follows:

- 20 1. For economic and compensatory damages according to proof at trial;
- 21 2. Declaring that Plaintiff's and the Class' overlying rights to use water from the
22 Basin are superior and have priority vis-a-vis all non-overlying users and Appropriators;
- 23 3. Apportioning water rights from the Basin in a fair and equitable manner and
24 enjoining any and all uses inconsistent with such apportionment;
- 25 4. Awarding Plaintiff and members of the Class damages from the public entity
26 defendants in the full amount that will compensate Plaintiff and the Class for past and future
27 takings by those Defendants and damages for past and future property infringement;
- 28

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5. Awarding Plaintiff and the Class the costs of this suit, including reasonable attorneys' and experts' fees and other disbursements; as well as such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: June 20, 2008

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

By: 
Michael D. McLachlan
Attorneys for Plaintiff

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PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **FIRST AMENDED CLASS ACTION COMPLAINT**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.

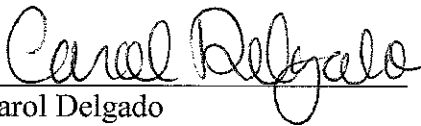

Carol Delgado

EXHIBIT 4

California Practice Guide

ENFORCING JUDGMENTS AND DEBTS

CHAPTER 6
TABLES & INDEX

JUDGE ALAN M. AHART (Ret.)
U.S. Bankruptcy Court
Central Dist., Calif.

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2016

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Cross-refer: For a detailed discussion of periodic payments under CCP §667.7, see Haning, Flahavan, Cheng & Wright, *Cal. Prac. Guide: Personal Injury* (TRG), Chs. 3 & 9.

- (2) [6:56.12] **Election by public entity:** When the judgment, net of collateral source deductions (Gov.C. §985(a)(2)), against an uninsured public entity in a “tort claims action” exceeds \$1,450,000 (calculated by increasing the \$725,000 1996 threshold amount by 5%, or \$36,250, on January 1 of each year commencing 1997), the public entity may “elect” to pay the judgment through specified periodic payments. [Gov.C. §984(d)]

This option is available only to public entities that are “not insured” (Gov.C. §984(d))—i.e., public entities that have no liability insurance; or that are self-insured by themselves, or through an insurance pooling arrangement, a joint powers agreement, the Local Agency Self Insurance Authority, or “any other similar arrangement.” [Gov.C. §984(a)]

- (a) [6:56.12a] **Notice of election or hearing:** A public entity electing to pay a judgment by periodic payments under Gov.C. §984 must serve and file a notice of election stipulating to the payment terms or a notice of hearing on the payment terms by the *earlier* of (i) 30 days after the clerk sends, or a party serves, notice of entry of judgment or (ii) 60 days after entry of judgment. [CRC 3.1804(a)]

The hearing must be held within 30 days after service of the notice . . . *notwithstanding any contrary local rule or practice*. The court must make an order for periodic payments at the hearing. [CRC 3.1804(b)]

- (b) [6:56.13] **Payment schedule:** Unless stipulated otherwise, the exact payment schedule is to be determined by the court, subject to these statutory limitations:
- 50% of the judgment (net of Gov.C. §985 collateral source payments) must be paid immediately. [Gov.C. §984(d)]
 - The balance may be paid over a maximum 10-year period or the length of the judgment creditor’s remaining life expectancy at the time judgment is entered, whichever is less. [Gov.C. §984(d)]

Upon the judgment creditor’s motion, the court “shall accelerate” payments if it finds any “unreasonable delay in, or failure to make” payments as ordered. [Gov.C. §984(e)(4)]

- (c) [6:56.14] **Interest on unpaid balance:** Interest accrues on the unpaid balance at the same rate as one-year U.S. Treasury Bills as of January 1, to be adjusted each January 1 thereafter, until the judgment is satisfied. [Gov.C. §984(e)(2)]

EXHIBIT 5

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Sherri R. Carter, Executive Officer/Clerk
By Dawn Alexander, Deputy

12 Attorneys for Cross-Complainant
13 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER
CASES
Included Actions:
17 *Los Angeles County Waterworks District No. 40 v.*
Diamond Farming Co., Superior Court of
18 California, County of Los Angeles, Case No. BC
325201;
19 *Los Angeles County Waterworks District No. 40 v.*
Diamond Farming Co., Superior Court of
20 California, County of Kern, Case No. S-1500-CV-
254-348;
21 *Wm. Bolthouse Farms, Inc. v. City of Lancaster,*
Diamond Farming Co. v. City of Lancaster,
22 *Diamond Farming Co. v. Palmdale Water Dist.*,
Superior Court of California, County of Riverside,
23 Case Nos. RIC 353 840, RIC 344 436, RIC 344
668
24 *Rebecca Lee Willis v. Los Angeles County*
Waterworks District No. 40, et al., Superior Court
25 of California, County of Los Angeles, Case No.
BC364533
26 *Richard Wood v. Los Angeles County Waterworks*
District No. 40, et al., Superior Court of
27 California, County of Los Angeles, Case No.
BC391869

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
NOTICE OF ELECTION AND
HEARING; MEMORANDUM OF
POINTS AND AUTHORITIES RE
ELECTION FOR PERIODIC
PAYMENTS; DECLARATION OF
SARAH CHRISTOPHER FOLEY**

[concurrently filed with [Proposed] Order]

Date: September 8, 2016
Time: 10:00 a.m.
Dept.: Room 222 (LASC)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Los Angeles County Waterworks District No. 40 (“District No. 40”) hereby elects to make
3 periodic payments of the award of attorneys’ fees to the Wood Class, as ordered in the Order
4 After Hearing on April 1, 2016, dated April 25, 2016 and entered on June 17, 2016 (“Attorneys’
5 Fees Order”), and as clarified in the Order Clarifying Order After Hearing on April 1, 2016,
6 entered on June 28, 2016 (“Clarifying Order”), pursuant to Government Code section 984 and
7 California Rules of Court, Rule 3.1804.

8 **I. INTRODUCTION**

9 Government Code section 984 allows a public entity to pay judgments in periodic
10 payments by election if the judgment exceeds \$1,450,000.¹ On April 25, 2016, this Court signed
11 the Attorneys’ Fees Order, which was not entered until June 17, 2016. The Attorneys’ Fees Order
12 requires Los Angeles County Waterworks District 40, Littlerock Creek Irrigation District, Quartz
13 Hill Water District, Palm Ranch Irrigation District, Desert Lake Community Service District,
14 California Water Service Company, and North Edwards Water District to pay attorneys’ fees to
15 the Wood Class in the amount of \$2,349,624.00. (Attorneys’ Fees Order, at p. 14.) The
16 Attorneys’ Fees Order does not specify the amount of the fees award that District No. 40 will be
17 required to pay. Pursuant to the subsequently issued Clarifying Order, District No. 40 – a public
18 entity – is to pay 74.76% of the fee award, which totals \$1,756,578.90. (Clarifying Order, at p.
19 2.) This amount exceeds the required threshold and qualifies for an election to make periodic
20 payments.

21 **II. ELECTION**

22 District No. 40 hereby elects to make periodic payments in accordance with Government
23 Code section 984 and as outlined below:

- 24 • 50% of the amount owed by District No. 40 will be due within fifteen (15) days
25 after the Attorneys’ Fees Order and Clarifying Order become final after their
26

27 ¹ Government Code section 984 set the threshold at \$725,000 for January 1, 1996 but implements a 5% increase on
28 the \$725,000 amount on January of each year. Thus, the threshold amount for 2016 is \$1,450,000. (Rutter Cal. Prac.
Guide, Enforcing Judgments and Debts § 6:56.12.)

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1 respective appeals², if the Appellate Court uphold the award of fees against
2 District No. 40;

- 3 • The remaining 50% will be paid in ten (10) annual installments;
- 4 • Installment payments will be made on September 1st of each year, beginning in
5 the first calendar year after the initial payment is made; and
- 6 • Interest, at the same rate as one-year United States Treasury bills as of January 1
7 of each year, will accrue to the unpaid balance of the judgment, and on each
8 January 1 thereafter throughout the duration of the installment payments the
9 interest shall be adjusted until the judgment is fully satisfied.

10 **III. CONCLUSION**

11 District No. 40 respectfully requests that the Court order periodic payments as detailed in
12 the concurrently filed [PROPOSED] Order.

14 Dated: August 12, 2016

BEST BEST & KRIEGER LLP

16 By: 

ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

27 _____
28 ² An execution on a judgment solely for costs of suit, including statutory attorneys' fees pursuant to Code of Civil Procedure section 1021, *et seq.*, is automatically stayed by an appeal. (Cal. Code Civ. Proc. § 917.1, subd. (d); *Vadas v. Sosnowski* (1989) 210 Cal.App.3d 471, 472.)

EXHIBIT 1

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County of Los Angeles

JUN 17 2016

Sherri B. Carter, Executive Officer/Clerk
By Raul Sanchez Deputy
Raul Sanchez

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

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

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

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

Judicial Council Coordination
Proceeding No. 4408

JCCP 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARING ON
APRIL 1, 2016**

- (1) "Second Supplemental" Motion by Willis Plaintiffs for Attorneys' Fees, Costs and Incentive Award;
- (2) Motion by Wood Plaintiffs for Award of Attorneys' Fees, Costs and Incentive Awards;
- (3) Motion for an Order Setting the Parameters for Class Counsel's Future Release and Motion for Order Regarding Payment of Outstanding Fees of the Class Administrator

Judge: Honorable Jack Komar, Ret.

06/27/2016

"Second Supplemental" Motion by Willis Plaintiffs for Attorneys' Fees, Costs and Incentive Award
Motion by Wood Plaintiffs for Award of Attorneys' Fees, Costs and Incentive Awards

Counsel for the Richard Wood and Rebecca Willis Classes have filed motions requesting attorneys' fees and costs. The motions were heard in Department One of the Santa Clara County Superior Court on April 1, 2016 at 1:30 p.m. pursuant to notice regularly given. Counsel appeared in person and telephonically, as reflected in the minutes of the court. By agreement of the parties, the matters were heard in Santa Clara County.

The moving, opposition, and reply papers for each motion were read and considered by the court and the parties orally argued the matters. The motions were ordered submitted. The court makes the following orders:

OBJECTIONS TO EVIDENCE.

The written objections to evidence filed by counsel for the Public Water Suppliers (PWS) are sustained. The filings were untimely, contained hearsay, dealt with settlement discussions which are privileged, and in many instances, arguments and evidence submitted was irrelevant and would not be of value in deciding the issues before the court. The court notes, however, that many of the materials submitted were of the courts records of the proceedings in various phases of trial and filings at case management hearings and to that extent are proper subjects for consideration by the court in its own consideration of the issues before the court based on the court's own records, whether or not cited by the parties..

The basic thrust, apparently, of the late materials filed by the parties seem to relate to the public's interest in the proceedings. The court is aware of the general public's interest in the proceedings within the adjudication area. That is a different public benefit and interest than is required in Code of Civil Procedure Section 1021.5, as discussed below.

THE MOTIONS

Counsel for both the Wood Class and the Willis Class seek attorneys' fees under theories of prevailing party and pursuant to Code of Civil Procedure Section 1021.5 as a private attorney general. The circumstances for each are different.

06/27/2016

CASE HISTORY GENERALLY

This series of coordinated and consolidated cases initially arose in 1999 with actions brought by private real property owners seeking declaratory relief and to quiet title to their water rights. The actions were brought against appropriators who were producing water from the aquifer.

By 2005, other actions were initiated, first by the Public Water Supplier (PWS) who were producing water for municipalities and others, essentially seeking to establish prescriptive rights to water as well as declaratory relief, contending that the adjudication area was in overdraft. The PWS also prayed for a physical solution to limit all pumping from the aquifer and to bring it into balance and preserve the aquifer. In 2005 all pending related actions were ordered coordinated in these proceedings.

The Antelope Valley Adjudication area is comprised of over 1000 square miles and has a population in excess of 70,000 persons who depend on the aquifer and imported water for their needs. Several public water suppliers have for decades produced water from the aquifer for use both inside and outside of the adjudication area. The federal government as the largest land owner within the adjudication area (Edwards Air Force Base) produces water for military and related purposes within the adjudication area. The so-called "Land Owner" parties are agricultural, industrial, and individuals who also have pumped groundwater underlying their real property, often for decades.

The federal government is an important and necessary party to the adjudication because of its federal reserve rights in the adjudication area for military defense and research and because of its obligations to protect the environment and to further the public safety and good. The federal government was initially served at the direction of the court. The U.S. Attorney General thereafter raised issues of jurisdiction based on the comprehensive adjudication requirements of the Federal McCarran Act.

To satisfy the McCarran Act objections, and to ensure that all persons and other parties would be subject to the court's judgment, with the encouragement of the court, two class actions were created, coordinated, and later consolidated with all pending actions for purposes

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of trial, to ensure that the coordinated actions would be a comprehensive adjudication for purposes of retaining jurisdiction over the federal government and so that any physical solution could be enforced against all persons claiming water rights. With the creation of the class actions, the court had jurisdiction over all persons who claimed either patent or latent water rights..

WILLIS NON-PUMPER CLASS

The Willis Class is composed of every land owner in the adjudication area (excepting only those who chose to opt out or who were otherwise parties to the adjudication) who did not and had not previously produced water from the adjudication area. In its class action complaint, the class sought declaratory relief and other related causes of action against the Public Water Suppliers' claims of prescription but did not sue or seek relief against any of the land owner parties who had been sued by the PWS.

In 2011, the Willis Class entered into a settlement with the PWS, stipulating and acknowledging that each class member was entitled to a non-allocated, correlative right as a dormant overlying owner. The settlement resulted in the PWS relinquishing any prescriptive claims against the class of non-pumpers in return for the class agreement to limit its correlative water rights to 85% of the federally adjusted safe yield, essentially ceding 15% of its dormant correlative water rights to the aquifer to the PWS. The PWS agreed to not seek future prescriptive water rights against the Class. At the time, it was unknown what the evidence would establish as the actual quantity of the Federal Reserve right. The settlement also occurred prior to the court rendering its partial statement of decision in Phase Three but after the court heard the evidence which established that the aquifer was in overdraft.

The Willis stipulated settlement and the judgment thereon did not grant any specific allocation or right to pump any specific amount of water, if any, from the aquifer (nor could it, since the agreement was limited to the claims the parties to the class action had against each other). It was not intended to allocate the specific right to pump water from the class members' land because the status of the aquifer was unknown at the time and the vested rights of all landowners who had not been sued by the class was also unknown and not bound by the

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stipulation. Moreover, the nature of any physical solution, if needed, was unknown. The physical solution, it was understood, could require a reduction in actual pumping and forbid new pumping from the aquifer (as it ultimately did).

The court approved the stipulation and entered judgment thereon in 2011, and following a motion for the same, awarded fees and costs to Willis Class counsel under Code of Civil Procedure Section 1021.5. It was expressly agreed in the stipulation that the class would not seek further fees and costs except in very narrow circumstances as described below.

WOOD CLASS OF SMALL PUMPERS

The Wood Class was comprised of property owners who pumped less than 25 acre feet of water per year. The class sought, *inter alia*, declaratory relief against only the PWS (a later suit filed on behalf of the class against the land owner parties who were water producers and users, allegedly for tactical purposes, was never served and ultimately abandoned).

In 2015, the Wood Class entered into a stipulation for judgment with several of the smaller public water suppliers and received agreed upon fees and costs from those settling public water producers (with the exception of the City of Lancaster). The settling parties included the Phelan-Pifion Hills Community Services District, Palmdale Water District, Rosamond Community Services District and the City of Lancaster.

Thereafter, the Wood Class entered into a stipulation and agreement for judgment with the remaining PWS against whom it had brought suit. The stipulation and judgment was conditioned on all of the PWS and the Landowner parties entering into a settlement which would be known as the "Global Settlement," and which by its terms would incorporate the Wood Class stipulation and proposed judgment, so that there would be a single judgment encompassing all coordinated and consolidated actions, including the Willis Class, the Wood Class, the PWS, and the Landowner parties, and the federal and state governments.

The court thereafter approved the Wood Class settlement and made its approval expressly contingent on its approval of the "Global Settlement."

"GLOBAL SETTLEMENT"

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In 2015, virtually all other parties who were participating in the litigation entered into the global settlement, proposing to the court a physical solution to the overdraft problem to which all settling parties agreed to be bound, reducing all pumping by all active pumpers, including the Wood Class, allocating to each a specified reduced water right, and regulating any new requests to produce water from the aquifer in accordance with the objective requirements of restoration of the aquifer.

Following an evidentiary hearing, the court adopted the physical solution as its own and approved the "global settlement" and the Wood Class settlement.

GLOBAL SETTLEMENT FEES AND COSTS PROVISIONS

The "global" stipulation for settlement provides that "the PWS and no other parties . . . shall pay all reasonable Small Pumper Class attorneys' fees and costs . . . through the date of the final judgment in an amount agreed to by the PWS and the Small Pumper Class, or as determined by the court." PWS reserved the right to seek contribution for reasonable class fees and costs from each other and from non-stipulating parties. See Paragraph 11 and 12 of the stipulation judgment.

The scope and meaning of the fee provision in the so-called global settlement is disputed. The Wood Class contends that it means that the PWS is bound to pay the fees and costs of Wood Class counsel, either by agreement as to amount, or if there is no agreement as to amount, then the amount shall be determined by the court. The PWS, on the other hand, assert that if the parties cannot agree, then the entire question of whether PWS should pay any fees and costs is to be determined by the court based on the law applied to the facts in the case.

In examining the language in paragraphs 11 and 12 of the stipulation, no other evidence of intent being offered by either party, , it would appear that the PWS agreed to pay such fees and costs as the court decided was reasonable if the parties could not agree as to the "amount." In the absence of extrinsic evidence of the discussions and negotiations of the parties related to this issue, the court is limited to the contract language alone. The court examines the entire contract under the provisions of the Civil code, and in particular Section 1641.

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Paragraph 12 specifically provides, "that in consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as provided in paragraph 11 above, the other Stipulating Parties agree that during the Rampdown established in the Judgment, a drought water management program ("Drought Program") shall be implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment."

While perhaps Paragraph 11 is ambiguous on the question, Paragraph 112 weighs in favor of the interpretation of the Wood Class.

Apart from whether the Wood Class interpretation is correct, the court concludes that the Wood Class counsel is entitled to fees and costs pursuant to CCP 1021.5 as well as a partially prevailing party.

While the PWS contend that the facts in this case do not provide a basis for an award of fees and costs under CCP 1021.5 and that neither the Wood Class nor the Willis Class is a prevailing party, at least as to the Wood Class fees and costs, the court concludes that the PWS are obligated for reasonable fees and costs based upon the language in the stipulation and as well based upon 1021.5 of the CCP and the prevailing party doctrine as discussed below

Whatever other decision on fees and costs, it is understood that the Palmdale Water District, Rosamond Community Services District, City of Lancaster, and Phelan-Pifion Hills Community Services District who had settled with the Wood Class earlier and paid (or released in the case of Lancaster) a negotiated amount of attorneys' fees and costs to the class counsel, are excluded from the fee request.

FEE AND COST CLAIMS BY ATTORNEYS FOR THE WOOD CLASS

Counsel for the Wood Class claim a lodestar total of 5,815.1 hours attorney hours and 842.6 paralegal hours and acknowledge that the earlier settlements with four of the water producers resulted in payment for 1276.3 hours- total fees of \$719,829 (with an estimated hourly rate in excess of \$500.00 hourly) and that costs in the sum of \$17,038.00 were paid.

The current request is for the remaining lodestar hours of 4538.8 and 679.5 paralegal hours at an hourly rate of \$720.for attorneys. The dollar request is for \$3,267,936 based on the

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Lodestar and \$80,224.00 for paralegals' work at hourly rates of \$110.00 and \$125.00. Counsel request a multiplier of 2.5 claiming that the novelty and complexity of the case, the outcome, the 8 year duration of counsel's participation, the risks of loss and uncertainty, the quality and efficiency of counsel's involvement, the inability to take on other work, and the personal and financial toll the work has taken on counsel, justify the multiplier.

PWS object to the request by counsel for the Wood Class on the grounds summarized as follows:

1. The Wood Class is not a prevailing party;
2. Attorneys' fees are not reasonable at \$720.00 hourly;
3. There is double billing by two lawyers for the same appearances, travel, and attendance at attorney conference and mediation sessions;;
4. There is block billing;
5. Some work billed by attorneys should have been done by clerical staff and paralegals;
6. There should not be any multiplier;
7. CCP 1021.5 is not applicable because there is no public benefit;
- 8 Several hours are billed for work not done or appearance not made.
9. There should not be a monetary incentive fee to class Representative Richard Wood though there is no objection to Mr. Wood receiving an increased water allocation of 2 additional acre feet a year as reflected in the judgment.

DECISION

Code of Civil procedure Section 1021.5 described as a codification of the "Private Attorney General" doctrine, authorizes an award of fees to a successful party who brings an action to enforce an important public right affecting the public interest if a significant benefit has been conferred on the general public or a large class of persons. The notion of a public right assumes there is an interference with, withholding or denial of a public right by governmental or other conduct.

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Counsel for the Wood class postulates the theory that the PWS by asserting a prescriptive right to take water from small overlying land owners, among others, has committed a wrong which justifies the application of CCP 1021.5.

However, a claim of a prescriptive right is authorized by law and cannot be a wrong, whether by government or private interests. The claim of prescription results from nothing more than an assertion that the statute of limitations bars opposition to a claim of wrongful taking as with adverse possession. The use of prescription as a sword instead of a defense does not convert it into a wrong.

The Antelope Valley Coordinated and Consolidated cases are unique in that the basic objective of all included actions was to determine individual and public water rights, whether of public or private entities. The actions, include those brought by those public entities who produce and provide water to the general public, by overlying real property owners as farmers, large and small, who produce water for agricultural purposes, by industries who depend on water for their production and existence, and by individuals and households whose very existence depends on pumping small quantities of water from a well on one's own property. The State of California as a land owner and water user, as a co-guardian of the environment, and the federal government as guardian of the security of the nation and the environment, became involved as parties and actively participated in an effort to ensure that if the court found the basin was in overdraft and needed protection, its participation would help to effect a good outcome, as well as protect their own interests.

In the Phase Three trial, the evidence and the court's findings established that the aquifer was suffering from insufficient ground water recharge associated with over-pumping throughout the basin for decades, that the aquifer was damaged by the overdraft, and that continued pumping would likely result in further detriment to the aquifer and the potential loss of water rights by all overlying land owners, whether agricultural, industrial, or even small land owners who pumped their own water for household and domestic uses. The essence of all actions by all parties seeking declaratory relief mandated that there be a physical solution so that both the aquifer and all interested parties were protected.

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The Public Water producers, all of whom may be characterized to some extent or other as appropriators, each sought to establish a priority prescriptive right to produce water from the aquifer from all other parties, including the Wood Class members. But the PWS also sought a physical solution that would preserve and restore the aquifer so that all parties, and the public interest, would benefit. The Wood Class declaratory relief action against the PWS appeared to be essentially defensive to prescriptive claims.

Absent the use of class actions, it would have been impractical to litigate the issues with 70,000 individual parties. Without an adjudication binding on the federal government and approximately 65,000 non-pumpers of the Willis Class subject to the judgment, the ability to effectively manage a physical solution would have been impossible. Based somewhat perhaps on the problem in this case, the legislature has recently enacted legislation that would simplify the court's jurisdiction in this type of situation. But that solution is at least 15 years too late for the Antelope Valley.

At the time, the court could not have adjudicated the cases without lawyers voluntarily representing of the two classes of parties which became known by the names of the representatives of the classes: the Willis Class and the Wood Class.

While it is contended in opposition to the fee request that there was no public benefit under CCP 1021.5, the court concludes that the opposite is true. First, the global settlement could not have been binding on all persons within the adjudication area without the Willis Class and the Wood Class of small pumpers. Secondly, it was necessary to have all persons bound in order to bind the federal government as the largest land owner in the adjudication area. Thirdly, the Willis Class 2011 stipulation and Wood Classe 2015 stipulation permitted the court to approve an enforceable physical solution that will stop ongoing degradation of the aquifer. The creation of the Willis Class preserved correlative rights of approximately 65,000 parties to the rights of overlying owners against present and future claims of prescription by the PWS. The Wood Class preserved the rights of small pumpers (approximately 4000 parties) to a specific but reduced and limited amount of water each year, protected the class from

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further claims of prescription, limited increase pumping in the future, and permitted the court to approve reduced allocations of water to all parties in the aquifer.

The court also notes that while the public water producers each were intent on preserving its right to produce water for the public good, considerable time and expense was expended to establish the need to preserve the aquifer and attempt to restore it to health and ensure its long term physical integrity. To the extent that the adjudication provided a means to correct a wrong, all parties producing water without limitation or external controls were contributing to the degradation of the Antelope Valley aquifer, including the PWS, the Wood Class, the federal and state governmental entities, as well as the land owner parties who were pumping and the non-pumpers who insisted they had an unfettered right to pump. The settlements and the adjudication over a period of fifteen years have thus provided great public benefit.

The Wood Class counsel of necessity actively represented the class interests in the case from its inception up to and including the approval of the "global settlement" and the entry of judgment. The continued representation was necessary even after the settlement because the class settlement with the PWS was conditioned on the approval of the global settlement and a physical solution, incorporating the Wood Class proposed judgment into the Global Settlement Judgment.

All of the above justify the conclusion and determination that the provisions of CCP 1021.5 are met and justify a finding that the public was benefitted by class counsel's representation. In addition to the public generally, the Class of around 4000 small pumpers also received a benefit by the cap on any prescriptive claims against their water rights in the future. The class is also a partially prevailing party as set forth below.

PREVAILING PARTY STATUS

The action brought here by the Wood Class was specifically intended to counter the claims of prescription brought by the Public Water Producers against all parties in the adjudication area. That claim was settled as part of the settlement between the class and the

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PWS, preserving but limiting the pumping rights of the Wood Class members but also and preventing any further claims of prescription. The court finds that the Wood Class is a partial prevailing party and that the class is entitled to reasonable fees and costs.

However, the PWS and the Landowner parties are also partial prevailing parties in the adjudication with regard to those parties against whom they sought relief. While the PWS relinquished claims, in part, to prescription rights, it also gained prescription rights against some of the parties and achieved through perseverance and the expenditures of considerable public funds, a physical solution by agreement or trial findings of what may be described as virtually all parties to the actions, including a few non-stipulating parties and defaulting parties.. Based on that fact, the PWS may be said to have partially prevailed in the case but not as to the principal claims of the Wood Class.

HOURLY RATE FOR COUNSEL AND PARALEGAL

The court is familiar with the compensation rates of counsel practicing in California, and in particular, in urban areas. While the opposition to the claim suggests that the court should evaluate the fee rates by looking to rural areas and lawyers' fees in the rural Antelope Valley, the court is satisfied that the venue of the action is the proper locale to evaluate attorney's fees.

While the rates requested are not far out of line with current large firm attorney fee rates for experienced lawyers in the Los Angeles area, it is not disputed that neither counsel had much experience with ground water litigation and that the rates requested should be reduced to reflect that fact. The counsel did have expertise in class action law and practice but not water law and have had to consult with other lawyers having that expertise as well as conduct legal research. Counsel became involved in the case in middle 2008, and while they seek a high level of fees for the entire 8 years, the court concludes that rates fell in 2008 and gradually rose from that reduced level over the period of the last eight years.

In 2008, as the entire country entered into what has been called "the Great Recession," law firms were dissolving, some were declaring bankruptcy, lawyers were being laid off or

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fired, salaries reduced, clients were looking for firms offering lower fees, and many lawyers were leaving the profession. Based on the observations of the court, averaging the hourly rate acknowledging these factors, along with rising fees more recently, the court will approve a fee rate for each counsel of \$500.00 hourly. When counsel volunteer for cases such as this there also must be an element of *pro bono publico* involved, especially when the obligor who will pay the fees is a public entity supported by tax dollars. As officers of the court, lawyers are not (or should not be) mere mercenaries.

The payment to paralegals is an obligation of the lawyers who engage them and their hourly rates are reasonable - nor have counsel disputed them except to argue that the paralegals should have done more of the work and the lawyers less.

OBJECTIONS TO DETAILED BILLINGS OF THE WOOD CLASS LAWYERS

As summarized above, the PWS argue that the attorneys engaged in block billing, double teamed unnecessarily, engaged in settlement negotiations with land owner parties, billed for work they did not perform, unnecessarily performed legal research on issues they should have been familiar with, performed work that was clerical and administrative in nature, and engaged in work after the Wood Class Settlement that was not necessary.

Credible evidence by way of sworn declarations established a presumption that work billed for was necessary. Work and time spent to assist in the global settlement involving other than the Wood Class Claims was necessary to ensure that the Wood Class settlement could be approved (it was contingent on the Global Settlement). The limited billing for two attorneys' time appears appropriate given the nature of the case. The court notes that rarely were other counsel without assistance from other associate lawyers. Most of the so-called block billing broke out the work done by items, reflecting time spent on each. The court is satisfied that work billed for was performed and was necessary. Retrospectively attempting to evaluate whether work was truly necessary or could have been done differently is an impossible task absent clear and incontrovertible evidence (of which there is none here). The court has presided over this case since 2005 and has observed the work of Wood Class counsel from the inception

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of the class and is satisfied that the hours claimed were reasonably spent on the case for those 8 years.

TOTAL FEES

The court declines to apply a multiplier to the fee award and finds that fees should be based upon a rate of \$500.00 hourly.

As a prevailing party and only a partial contributor to the public benefit under CCP 1021.5, the court makes the following fee award:

Michael McLachlan: 4184.9 hours @ \$500 per hour for a total fee award of \$ 2,092,450. attorneys fees;

Daniel O'Leary: 353.9 hours @\$500 per hour for a total fee award of \$176,950.;

Total Paralegal fees of \$80,224.

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COSTS

It is generally agreed that costs are not available under CCP 1021.5. However, costs are available to a prevailing party under the provisions of CCP 1033 et seq. Moreover, the stipulation for judgment provides that the issue of the amount of fees and costs is left to the discretion of the court or the agreement of the parties. See the Stipulation for Entry of Judgment and Physical Solution, Paragraphs 11 and 12.

Counsel for the Wood Class is directed to file a Memorandum of Costs under the provisions of the Code of Civil procedure. The court will hear any motions to tax costs or other challenges to the cost bill in accord with the Code of Civil Procedure and the Rules of Court..

The allocation of fees between the public water producers should be apportioned according to percentages of water received as a result of the global settlement and the

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judgment. The fee and cost award shall be several against all public water producers save the parties who have previously settled and paid fees and costs. Moreover, any public water producer may opt to pay such fees or costs over a ten year period in accord with the law.

RICHARD WOOD INCENTIVE

As an incentive award, Mr. Wood is granted 2 additional acre feet a year for a yearly total under the judgment of 5 acre feet a year, consistent with the terms of the stipulation of the parties.

WILLIS CLASS FEE REQUEST

Counsel for the Willis Class now seeks additional fees and costs from the PWS (and the Land Owner parties) based on its post 2011 settlement participation.

The Willis Class as non-water producers settled the class action and the PWS Claims with the only parties who made a claim against the class (the PWS who sought prescriptive rights and other relief) in 2011. The settlement preserved the non-pumper class rights to a correlative share of 85% (which is apparently less the 15% amount attributed to the PWS claim of prescription) of the federally adjusted safe yield of the aquifer along with their agreement to be bound by a court created physical solution. The Willis Class participation through the time of the stipulated settlement in 2011 was beneficial to the public interest and Counsel for the class received attorney's fees and costs in excess of \$1,000,000 for such representation and public benefit.

Counsel for the WILLIS CLASS failed to establish post 2011 stipulation/judgment benefit to the public under CCP 1021.5 or to its class members by their involvement in the proceedings after that date. Moreover, it was not a prevailing party in any proceedings post the 2011 judgment.

Contrary to the claims of counsel,

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1. None of the work of counsel for the class materially benefitted or positively affected any part of the Global Settlement and Judgment- the rights of the Willis class were the rights of all non-pumpers and were never threatened after the stipulation in 2011.
 2. The class correlative rights were as to 85% of the federally adjusted safe yield which meant that they were immune from prescription by the only party who had such a claim-i.e., the PWS, which immunity the class obtained in the 2011 settlement by relinquishing 15% of its otherwise correlative rights basin-wide to the PWS.
 3. The class had stipulated to be bound by whatever physical solution as nonpumpers the court might establish to resolve aquifer overdraft.
 4. The overlying owners were not an adverse party to the claims of the Willis Class and in fact there were no claims by the class as non-pumpers to an allocation of specific water production. The findings of the court in trial Phases 3 and 4 established that there was no surplus from which any new pumping could occur without causing further detriment to the aquifer, so that it was necessary that the court curtail and reduce existing pumping by all water producers, public and private, until the aquifer was in balance. As a matter of law the court could not take water rights from a water producing entity whose use was reasonable and beneficial and give those rights to a previously non pumping party. And, the Willis Class never requested an allocable quantity of water to be pumped.
 5. The Willis Class was unsuccessful in every request and application to the court. As the court stated frequently to all parties, on the record, if the parties who were water producers failed to come up with a solution, the court would be required to impose such on an involuntary basis- but that could not affect the stipulated relationship between the PWS and the Willis Class;
 6. Willis Class participation was neither mandatory nor appropriate beyond ensuring that its stipulation and judgment would be incorporated into the final judgment.
- However, no party ever objected or made any attempt to modify the stipulation and judgment or to prevent its enforcement and the PWS uniformly always requested

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incorporation of the Willis Class judgment into the Global settlement and judgment without modification.

7. There was no need for the class to be present for the court to make reasonable and beneficial use findings as to the water producers and users, including overlying owners, who pumped and produced water, noting that no claims were made against the class' correlative rights. There were no new claims or causes of action which would require the defense by class counsel.

8. All the benefits to the public and the class occurred in spite of the misplaced opposition of the class counsel to the physical solution which the class counsel now claims to have been at least a partial cause.

9. Class did not prevail and has already been paid for fees for all work prior to the 2011 stipulation and judgment.

10. The only parties against whom the court could award fees and or costs to the Willis Class are the PWS but there being no adversity in fact or law between the class and the PWS, such remedy is unavailable. Moreover, by the terms of the stipulation, the class agreed not to seek further fees and or costs from the PWS except under three very specific circumstances as specified in Paragraph VIID of the stipulation for settlement, none of which are applicable here:

- a) If counsel was ordered to participate in the proceedings;
- b) If counsel engaged in reasonable efforts to defend against new claims or causes of action made against the class;
- c) Enforcement of a public right under CCP 1021.5.

The court did not require an appearance by the class in any phase of the trial after the stipulation in 2011.

The court makes the further following findings:

1. The class was not a prevailing party on any major issue;
2. The Court denied pre-participation enforcement fees when motion for such was made given the absence of good cause;

3. There was no legal adversity between the Willis Class and the PWS after the judgment was entered in 2011, having totally settled the declaratory relief claims of the class and eliminating any further claims of prescription against the class members by the PWS. Nor was there legal adversity between Willis Class and the Landowners or any other parties in the case since there were no claims by the landowners, or others, against the ownership interest of the class members.
4. All substantive objections made by the class during the Phase 6 proceedings were overruled as being without merit or foreclosed by the stipulation and judgment;
5. No competent evidence established that the proposed physical solution endangered any rights of Willis Class members nor was there any competent or credible evidence that any member of the class was prevented from exercising any rights under the stipulations or harmed by the physical solution;

There was no basis for an incentive award for the new class representative based on the presentation of any evidence offered by members of the class.

The court therefore denies the right to fees and costs as claimed by counsel for the Willis Class.


The court also denies any incentive to the current class representative. While he did testify during the physical solution prove up, his testimony was unnecessary to any issue the court was required to decide. His primary purpose seems to have been to oppose the physical solution based on a hypothetical use of his owned real property.

WOOD CLASS REQUEST FOR ORDER SETTING PARAMETERS FOR TERMINATION OF APPOINTMENT AS CLASS COUNSEL AND REQUEST FOR ORDER ON ADMINISTRATOR FEE PAYMENT.

As reflected in the minutes of the court, the judgment is not final, there is no request to withdraw at this time, and the court denies the request without prejudice. The request for payment of administrator fees was taken off calendar without prejudice.

SO ORDERED.

Dated: April 25, 2016



Hon. Jack Komar (Ret.)
Judge of the Superior Court

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EXHIBIT 2

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FILED
Superior Court of California
County of Los Angeles

JUN 28 2016

Sherri R. Carter, Executive Officer/Clerk
By [Signature] Deputy
E. Lopez

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

Coordinated Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES <hr/> RICHARD A. WOOD, on behalf of himself and all others similarly situated <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ALTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; MOJAVE PUBLIC UTILITY DISTRICT; and DOES 1 through 1,000; <p style="text-align: center;">Defendants.</p>) Judicial Council Coordination No. 4408) [Assigned to the Honorable Jack Komar]) CASE No. BC 391869) (Proposed) ORDER CLARIFYING ORDER) AFTER HEARING ON APRIL 1, 2016
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07/05/2016

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The Court's Order of April 1, 2016 (the "Order"), addressing in part, Richard Wood's Motion for Award of Attorneys' Fees, Costs and Incentive Award, is clarified as follows:

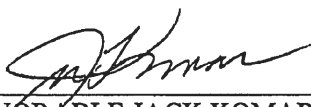
The Order does not apply to Boron Community Services District or West Valley Water District. Further, California Water Service Company is not a public entity and, thus, reference in the Order to payment over a ten year period in accord with the law is not applicable to this defendant.

The allocation of attorneys' fees and costs are allocated among the defendants as follows:

Los Angeles County Waterworks District No. 40:	74.76%
California Water Service Company:	3.78%
Littlerock Creek Irrigation District:	8.77%
Quartz Hill Water District:	6.21%
Palm Ranch Irrigation District:	5.13%
North Edward Water District:	0.54%
Desert Lake Community Services District	0.81%

Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Quartz Hill Water District, Palm Ranch Irrigation District, North Edward Water District and Desert Lake Community Services District shall be entitled to pay this judgment in 10 equal payments over a period of 10 years.

DATED: 6-28-16


HONORABLE JACK KOMAR
Judge of the Superior Court

07/05/2016

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

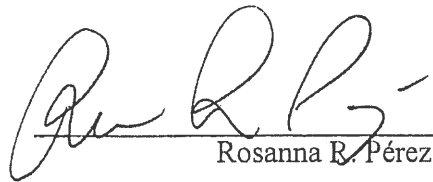
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 12, 2016, I served the following document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S NOTICE OF ELECTION AND HEARING; MEMORANDUM OF POINTS AND AUTHORITIES RE ELECTION FOR PERIODIC PAYMENTS; DECLARATION OF SARAH CHRISTOPHER FOLEY



BY ELECTRONIC TRANSMISSION. I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the www.scefiling.org electronic service list for the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is Rosanna.perez@bbklaw.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 12, 2016, at Los Angeles, California.


Rosanna R. Pérez

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LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

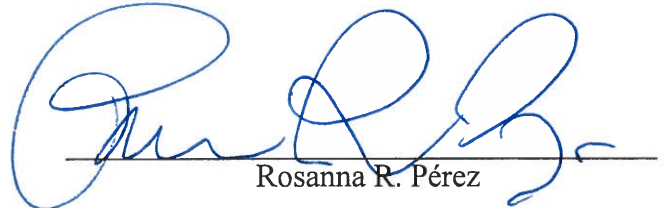
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 31, 2016, I served the following document(s):

REPLY IN SUPPORT OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S NOTICE OF ELECTION AND HEARING; SUPPLEMENTAL DECLARATION OF SARAH CHRISTOPHER FOLEY



BY ELECTRONIC TRANSMISSION. I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the www.scefiling.org electronic service list for the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is Rosanna.perez@bbklaw.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 31, 2016, at Los Angeles, California.



Rosanna R. Pérez

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