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10/5/2016

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12 Attorneys for Plaintiff Richard Wood and the Class

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**

15 Coordination Proceeding  
16 Special Title (Rule 1550(b))

17 ANTELOPE VALLEY GROUNDWATER  
18 CASES

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

22 Plaintiff,

23 v.

24 LOS ANGELES COUNTY  
25 WATERWORKS DISTRICT NO. 40; et  
26 al.

27 Defendants.

Judicial Council Coordination  
Proceeding No. 4408  
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**OPPOSITION TO SECOND  
NOTICE OF ELECTION UNDER  
GOVERNMENT CODE SECTION  
984; DECLARATION OF  
MICHAEL D. MCLACHLAN**

Location: Room 222 (Mosk)  
Date: October 18, 2016  
Time: 9:00 a.m.

1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 (“District 40”) has filed a  
3 second Notice of Election and hearing (“Second Notice of Election”) pursuant to  
4 Government Code Section 984. This Second Notice of Election is improper for  
5 numerous reasons: (1) it is an improper motion for reconsideration under C.C.P.  
6 section 1008; (2) it is untimely filed under Rule of Court 3.1802; (3) as the Court  
7 has previously ruled, Section 984 does not apply and an order awarding  
8 attorneys’ fees, which are costs; and (4) Section 984 imposes a monetary  
9 threshold that is in excess of amount at issue.

10 But if the Court were to issue an order under Section 984, it should not be  
11 for any more than three years. District 40 has made no case for anything longer,  
12 and the equities strongly disfavor a lengthy payment scheme. The payment  
13 schedule is an item left to the discretion of the Court under Section 984(d)  
14 (“period of time to be determined by the Court”).

15 Also of note here is the requirement that the Court must make any order  
16 for periodic payments at the hearing on the Notice of Election under Section 984.  
17 (C.R.C. 3.1804.)

18 **II. FACTUAL BACKGROUND**

19 On January 27, 2016, Plaintiff Richard Wood (“Plaintiff”) filed a motion for  
20 award of attorneys’ fees, cost and incentive award. On April 25, 2016, the Court  
21 issued its “Order After Hearing on April 1, 2016” in which awarded a total of  
22 \$2,349,624 in attorneys’ fees, at \$500 per hour – a rate well below market rates.  
23 (Foley Decl., Ex. 1.) The Court served notice of entry of this order on July 15,  
24 2016. (McLachlan Decl., Ex. A.) On August 12, 2016, District 40 electronically  
25 served its first Notice of Election under Section 984 (“First Notice of Election”).  
26 (McLachlan Decl., Ex. B.) The hearing on was held on September 8, 2016, at  
27 which time the Court denied it. (McLachlan Decl., Ex. C (Minute Order of  
28 September 8, 2016).) On September 20, 2016, District 40 filed is Second Notice

1 of Election, which is again directed at the Order After Hearing on April 1, 2016.  
2 (Dunn Decl., Ex. 1.)

3 In 2011, District 40 filed a Notice of Election with regard to the Willis  
4 Class, in which it stated to the Court in reference to the Section 984 monetary  
5 election threshold, as follows:

6 Government Code Section 984 set the threshold for January 1, 1996 but  
7 implements a 5% increase on January [sic] of each year. Thus, the  
8 threshold amount for 2011 is \$1,507,222.94.

9 (McLachlan Decl., Ex. D, fn. 1.) In 2016, District 40 has a fee order that exceeds  
10 the current threshold of \$1,923,640.84,<sup>1</sup> so it has taken the very same form  
11 “Notice of Election” it used in 2011, and replaced the first footnote so that the  
12 threshold in 2016 is now \$1,450,000. (Second Notice of Election, p.1, fn. 1.)

13 In its Order after Hearing of July 28, 2016, the Court refused to exercise its  
14 discretion under Section 1033.5 (c)(4) to award a host of costs – including court  
15 hearing transcripts, as well as hotel and travel expenses for numerous hearings  
16 held in San Jose (at the Court’s express request) and the Scalaminini depositions  
17 in Northern California, trial exhibits, among other costs – all of which were  
18 reasonable and necessary expenses of the same type awarded to Willis Class  
19 counsel in 2011. (Dunn Decl., Ex. 3.) In that Order, the Court taxed  
20 approximately \$20,000 in valid and appropriate costs, and then, opted to reward  
21 these non-settling defendants by gratuitously awarding them an additional credit  
22 of \$17,038 for costs received from other settling defendants in 2013. (*Id.* at pp. 5-

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24  
25 <sup>1</sup> The computation of the current threshold under Section 984(d) is fairly  
26 straightforward, and requires the multiplication of the base amount of \$725,000  
27 by 1.05 for a period of twenty years. There are a number of free calculator’s on  
28 the internet that will quickly preform the calculation, including:  
<http://www.calculatorsoup.com/calculators/financial/compound-interest-calculator.php>

1 6.) And again, in this Order, the Court applied a substantially below-market  
2 hourly rate of \$500 per hour. (*Id.* at 7:12.)

3 The Court has also attempted to give District 40, without any formal or  
4 informal request whatsoever, a ten year payment plan under Government Code  
5 section 970.6. (*Id.* at 7:20-23.)

### 6 **III. ARGUMENT**

#### 7 **A. This Application is Barred by C.C.P. Section 1008.**

8 The Court has already denied the First Notice of Election as to the Order  
9 After Hearing of April 1, 2016. Absent a showing of “new or different facts,  
10 circumstances or law,” the Court does not have jurisdiction to entertain a second  
11 hearing on the matter. (C.C.P. § 1008(e); *Garcia v. Hejmadi* (1997) 58  
12 Cal.App.4<sup>th</sup> 674, 691.) This is true of the Second Notice of Election because it  
13 seeks to challenge an order that resulted from an application for such order made  
14 by formal request. (*Sorenson v. Sup. Court* (2013) 219 Cal.App.4<sup>th</sup> 409, 420-21.)  
15 Furthermore, Section 1008(b) requires the party making the subsequent  
16 application to set forth by affidavit the new facts, circumstances or law. The  
17 subsequent application cannot be granted when a party fails to comply with this  
18 requirement. (*Film Packages v. Branywine Film Prods.*, (1987) 193 Cal.App.3d  
19 824, 827.)

20 Here, District 40 has failed to include a declaration explaining how this  
21 Second Notice of Election is a proper motion for reconsideration. Hence, it must  
22 be denied. There are no new facts, circumstances or law that take this Second  
23 Notice of Election outside the scope of Section 1008.

#### 24 **B. This Election is Untimely.**

25 California Rule of Court 3.1802(a) provides:

26 A public entity electing to pay a judgment against it by periodic  
27 payments under Government Code section 984 must serve and file a  
28 notice of election stipulating to the terms of such payments, or a notice  
of hearing on such terms, by the earlier of:

- 1 (1) 30 days after the clerk sends, or a party serves, notice of entry of  
2 judgment; or  
3 (2) 60 days after entry of judgment.

4 Here, the clerk electronically served notice of entry of the “Order After  
5 Hearing of April 1, 2016” on July 15, 2016. (McLachlan Decl., Ex. A.) Thereafter,  
6 District 40 had thirty days to file and serve its Notice of Election with regard to  
7 that order. Because the Second Notice of Election was served (and presumably  
8 filed) on September 20, 2016, it is untimely as to that order. <sup>2</sup>

9 **C. Government Code Section 984 Is Not Applicable Here**  
10 **Because This Is Not a Tort Claims Action Judgment.**

11 District 40 cannot make an election under Government Code section 984  
12 because the obligation to pay attorneys’ fees is not a “judgment on a tort claims,”  
13 but rather just costs of suit. (Gov. Code § 984(d).) District 40 freely admits the  
14 attorneys’ fees are “solely costs of suit.” (Second Notice of Election, FN2, 3:27-  
15 28.) Government Code section 984 states:

16 If, after making any deductions pursuant to Section 985 of the  
17 Government Code, **the judgment on a tort claims action** against a  
18 public entity that is not insured is greater than five hundred  
19 thousand dollars (\$500,000), the public entity may elect to pay the  
20 judgment in periodic payments as provided in this subdivision.

21 Effective January 1, 1990, the five hundred thousand dollar  
22 (\$500,000) threshold amount shall be five hundred fifty thousand  
23 dollars (\$550,000). Effective January 1, 1992, that amount shall be  
24 six hundred thousand dollars (\$600,000). Effective January 1, 1994,  
25 that amount shall be six hundred fifty thousand dollars (\$650,000).  
26 Effective January 1, 1996, that amount shall be seven hundred  
27 twenty-five thousand dollars (\$725,000), and thereafter, the seven  
28 hundred twenty-five thousand dollar (\$725,000) amount shall be  
increased 5 percent on January 1 of each year.

After any amounts reimbursed pursuant to Section 985, the

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26 <sup>2</sup> The same is also true of the Order Clarifying Order after Hearing on April  
27 1, 2016, which was entered on June 28, 2016. (Dunn Decl., ¶ 3, Ex. 2.) That  
28 order does not itself award any fees or costs, but if it did, a notice of election as to  
that order would be untimely after August 27, 2016. (C.R.C. 3.1802(a)(2).)

1 judgment-debtor shall pay 50 percent of the remainder immediately,  
2 and the other 50 percent of the remainder shall be paid over a period  
3 of time to be determined by the court, not to exceed 10 years or the  
4 length of the judgment-creditor's remaining life expectancy at the  
5 time the judgment is entered, whichever is less.

(Gov. Code § 984(d) (emphasis added).)

6 The fee order in question is not a tort claims action, and thus falls outside  
7 the scope of Section 984. The California tort claims statutes are found a few  
8 sections before Section 984 in the Government Code, at sections 900 *et seq.* The  
9 claims act requirements are only applicable to claims for money damages, not to  
10 an award of attorneys' fees. (Gov. Code § 905; *Lozada v. City and County of San*  
11 *Francisco* (2006) 145 Cal.App.4<sup>th</sup> 1139, 1160.)<sup>3</sup> The Court in *Lozada* held:

12 At the outset, we recognize that attorney fees authorized by [statute] are  
13 not subject to the claim filing requirement. [Defendant] acknowledges that  
14 **the recovery of attorney fees such as those sought here are not a**  
15 **separate item of monetary relief or damages to which the**  
16 **Government Claims Act applies. When authorized by statute,**  
17 **award of attorney fees are defined as costs, not damages.**  
18 [Citation.]

19 (*Lozada* at 1160 (emphasis added), citing C.C.P. § 1033.5(a)(10)(B) and *Elton v.*  
20 *Anheuser-Busch Beverage Group, Inc.* (1996) 50 Cal.App.4<sup>th</sup> 1301, 1308; *see also*  
21 *Rony v. Costa* (2012) 210 Cal.App.4<sup>th</sup> 746, 758 (statutory attorneys' fees are not  
22 "damages").)<sup>4</sup>

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23 <sup>3</sup> In denying the First Notice of Election, the Court stated on the record that  
24 cited to the *Lozada* decision as dispositive, stating that "Costs are costs. And they  
25 include attorney's fees under a variety of circumstances." (McLachlan Decl., Ex.  
26 G (Hearing Transcript of September 8, 2016) 33:11-13.)

27 <sup>4</sup> The holding in this line of cases is consistent with the policy of the state  
28 tort claims act. The California Supreme Court has stated that the policy behind  
the tort claims act is to "facilitate investigation and possible settlement." (*City of*  
*Stockton v. Sup. Court* (2007) 42 Cal.4<sup>th</sup> 730, 741.) Since the potential claim for  
statutory fees is entirely contingent at the outset of litigation, it does not exist at  
that time.

1 District 40 may attempt to argue that the complaint contained tort claims,<sup>5</sup>  
2 but as the Court is aware, those claims were never litigated and did not result in a  
3 judgment. It is undisputed that Plaintiff and the class did not obtain a monetary  
4 recovery, and that Judgment and Physical Solution is entirely equitable. Hence,  
5 the only orders of a monetary nature are the various orders pertaining to  
6 attorneys' fees and costs. For this reason, and because District 40 also fails to  
7 meet the monetary threshold, as discussed below, it is not entitled to periodic  
8 payment under Section 984.

9 **D. The Amount At Issue Is Below the Monetary Threshold.**

10 As set forth above, a public agency can invoke Government Code section  
11 984(d) only if the amount of the judgment (in this case a post-judgment order),  
12 exceeds the statutorily mandated threshold. Hence, even if this was a tort claims  
13 judgment, which it is not, the obligation in question would have to exceed the  
14 amount set forth in the statute, which is not the case here. District 40 calculates  
15 its share of the all of the fee and cost orders at \$1,895,376 (Second Notice of  
16 Election, 1:21); however, the statutory threshold is only \$1,923,640 in 2016.

17 The relevant statutory language states that “[e]ffective January 1, 1996,  
18 that amount shall be seven hundred twenty-five thousand dollars (\$725,000),  
19 and thereafter, the seven hundred twenty-five thousand dollar (\$725,000)  
20 amount shall be increased 5 percent on January 1 of each year.” In 2011, District

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21  
22 <sup>5</sup> Such an argument would of course open up other contrary arguments and  
23 issues, including the fact that the complaint also pleads two takings claims, which  
24 are also exempt from the tort claims act. (Gov. Code § 905.1.) While those claims  
25 were also not litigated, and were not the basis of the judgment in question, an  
26 assertion that the Complaint is tort-based also necessarily means that it is equally  
27 based in takings. And if that is the case for purposes of Section 984, then it  
28 cannot be so just in part. If the judgment is then equally part takings in nature,  
should the governing interest rates not be statutory, but higher rates as mandated  
by applicable Constitutional principles? (See *Customer Co. v. City of Sacramento*  
(1995) 10 Cal.4<sup>th</sup> 368, 390.)

1 40 recognized the plain meaning of this language when it stated to this Court,  
2 after the Willis fee award:

3 Government Code Section 984 set the threshold for January 1, 1996 but  
4 implements a 5% increase on January [sic] of each year. Thus, the  
5 threshold amount for 2011 is \$1,507,222.94.

6 (McLachlan Decl., Ex. D, fn. 1.) This is accurate and consistent with the language  
7 of the statute. However, today, District 40 has a fee and cost order that does not  
8 exceed the current threshold of \$1,923,640.84, so it has taken the very same form  
9 “Notice of Election” it used in 2011, and replaced the first footnote so that the  
10 threshold in 2016 is now \$1,450,000. (Notice of Election, p.1, fn. 1.) The  
11 implication of this calculation is that the 5% annual increase is not really 5%, it is  
12 fixed amount of \$36,250 per year.

13 If District 40’s reading of the threshold language were accurate, there  
14 would not be a 5% increase in any year after 1996. In fact, using District 40’s  
15 number, the increase this year would only be 2.5%.<sup>6</sup> If the legislature wished that  
16 to be the case, it could have and would have specified the sum of \$36,250 per  
17 year rather than providing for a 5% increase each year.

18 The other problem with District 40’s argument here is that it has argued  
19 two inconsistent positions in the same action in an attempt to promote its current  
20 interests. No explanation has been given for this, so the Court should seriously  
21 consider the imposition of a judicial estoppel.

22 ‘Judicial estoppel, sometimes referred to as the doctrine of  
23 preclusion of inconsistent positions, prevents a party from “asserting a  
24 position in a legal proceeding that is contrary to a position previously taken  
25 in the same or some earlier proceeding. ...”

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26  
27 <sup>6</sup> Using District 40’s fixed increase of \$36,250 per year, and dividing that  
28 by \$1,450,000, yields a 2.5 percent increase this year. In the following year, the  
increase would drop to 2.4 percent, and so on.



1 [C]ourts have uniformly recognized that [the] purpose [of judicial  
2 estoppel] is ‘to protect the integrity of the judicial process.’ (New  
3 Hampshire v. Maine (2001) 532 U.S. 742, 749 [149 L. Ed. 2d 968, 121 S. Ct.  
4 1808, 1814] (New Hampshire); accord, State Water Resources Control Bd.  
5 Cases (2006) 136 Cal.App.4th 674, 826–827 [39 Cal. Rptr. 3d 189];  
6 Jackson, supra, 60 Cal.App.4th at p. 181.) The doctrine is “‘aimed at  
7 preventing fraud on the courts.’ ... [It] “‘is invoked to prevent a party from  
8 changing its position over the course of judicial proceedings when such  
9 positional changes have an adverse impact on the judicial process ... . “The  
10 policies underlying preclusion of inconsistent positions are ‘general  
11 consideration[s] of the orderly administration of justice and regard for the  
12 dignity of judicial proceedings.’ ” ... Judicial estoppel is “intended to  
13 protect against a litigant playing ‘fast and loose with the courts.’ ” ” ... “It  
14 seems patently wrong to allow a person to abuse the judicial process by  
15 first [advocating] one position, and later, if it becomes beneficial, to assert  
16 the opposite.”” (M. Perez Co., Inc. v. Base Camp Condominiums Assn. No.  
17 One (2003) 111 Cal.App.4th 456, 463 [3 Cal. Rptr. 3d 563].)

18 (*Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 130-31.)

19 The doctrine of judicial estoppel applies when: “(1) the same party has  
20 taken two positions; (2) the positions were taken in judicial or quasi-judicial  
21 administrative proceedings; (3) the party was successful in asserting the first  
22 position (i.e., the tribunal adopted the position or accepted it as true); (4) the two  
23 positions are totally inconsistent; and (5) the first position was not taken as a  
24 result of ignorance, fraud, or mistake.” (*Levin v. Ligon* (2006) 140 Cal.App.4th  
25 1456, 1469.) All of these factors are met or, as with the fifth factor, appear to be  
26 met. District 40’s two positions are inconsistent and it was successful on its  
27 original position. (McLachlan Decl., Ex. E.) At a minimum, it is incumbent on  
28 District 40 to explain why its changed position is the result of ignorance or  
mistake.

In any event, under the language of Section 984(d), the threshold amount  
required for an election in 2016 is \$1,923,640.84. District 40’s several obligation  
under all the orders – assuming they could be aggregated, which they cannot – is  
only \$1,895,376. (Second Notice of Election, 1:21.) Hence, even if the attorneys’

1 fees owed were damages under the tort claims act, the amount of the obligation is  
2 not large enough to trigger the right to an election for periodic payments.

3 **E. If The Court Were to Order Periodic Payments Under**  
4 **Section 984, Equity Dictates That It Not Exceed A Period of**  
5 **Three Years.**

6 Section 984 provides that the payment structure “shall be over a period of  
7 time to be determined by the court, not to exceed 10 years or [the judgment  
8 creditor’s life expectancy] . . .” (Gov. Code § 984(d).) Hence, the term of years is  
9 set at the discretion of the Court. District 40 has offered no evidence of any  
10 financial hardship, nor even asserted that any exists.<sup>7</sup> On the other hand, there is  
11 substantial evidence of the financial hardship this litigation has caused class  
12 counsel. (See Declarations of Michael D. McLachlan (served January 1, 2014,  
13 January 27, 2016, March 11, 2016, March 25, 2016, and June 27, 2016), the  
14 Declarations of Daniel M. O’Leary (January 27, 2016) which are incorporated  
15 herein by reference.)

16 That hardship has only been exacerbated by the Court’s refusal to base the  
17 fee award on current market rates, or to apply a multiplier, as well as the Court’s  
18 choice to tax tens of thousands of dollars in recoverable costs. (McLachlan Decl.,  
19 ¶¶ 9-13.) This situation is certainly enough for Class Counsel to fully endorse  
20 Justice Lui’s recent suggestion that Class Counsel should gain approval of the  
21 terms of their compensation at the start of the litigation. (*Laffitte v. Robert Half*  
22 *Int’l* (August 11, 2016) 2016 Cal.LEXIS 6387 \*46-47.)

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24  
25 <sup>7</sup> District 40 has informed Class Counsel and the Court that it has decided  
26 not to pursue relief under Government Code Section 970.6. (McLachlan Decl., ¶  
27 13, Ex. F.) Section 970.6 is the “hardship” section. The fact that District 40 had  
28 decided not to pursue that avenue is very reliable proof that the fee and costs  
awards do not pose a financial hardship to District 40.

1           Ordering a payment plan for over two-thirds of the attorney fee award  
2 grossly compounds the hardship on Class Counsel, and grossly undermines the  
3 economic value of the fee award. After a two to five year appellate process, a ten  
4 year payment plan puts final payments beyond 2030. Furthermore, such an  
5 unnecessary order would also provide a great disincentive to any counsel from  
6 take these types of public interest matters in the future. (*Perdue v. Kenny A. ex*  
7 *rel. Winn* (2010) 559 U.S. 542, 550-52; *Kelly v. Wengler* (9<sup>th</sup> Cir. 2016) 822 F.3d  
8 1085, 2016 U.S.App.LEXIS 9381 \*39-41 (discussing difficulty in attracting  
9 counsel to take on important but undesirable cases); *Graham v. DaimlerChrysler*  
10 *Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 580; *see also* Richard A. Pearl, *Cal. Attorney Fee*  
11 *Awards*, at § 10.67 (discussing public service element in increasing lodestar).)

12           The Court should not order a payment plan, and certainly not without  
13 District 40 establishing some sort of financial need for one.

14 **IV. CONCLUSION**

15           For the foregoing reasons, the Court should not order the periodic  
16 payments under Section 984.

17  
18 DATED: October 4, 2016

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

19  
20  
21 By: \_\_\_\_\_  
22 MICHAEL D. MCLACHLAN  
23 Attorneys for Plaintiff and the Class  
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1           9.     While the case clearly has been of great public benefit, the personal  
2 cost to me has been incredibly severe. I have for a many years been able to get  
3 regularly hourly work at rates of \$500 per hour and substantially greater. I have  
4 historically done a limited amount of this work because I prefer representing the  
5 little guy.

6           10.    A large portion of costs (over \$40,000) I have advanced in this  
7 matter are currently on my primary line of credit, which due to the contingent  
8 nature of the matters I finance using that line, carries interest at 12.5% per year.  
9 In addition to costs the Court refused to award, I am out a very large sum or non-  
10 recoverable interest, spent financing the County of Los Angeles without  
11 repayment.

12           11.    No sensible lawyer would ever take on a contingent matter where he  
13 will not get paid for 8 (and potentially as many as 24) years when he or she could  
14 do hourly work and get paid every month. I can say without hesitation that the  
15 single greatest mistake in my career to date (including several cases lost) was  
16 taking on this matter. I would never again take on a public interest matter  
17 without a written agreement up front as to how I would be compensated.

18           12.    It is an extreme hardship, if not a complete financial impossibility  
19 for me, my practice, and my family, to wait as long as twelve to fifteen years to be  
20 paid for this work.

21           13.    Jeffrey Dunn has informed me in writing that his client will not be  
22 moving under Government Code Section 970.6, which he has also apparently  
23 communicated to the Court. (**Exhibit F.**) Section 970.6 is the “hardship”  
24 section. The fact that District 40 had decided not to pursue that avenue is very  
25 reliable proof that the fee and costs awards do not pose a financial hardship to  
26 District 40.

27           14.    Attached as **Exhibit G** is a true and correct copy of a portion of the  
28 hearing transcript of September 8, 2016.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4<sup>th</sup> day of October, 2016, at Hermosa Beach, California.

---

Michael D. McLachlan

# **Exhibit A**

## Mike McLachlan

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**From:** efilinmail@tylerhost.net  
**Sent:** Friday, July 15, 2016 4:31 PM  
**To:** Mike McLachlan  
**Subject:** Notification of Service for Case No. 2005-1-CV-049053 (ANTELOPE VALLEY GROUNDWATER LITIGATION (JCCP 4408))

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

## Notification of Service

Envelope Number: **173377**

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Filing Details	
<b>Case Number</b>	2005-1-CV-049053
<b>Case Style</b>	ANTELOPE VALLEY GROUNDWATER LITIGATION (JCCP 4408)
<b>Date/Time Submitted</b>	7/15/2016 4:25:57 PM PDT
<b>Filing Type</b>	Order
<b>Filed By</b>	Rowena Walker
<b>Service Contacts</b>	Other Service Contacts not associated with a party on the case:  Michael McLachlan ( <a href="mailto:mike@mclachlan-law.com">mike@mclachlan-law.com</a> )  Jeffrey Dunn ( <a href="mailto:jeffrey.dunn@bbklaw.com">jeffrey.dunn@bbklaw.com</a> )  Wendy Wang ( <a href="mailto:wendy.wang@bbklaw.com">wendy.wang@bbklaw.com</a> )  June Ailin ( <a href="mailto:jailin@awattorneys.com">jailin@awattorneys.com</a> )  Douglas Evertz ( <a href="mailto:devertz@murphyevertz.com">devertz@murphyevertz.com</a> )  John Tootle ( <a href="mailto:jtootle@calwater.com">jtootle@calwater.com</a> )  Thomas Bunn ( <a href="mailto:tombunn@lagerlof.com">tombunn@lagerlof.com</a> )  Warren Wellen ( <a href="mailto:wwellen@counsel.lacounty.gov">wwellen@counsel.lacounty.gov</a> )  James Markman ( <a href="mailto:jmarkman@rwglaw.com">jmarkman@rwglaw.com</a> )  Keith Lemieux ( <a href="mailto:keith@lemieux-oneill.com">keith@lemieux-oneill.com</a> )



Joseph Hughes ([jhughes@kleinlaw.com](mailto:jhughes@kleinlaw.com))  
Ravi Patel ([rpatel@kleinlaw.com](mailto:rpatel@kleinlaw.com))  
Lee Leininger ([lee.leininger@usdoj.gov](mailto:lee.leininger@usdoj.gov))  
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# **Exhibit B**

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LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

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7 COUNTY OF LOS ANGELES  
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LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

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

15 ANTELOPE VALLEY GROUNDWATER  
16 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.<sup>1</sup> 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 <sup>1</sup> 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.)

1                    respective appeals<sup>2</sup>, 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     <sup>2</sup> 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**

**FILED**  
Superior Court of California  
County of Los Angeles

JUN 17 2016

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

RECEIVED

JUN 17 2016

FILING WINDOW

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

JCCP 4408  
Judicial Council Coordination  
Proceeding No. 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.

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## 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-Piñon 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-Piñon 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 Class 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

06/27/2016

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

06/27/2016

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,

06/27/2016

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

08/27/2016

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;

06/27/2016

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.

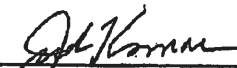
The court also denies any incentive to the current class representative. While he did testify during the physical solution prove up, his testimony was unnecessary to any issue the court was required to decide. His primary purpose seems to have been to oppose the physical solution based on a hypothetical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

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

06/27/2016

# **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 E. Lopez Deputy

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

Coordinated Proceeding )  
Special Title (Rule 1550(b)) ) **Judicial Council Coordination No. 4408**

ANTELOPE VALLEY GROUNDWATER )  
CASES ) [Assigned to the Honorable Jack Komar]

\_\_\_\_\_ ) ~~(Proposed)~~ **ORDER CLARIFYING ORDER**  
AFTER HEARING ON APRIL 1, 2016

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

Plaintiffs, )

vs. )

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; )

Defendants. )

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

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**PROOF OF SERVICE**

I, Rosanna R. Pérez, declare:

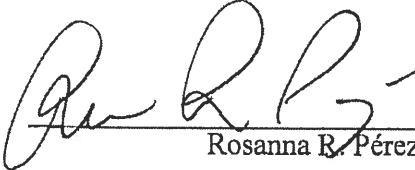
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 12, 2016, I served the following document(s):

**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](http://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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# **Exhibit C**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/08/16

DEPT. 222

HONORABLE Jack Komar

JUDGE P. BOYD

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

D. SALYER, CSR#4410

Reporter

10:00 am

JCCP4408

Plaintiff MICHAEL MCCLACHLAN (X)

Counsel JOHN TOOTLE (X)

COORDINATION PROCEEDING SPECIAL  
TITLE RULE (1550(b)

LELAND MCELHANEY (X)

Defendant WENDY WANG(X)

ANTELOPE VALLEY  
GROUNDWATER CASES

Counsel ERIC ROBINSON (X)

DEREK HOFFMAN (X)

\*ASSIGNED TO JUDGE JACK KOMAR

JEFFREY DUNN (X)

CHRISTOPHER SANDERS (X)

**NATURE OF PROCEEDINGS:**

CONFERENCE RE RULES AND PROCEDURES FOR THE ELECTION  
OF PERMANENT WATERMASTER BOARD;  
(c.f. 9-6-16 per order of 7-28-16)

Conference is held.

Motion for payments pursuant to Government Code 984 is  
argued and DENIED.

Motion for payments pursuant to Government Code 970.6  
is argued and continued to October 18, 2016 at  
9:00 a.m. in this department.

The court approves the rules and procedures for the  
Watermaster with the exception of 5.A, which will be  
further addressed at the October 18, 2016 hearing.

Counsel for the City of Los Angeles, Eric Robinson, is  
to prepare an order.

\*\*\*\*\*  
ADDITIONAL COUNSEL/PARTIES PRESENT VIA COURT CALL:

ALESHIRE & WYNDER LLP BY: NICOLAS PAPAJOHN  
BY: NICOLAS PAPAJOHN (X)

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
BY: MICHAEL FIFE (X)

CLIFFORD & BROWN

MINUTES ENTERED 09/08/16 COUNTY CLERK
---

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/08/16

DEPT. 222

HONORABLE Jack Komar

JUDGE P. BOYD

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

D. SALYER, CSR#4410

Reporter

10:00 am

JCCP4408

Plaintiff	MICHAEL MCCLACHLAN (X)
Counsel	JOHN TOOTLE (X)
	LELAND MCELHANEY (X)
Defendant	WENDY WANG (X)
Counsel	ERIC ROBINSON (X)
	DEREK HOFFMAN (X)
	JEFFREY DUNN (X)
	CHRISTOPHER SANDERS (X)

COORDINATION PROCEEDING SPECIAL  
TITLE RULE (1550(b))

ANTELOPE VALLEY  
GROUNDWATER CASES  
\*ASSIGNED TO JUDGE JACK KOMAR

**NATURE OF PROCEEDINGS:**

BY: RICHARD ZIMMER (X)

KRONICK, MOSKOVITZ, TIEDERMANN & GIRARD  
BY: STANLEY POWELL (X)

KUHS & PARKER  
BY: ROBERT KUHS (X)

LEBEAU-THELEN, LLP  
BY: BOB JOYCE (X)

LEMIEUX & O'NEILL  
BY: W. KEITH LEMIEUX, JR. (X)

MORRISON & FOERSTER LLP  
BY: WILLIAM SLOAN

MURPHY & EVERTZ LLP  
BY: DOUGLAS EVERTZ (X)

MUSICK, PEELER & GARRETT LLP  
BY: THEODORE A. CHESTER, JR. (X)

R.REX PARRIS LAW FIRM  
BY: ROBERT A. PARRIS (X)

U.S. DEPARTMENT OF JUSTICE  
BY: JAMES J. DUBOIS (X)

<b>MINUTES ENTERED</b> 09/08/16 <b>COUNTY CLERK</b>
---

# **Exhibit D**

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

1 BEST BEST & KRIEGER LLP  
ERIC L. GARNER, Bar No. 130665  
2 JEFFREY V. DUNN, Bar No. 131926  
STEFANIE D. HEDLUND, Bar No. 239787  
3 5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614  
4 TELEPHONE: (949) 263-2600  
FACSIMILE: (949) 260-0972  
5 Attorneys for Defendant  
LOS ANGELES COUNTY WATERWORKS  
6 DISTRICT NO. 40

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

7 OFFICE OF COUNTY COUNSEL  
COUNTY OF LOS ANGELES  
8 ANDREA ORDIN, Bar No. 38235  
COUNTY COUNSEL  
9 WARREN WELLEN, Bar No. 139152  
PRINCIPAL DEPUTY COUNTY COUNSEL  
10 500 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012  
11 TELEPHONE: (213) 974-8407  
TELECOPIER: (213) 687-7337  
12 Attorneys for Defendant LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES

17 ANTELOPE VALLEY  
GROUNDWATER CASES

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

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

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

Judicial Council Coordination 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  
NOTICE OF ELECTION AND HEARING;  
MEMORANDUM OF POINTS AND  
AUTHORITIES RE ELECTION FOR  
PERIODIC PAYMENTS

Hearing:

Date: November 15, 2011  
Time: 9:00 a.m.  
Dept.: 316 (Room 1515)

1 NOTICE OF ELECTION AND HEARING

2 TO ALL PARTIES AND ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Littlerock Creek Irrigation District, Palm Ranch Irrigation  
4 District, Desert Lake Community Services District, North Edwards Water District, and Los  
5 Angeles County Waterworks District No. 40 hereby elect to make periodic payments on the  
6 Amended Final Judgment Approving Willis Class Action Settlement pursuant to Government  
7 Code section 984 and California Rules of Court, Rule 3.1804.

8 PLEASE TAKE FURTHER NOTICE that on November 15, 2011, at 9:00 a.m., or on any  
9 other date and time determined by the Court, in Department 316, Room 1515 of the above titled  
10 court, located at 600 South Commonwealth Avenue, Los Angeles, a hearing will be held on Los  
11 Angeles County Waterworks District No. 40 to make periodic payments on the Amended Final  
12 Judgment Approving Willis Class Action Settlement.

13 This hearing request is made pursuant to Government Code section 984, California Rules  
14 of Court, Rule 3.1804, the attached Memorandum of Points and Authorities, and any other oral  
15 and documentary evidence presented at the hearing.

16 Dated: October 27, 2011

BEST BEST & KRIEGER LLP

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18  
19 By: 

20 ERIC L. GARNER  
21 JEFFREY V. DUNN  
22 STEFANIE D. HEDLUND  
23 Attorneys for Defendant  
24 LOS ANGELES COUNTY  
25 WATERWORKS DISTRICT NO. 40  
26  
27  
28

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3750 UNIVERSITY AVENUE, SUITE 400  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District,  
3 Palm Ranch Irrigation District, Desert Lake Community Services District, and North Edwards  
4 Water District hereby elect to make periodic payments under Government Code section 984 to  
5 pay the award in the Amended Final Judgment Approving Willis Class Action Settlement.

6 I. INTRODUCTION

7 Government Code section 984 allows a public entity to pay judgments in periodic  
8 payments by election if the judgment exceeds 1,507,222.94.<sup>1</sup> On September 22, 2011, this Court  
9 signed the Amended Final Judgment Approving Willis Class Action Settlement (“Willis  
10 Judgment”). The Willis Judgment requires the City of Palmdale, Palmdale Water District,  
11 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District,  
12 California Water Service Company, Rosamond Community Services District, Phelan Pinon Hills  
13 Community Services District, Desert Lake Community Services District, North Edwards Water  
14 District and Los Angeles County Waterworks District No. 40 to pay attorneys fees in the amount  
15 of \$2,075,174.18. (Willis Judgment, ¶ 21.) This amount exceeds the required threshold and  
16 qualifies for an election to make periodic payments.

17 II. ELECTION

18 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake  
19 Community Services District, North Edwards Water District, and Los Angeles County  
20 Waterworks District No. 40 hereby elect to make periodic payments in accordance with the  
21 applicable Government Code section and as outlined below:

- 22
- 50% (\$1,037,587.09) will be due within 15 days of a signed order;
  - 23 • The remaining 50% (\$1,037,587.09) will be paid in 10 annual installments;
  - 24 • Installment payments will be made on November 1st of each year, beginning in  
25 2012; and
  - 26 • The amount of each installment payment will be as follows:

27  
28 <sup>1</sup> Government Code section 984 set the threshold at \$725,000 for January 1, 1996 but implements a 5% increase on  
January of each year. Thus, the threshold amount for 2011 is \$1,507,222.94.

1 November 1, 2012: \$103,758.71  
2 November 1, 2013: \$103,758.71  
3 November 1, 2014: \$103,758.71  
4 November 1, 2015: \$103,758.71  
5 November 1, 2016: \$103,758.71  
6 November 1, 2017: \$103,758.71  
7 November 1, 2018: \$103,758.71  
8 November 1, 2019: \$103,758.71  
9 November 1, 2020: \$103,758.71  
10 November 1, 2021: \$103,758.70

- Interest, at the same rate as one-year United States Treasury bills as of January 1 of each year, will accrue to the unpaid balance of the judgment, and on each January 1 thereafter throughout the duration of the installment payments the interest shall be adjusted until the judgment is fully satisfied.

11 III. CONCLUSION

12 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake  
13 Community Services District, North Edwards Water District, and Los Angeles County  
14 Waterworks District No. 40 respectfully request the Court order periodic payments as detailed in  
15 the [PROPOSED] Order attached as Exhibit "A."

16 Dated: October 27, 2011

BEST BEST & KRIEGER LLP

17 By: 

18 ERIC GARNER  
19 JEFFREY V. DUNN  
20 STEFANIE D. HEDLUND  
21 Attorneys for Defendant  
22 LOS ANGELES COUNTY  
23 WATERWORKS DISTRICT NO. 40

24 26345.00000\7005444.1



LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On October 27, 2011, I served the within document(s):

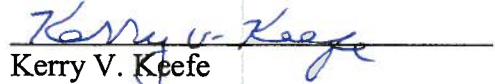
**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 NOTICE OF ELECTION AND HEARING; MEMORANDUM OF POINTS AND AUTHORITIES RE ELECTION FOR PERIODIC PAYMENTS**

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

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

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

Executed on October 27, 2011, at Irvine, California.

  
Kerry V. Keefe

# **Exhibit E**

1 BEST BEST & KRIEGER LLP  
ERIC L. GARNER, Bar No. 130665  
2 JEFFREY V. DUNN, Bar No. 131926  
STEFANIE D. HEDLUND, Bar No. 239787  
3 5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614  
4 TELEPHONE: (949) 263-2600  
FACSIMILE: (949) 260-0972  
5 Attorneys for Defendant  
LOS ANGELES COUNTY WATERWORKS  
6 DISTRICT NO. 40

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

CONFORMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

NOV 21 2011

John A. Clarke, Executive Officer/Clerk  
BY Raul Sanchez, Deputy

7 OFFICE OF COUNTY COUNSEL  
COUNTY OF LOS ANGELES  
8 ANDREA ORDIN, Bar No. 38235  
COUNTY COUNSEL  
9 WARREN WELLEN, Bar No. 139152  
PRINCIPAL DEPUTY COUNTY COUNSEL  
10 500 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012  
11 TELEPHONE: (213) 974-8407  
TELECOPIER: (213) 687-7337  
12 Attorneys for Defendant LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES

17 ANTELOPE VALLEY  
GROUNDWATER CASES

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

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

24 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
25 Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
26 California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668  
27

Judicial Council Coordination No. 4408

CLASS ACTION

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

~~PROPOSED~~ ORDER RE ELECTION  
FOR PERIODIC PAYMENTS OF THE  
AMENDED FINAL JUDGMENT  
APPROVING WILLIS CLASS ACTION  
SETTLEMENT

28  
ORDER RE ELECTION FOR PERIODIC PAYMENTS

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

LAW OFFICES OF  
BEST, BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

ORDER

On November 15, 2011 the Court held a hearing regarding the election by Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, and Los Angeles County Waterworks District No. 40 for periodic payments of the Amended Final Judgment Approving Willis Class Action Settlement at 9:00 a.m., or as soon as the matter could be heard in Department 316 of the Los Angeles County Superior Court. All appearances were stated on the record. Attached as Exhibit "A" is a true and correct copy of the Court's minute order.

IT IS ORDERED that the \$2,075,174.18 award in the Amended Final Judgment Approving the Willis Class Action Settlement shall be paid in periodic payments, as provided in Government Code section 984, as follows:


- 50% (\$1,037,587.09) will be due within 15 days of this order;
- The remaining 50% (\$1,037,587.09) will be paid in 10 annual installments;
- Installment payments will be made on or before November 1st of each year, beginning in 2012;
- The amount of each installment payment will be as follows:
  - November 1, 2012: \$103,758.71
  - November 1, 2013: \$103,758.71
  - November 1, 2014: \$103,758.71
  - November 1, 2015: \$103,758.71
  - November 1, 2016: \$103,758.71
  - November 1, 2017: \$103,758.71
  - November 1, 2018: \$103,758.71
  - November 1, 2019: \$103,758.71
  - November 1, 2020: \$103,758.71
  - November 1, 2021: \$103,758.70
- Interest, at the same rate as one-year United States Treasury bills as of January 1, each year. Each year shall accrue to the unpaid balance of the judgment, and on

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each January 1 thereafter throughout the duration of the installment payments the interest shall be adjusted until the judgment is fully satisfied.

- Nothing in this Order shall prevent the parties from agreeing to make a payment on any other terms.
- The court shall retain jurisdiction as provided in Government Code section 984 (e) (4).

Dated: 11-15-2011

  
HON. JACK KOMAR

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
8 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

26345.00000\7005769.1

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

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**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On October 27, 2011, I served the within document(s):

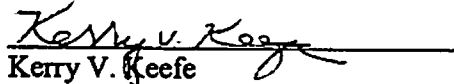
**[PROPOSED] ORDER RE ELECTION FOR PERIODIC PAYMENTS OF THE AMENDED FINAL JUDGMENT APPROVING WILLIS CLASS ACTION SETTLEMENT**

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

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

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

Executed on October 27, 2011, at Irvine, California.

  
Kerry V. Keefe

# **Exhibit F**

## Mike McLachlan

---



**From:** Jeffrey Dunn <jeffrey.dunn@BBKLAW.COM>  
**Sent:** Tuesday, September 20, 2016 5:16 PM  
**To:** Mike McLachlan  
**Cc:** Wendy Wang; Dan Oleary  
**Subject:** Re: Antelope fee election

Mike,

District No. 40 will not be filing a motion under 970.6.

Thanks, Jeff.



**Jeffrey Dunn**  
Partner  
[jeffrey.dunn@bbklaw.com](mailto:jeffrey.dunn@bbklaw.com)  
T: (949) 263-2616 C: (714) 926-5491  
[www.BBKlaw.com](http://www.BBKlaw.com)  

> On Sep 20, 2016, at 3:35 PM, Mike McLachlan <[mike@mclachlan-law.com](mailto:mike@mclachlan-law.com)> wrote:

>  
> Jeff,  
>  
> Can we take from the attached that D40 will not be pursuing the 970.6 avenue on October 18?

>  
> I inquire because my office is going to shortly be serving deposition notices on the 970.6 issue (primarily issues relating to hardship and finances). I will likely serve one for D40, but if your client has decided not to pursue the Section 970.6 resolution and hearing then I do not see the need for the deposition.

>  
> Mike McLachlan  
> Law Offices of Michael D. McLachlan, APC  
> 44 Hermosa Avenue  
> Hermosa Beach, CA 90254  
> Office: 310-954-8270  
> Fax: 310-954-8271  
>  
> <D40 Notice of Election 2 (16 10 18 hearing).pdf>

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.



# **Exhibit G**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 ROOM 222 - MOSK

HON. JACK KOMAR, JUDGE

4  
5 ANTELOPE VALLEY GROUND WATER )  
CASES. )

6 )  
7 ) SUPERIOR COURT  
CASE NO. 1-05-CV-049053  
8 ) JCCP 4408  
\_\_\_\_\_ )

9  
10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 Thursday, September 8, 2016

12 APPEARANCES OF COUNSEL:

13 FOR L.A. COUNTY:  
14 WATERWORKS DISTRICT

BEST BEST & KRIEGER  
BY: WENDY Y. WANG, ESQ.  
JEFFREY V. DUNN, ESQ.  
300 South Grand Avenue  
25th Floor  
Los Angeles, California 90071  
(213)617-8100  
wendy.wang@bbklaw.com  
jeffrey.dunn@bbklaw.com

18 FOR RICHARD WOOD:

19 LAW OFFICES OF MICHAEL D. MC LACHLAN  
BY: MICHAEL D. MC LACHLAN, ESQ.  
44 Hermosa Avenue  
20 Hermosa Beach, California 90254  
(310)954-8270  
21 mike@mclachlan-law.com

22 (Appearances continued on next page.)  
23

24 JOB NO. 131223  
25

26 DAVID A. SALYER, CSR, RMR, CRR  
27 Official Pro Tem Court Reporter  
License No. 4410  
28

1 APPEARANCES OF COUNSEL: (CONTINUED)

2 FOR CITY OF LOS ANGELES:

3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
4 BY: ERIC N. ROBINSON, ESQ.  
5 STANLEY C. POWELL, ESQ. (Court Call)  
6 400 Capital Mall  
7 27th Floor  
8 Sacramento, California 95814  
9 (916)321-4500  
10 erobinson@kmtg.com

11 FOR AVEK: BRUNICK, MC ELHANEY & KENNEDY  
12 BY: LELAND P. MC ELHANEY, ESQ.  
13 1839 Commercenter West  
14 San Bernardino, California 92408  
15 (909)889-8301  
16 lmcelhaney@bmbllawoffice.com

17 FOR ANTELOPE VALLEY UNITED MUTUAL, ETC.:  
18 GRESHAM SAVAGE  
19 BY: DEREK R. HOFFMAN, ESQ.  
20 550 East Hospitality Lane  
21 Suite 300  
22 San Bernardino, California 92408  
23 (909)890-4499  
24 derek.hoffman@GreshamSavage.com

25 FOR COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY:  
26 14 & 20 ELLISON, SCHNEIDER & HARRIS, LLP  
27 BY: CHRISTOPHER M. SANDERS, ESQ.  
28 2600 Capitol Avenue  
Suite 400  
Sacramento, California 95816-5905  
(916)447-2166  
cms@eslawfirm.com

(Appearances continued on next page.)

1 APPEARANCES OF COUNSEL: (CONTINUED)

2 FOR PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT:  
3 (Court Call) ALESHIRE & WYNDER, LLP  
4 BY: NICOLAS PAPAJOHN, ESQ.  
(949)223-1170

5 FOR ANTELOPE VALLEY GROUND WATER ASSOCIATION:  
6 (Court Call) BROWNSTEIN HYATT FARBER SCHRECK, LLP  
7 BY: MICHAEL T. FIFE, ESQ.  
(805)963-7000

8 FOR MARLON BARNES: BRUNICK, MC ELHANEY & KENNEDY  
9 (Court Call) BY: MARLON BARNES, ESQ.  
(909)889-8301

10  
11 FOR BOLTHOUSE FARMS, ETC.:  
12 (Court Call) CLIFFORD & BROWN  
13 BY: RICHARD G. ZIMMER, ESQ.  
(661)322-6023

14 FOR ANTELOPE VALLEY WATER STORAGE, LLP:  
15 (Court Call) HERUM CRABTREE SUNTAG  
16 BY: JANELLE S. KRATTIGER, ESQ.  
(209)472-7700

17 FOR TEJON RANCH COMPANY:  
18 (Court Call) KUHS & PARKER  
19 BY: ROBERT G. KUHS, ESQ.  
(661)322-4004

20 FOR ANTELOPE VALLEY MOBILE ESTATES:  
21 (Court Call) LAW OFFICES OF WALTER J. WILSON  
22 BY: WALTER J. WILSON, ESQ.  
(562)432-3388

23 FOR DIAMOND FARMING: LE BEAU-THELEN, LLP  
24 (Court Call) BY: BOB H. JOYCE, ESQ.  
(661)325-8962

25

26

27 (Appearances continued on next page.)

28

1 APPEARANCES OF COUNSEL: (CONTINUED)

2 FOR LITTLE ROCK CREEK IRRIGATION DISTRICT, ET AL.:  
3 (Court Call) LEMIEUX & O'NEILL  
4 BY: W. KEITH LEMIEUX, JR., ESQ.  
(805)495-4770

5 FOR BORON COMMUNITY SERVICES DISTRICT:  
6 (Court Call) MC MURTREY & HARTSOCK & WORTH  
7 BY: JAMES A. WORTH, ESQ.  
(661)322-4417

8 FOR U.S. BORAX:  
9 (Court Call) MORRISON & FOERSTER, LLP  
10 BY: WILLIAM M. SLOAN, ESQ.  
(415)268-7209

11 FOR CITY OF LANCASTER AND ROSAMOND:  
12 (Court Call) MURPHY & EVERTZ, LLP  
13 BY: DOUGLAS J. EVERTZ, ESQ.  
(714)277-1700

14 FOR LANDIN V. INC., ET AL.:  
15 (Court Call) MUSICK, PEELER & GARRETT, LLP  
16 BY: THEODORE A. CHESTER, JR., ESQ.  
(213)629-7623

17 FOR DIRECTOR OF THE ANTELOPE VALLEY EAST KERN WATER AGENCY:  
18 R. REX PARRIS LAW FIRM  
19 BY: ROBERT A. PARRIS, ESQ.  
(661)949-2595

20 FOR RICHARD A. WOOD: RICHARD A. WOOD  
21 In Pro Per  
(661)946-1161

22 FOR U.S. DEPARTMENT OF JUSTICE:  
23 U.S. DEPARTMENT OF JUSTICE  
24 BY: JAMES J. DUBOIS, DEPUTY  
(303)844-1375

25

26

27

28

INDEX FOR THURSDAY, SEPTEMBER 8, 2016

PROCEEDINGS	PAGE NO.
Motion Hearing	1

(No Exhibits Marked/Received.)

(No Witnesses Called.)

1 CASE NUMBER: JCCP 4408  
2 CASE NAME: ANTELOPE VALLEY CASES  
3 LOS ANGELES, CALIFORNIA THURSDAY, SEPT 8, 2016  
4 DEPARTMENT ROOM 222 JACK KOMAR, JUDGE  
5 REPORTER: DAVID A. SALYER, CSR 4410  
6 TIME: 10:00 A.M.

7 -o0o-

8 THE COURT: If you appear, obviously state your  
9 appearance for the court reporter.

10 We have two matters to hear this morning.

11 The first deals with the issue raised by the Public  
12 Water Suppliers and objected to by the Wood class concerning  
13 the payment of attorney's fees and costs over a period of  
14 time.

15 The second deals with the question of the rules for the  
16 selection of the public -- I'm sorry, the landowner parties  
17 representatives to the Watermaster Board.

18 Let's take up the fee issue first.

19 Mr. Dunn, you have filed a notice of election.

20 MR. DUNN: Yes, your Honor.

21 We have filed a notice of election for the installment  
22 method of payment of the fees.

23 I'm not sure what more there is to add that's already  
24 in the papers.

25 If the Court has a question --

26 THE COURT: Maybe you can speak into the microphone so  
27 that everybody can hear you.

28 MR. DUNN: Thank you.

1 damages here. We are talking clearly about costs.

2 The sentence I didn't read from Lozano says, "When  
3 authorized by statute, awards of attorney's fees are defined  
4 as costs, not damages."

5 There is no dispute, I think, from Mr. Dunn, the Court  
6 or anybody else that 1033.5 very clearly says that attorney's  
7 fees are costs.

8 THE COURT: I don't think that's -- I don't think  
9 that's subject to argument.

10 MR. MC LACHLAN: Right.

11 THE COURT: Costs are costs. And they can include  
12 attorney's fees under a variety of circumstances.

13 That's why the Lozano case is a significant case.

14 Frankly, without the benefit of having a research  
15 attorney to assist me in this matter, I have always believed  
16 that the 970.6 was truly the operative section. It's what I  
17 had in mind at the time I made the order originally on fees on  
18 April 25th, I think it was, from that order and subsequent  
19 orders.

20 Now I'm confronted with an issue under 984, and I have  
21 to decide whether or not it's applicable or not.

22 If it's not applicable, then that does not prevent your  
23 seeking of the same type of remedy under 970.6.

24 I'm just wondering at this point if we can save some  
25 attorney's fees and time by having counsel see if they can  
26 reach an understanding about how they might proceed on that  
27 issue with a stipulation that would permit the Court to, for  
28 example -- and this is not an opinion, it is not a decision --



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROOM 222 - MOSK

HON. JACK KOMAR, JUDGE

ANTELOPE VALLEY GROUND WATER  
CASES.

)  
)  
)  
) SUPERIOR COURT  
) CASE NO. JCCP 4408  
)  
)

\_\_\_\_\_

I, DAVID A. SALYER, Official Pro Tem Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 69, inclusive, comprise a true and correct transcript of the proceedings taken in the above-entitled matter reported by me on September 8, 2016.

DATED September 9, 2016.



\_\_\_\_\_  
DAVID A. SALYER, CSR, RMR, CRR  
Official Pro Tem Court Reporter  
CSR No. 4410

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over  
3 the age of 18 and am not a party to the within action. My business address is 44  
4 Hermosa Avenue, Hermosa Beach, California 90254. My electronic notification  
address is kevin@mclachlan-law.com.

5 On August 25, 2016, I caused service in the manner indicated below of the  
6 foregoing document(s) described as **OPPOSITION TO NOTICE OF  
7 ELECTION UNDER GOVERNMENT CODE SECTION 984;  
8 DECLARATION OF MICHAEL D. MCLACHLAN** to be served on all parties  
in this matter as follows:

- 8 ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection  
9 and processing of documents for mailing. Under that practice, the above-  
10 referenced document(s) were placed in sealed envelope(s) addressed to the  
11 parties as noted above, with postage thereon fully prepaid and deposited  
such envelope(s) with the United States Postal Service on the same date at  
Los Angeles, California.
- 12 (X) (BY ELECTRONIC SERVICE) Per court order requiring service and filing  
13 by electronic means, this document was served by electronic service to the  
14 by posting to Odyssey eFile, including electronic filing with the Santa Clara  
Superior Court.
- 15 ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal  
16 Express or other overnight delivery service, for delivery on the next  
17 business day. Each copy was enclosed in an envelope or package designed  
18 by the express service carrier; deposited in a facility regularly maintained  
19 by the express service carrier or delivered to a courier or driver authorized  
to receive documents on its behalf; with delivery fees paid or provided for;  
addressed as shown on the accompanying service list.
- 20 (X) (STATE) I declare under penalty of perjury under the laws of the State of  
21 California that the above is true and correct.

22 \_\_\_\_\_  
23 /s/ Ana Horga  
24 Ana Horga  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over  
3 the age of 18 and am not a party to the within action. My business address is 44  
4 Hermosa Avenue, Hermosa Beach, California 90254. My electronic notification  
address is kevin@mclachlan-law.com.

5 On October 4, 2016, I caused service in the manner indicated below of the  
6 foregoing document(s) described as **OPPOSITION TO SECOND NOTICE OF  
7 ELECTION UNDER GOVERNMENT CODE SECTION 984;  
8 DECLARATION OF MICHAEL D. MCLACHLAN** to be served on all parties  
in this matter as follows:

- 8 ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection  
9 and processing of documents for mailing. Under that practice, the above-  
10 referenced document(s) were placed in sealed envelope(s) addressed to the  
11 parties as noted above, with postage thereon fully prepaid and deposited  
such envelope(s) with the United States Postal Service on the same date at  
Los Angeles, California.
- 12 (X) (BY ELECTRONIC SERVICE) Per court order requiring service and filing  
13 by electronic means, this document was served by electronic service to the  
14 by posting to Odyssey eFile, including electronic filing with the Santa Clara  
Superior Court.
- 15 ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal  
16 Express or other overnight delivery service, for delivery on the next  
17 business day. Each copy was enclosed in an envelope or package designed  
18 by the express service carrier; deposited in a facility regularly maintained  
19 by the express service carrier or delivered to a courier or driver authorized  
to receive documents on its behalf; with delivery fees paid or provided for;  
addressed as shown on the accompanying service list.
- 20 (X) (STATE) I declare under penalty of perjury under the laws of the State of  
21 California that the above is true and correct.

22 \_\_\_\_\_  
23 /s/ Ana Horga  
24 Ana Horga