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LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, NORTH EDWARDS WATER DISTRICT, DESERT LAKE COMMUNITY SERVICE DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Coordinated Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

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

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Kern County Superior Court, Case No. S-1500-CV-234348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster v. Palmdale Water District, Riverside County Superior Court, Consolidated Actions, Case Nos. RIC 353840, RIC 344436, RIC 344668

AND RELATED CROSS-ACTIONS

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar – Dept. 12

OPPOSITION TO MOTION FOR ATTORNEYS' FEES

DATE: March 22, 2011
TIME: 9:00 a.m.
DEPT: CCW

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I. INTRODUCTION

The Willis Class moves for attorneys' fees pursuant to Code of Civil Procedure section 1021.5, also known as the "Private Attorney General" provision. Section 1021.5 permits attorneys' fees to a "successful party that has litigated a matter which has conferred a benefit to the general public." (CCP § 1021.5.) For purposes of attorneys' fees motions, there can be only one "prevailing party." (*Bank of Idaho v. Pine Avenue Associates* (1982) 137 Cal.App.3d 5 [186 Cal.Rptr. 695].) "A governmental entity is not liable for attorneys' fees unless it has lost on the merits." (*Nestande v. Watson* (2003) 111 Cal.App.4th 232, 240 [4 Cal.Rptr.3d 18, 23].) The plaintiff in an attorneys' fees motion has the burden of providing evidence necessary to demonstrate that it is the prevailing party. (*MBNA America Bank, N.A. v. Gorman* (2006) 54 Cal.Rptr.3d 724.)

Plaintiffs do not provide any evidence to support their blanket assertion that they are the prevailing party in the lawsuit. The most fair reading of the settlement agreement is that it is "good news and bad news as to each of the parties." Under these circumstances, there is no prevailing party and an award of attorneys' fees is improper. (*Deane Gardenhome Assn. v. Denktas* (1993) 13 Cal.App.4th 1394, 1398 [16 Cal.Rptr.2d 816].)

Plaintiffs' motion also does not meet the standard of CCP section 1021.5 because Plaintiffs cannot show "the general requirement that the benefit provided by the litigation inures primarily to the public." (*Vasquez v. State* (2008) 45 Cal.4th 243 [85 Cal.Rptr.3d 466].) The relief requested by the Willis Class was an order finding their private interests were superior and paramount to the interests of the public generally. Application of section 1021.5 to this case is an inversion of the public interest requirements. If successful, Plaintiffs' complaint would have reduced the rights of the public, not added to them.

The court may reduce an award of attorneys' fees based on the degree of "success" of the complaint. (*Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 846-847, [216 Cal.Rptr. 649].) The court may also reduce a 1021.5 award based on the degree of "public interest" present in the dispute and the fact that it will be paid from the public's coffers. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49 [141 Cal.Rptr. 315, 569 P.2d 1303].) If this court finds that the Wills Class is the

prevailing party, both of these factors should result in a considerable reduction of the attorneys' fees award.

II. ARGUMENT

A. PLAINTIFFS ARE NOT THE "PREVAILING PARTY" UNDER THE SETTLEMENT

1. Introduction

Code of Civil Procedure section 1021.5 only authorizes attorneys' fees for plaintiffs who are a "successful party." (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637 [52 Cal.Rptr.3d 1].) The term "successful party" is analogous to the term "prevailing party." (*Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173 [31 Cal.Rptr.3d 447].) The term "prevailing party" arises in connection with many attorneys' fees statutes and has been defined in a variety of contexts. (See, e.g., Civil Code § 1717 [contractual attorneys' fees]; Code of Civil Procedure § 425.16 [anti-SLAPP motions]; Business and Professions Code § 809 [peer review lawsuit]; Government Code § 25845 [nuisance abatement].)

A party is or is not a prevailing party for attorneys' fees purposes. (*Bank of Idaho v. Pine Avenue Associates* (1982) 137 Cal.App.3d 5 [186 Cal.Rptr. 695].) There can be only one prevailing party. (*Id.*) "Typically, a determination of no prevailing party results when both parties seek relief, but neither prevails, or when the ostensibly prevailing party receives only a part of the relief sought." (*Protect Our Water v. County of Merced* (2005) 130 Cal.App.4th 488 [30 Cal.Rptr.3d 202], citing *Deane Gardenhome Assn. v. Denktas* (1993) 13 Cal.App.4th 1394, 1398 [16 Cal.Rptr.2d 816].) Stated another way, when a judgment or settlement is "good news and bad news as to each of the parties," then there is no prevailing party and no legal basis to award attorneys' fees. (*DeaneGardenhome, supra,* at 13 Cal.App.4th 1394.)

There are three ways for a plaintiff to demonstrate they are a prevailing party for purposes of a 1021.5 fee request: (1) the party may obtain a favorable judgment on their complaint; (2) in the absence of a favorable judgment, the party can demonstrate through affirmative evidence that "his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior;" or (3) the plaintiff can demonstrate through affirmative evidence that "the litigation substantially contributed

to or was demonstrably influential in setting in motion the process which eventually achieved the desired result." (*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 903 [283 Cal.Rptr. 829, 836].)

Plaintiffs cannot show they achieved a favorable judgment on their complaint because the settlement contains none of the relief requested in their complaint. Plaintiffs also failed to present evidence to support a finding of "prevailing party" under the catalyst doctrine. Accordingly, this motion should be denied.

2. There Is No "Prevailing Party" Under The Settlement Because There Are Gains And Losses For Both Sides

The Willis Class's complaint was premised on the allegation that they had a "superior" right to pump water to the public water suppliers and that the public water suppliers' public use of water was interfering with their private water rights. Based on these allegations, the Willis Class asserted eight causes of action. The first cause of action was for declaratory relief, "[d]eclaring that Plaintiffs' and the Classes' overlying rights to use water from the basin are superior and have priority *vis-á-vis* all overlying users and purveyors; . . .." (Second Amended Complaint ("SAC"), p. 18:9-11.) The second cause of action sought "a declaration from the Court quieting title to [Plaintiffs'] appurtenant rights to pump" water from the Basin. (SAC, p. 11:14-15.) The third and fourth causes of action sought monetary damages based on the takings clauses of the California and federal constitutions. (SAC, pp. 11-14.) The remaining causes of action alleged nuisance, trespass, conversion, and injunctive relief, seeking to enjoin Defendants' "production of water from the Basin." (SAC, p. 17:27.)

The settlement does not achieve any of the objectives of the Willis Class complaint. First, the settlement does not provide any monetary relief to the Plaintiffs by the Public Water Suppliers for use of the native groundwater. The settlement does not include any agreement the Willis Class has a "superior right" to use the groundwater from the public water suppliers. In fact, the agreement apportions the water right between the parties on a correlative basis without payment. "The Settling Parties agree that the Settling Defendants collectively have the right to produce up to 15% of the Basin's Federally Adjusted Native Safe Yield..." while "the Willis Class Members have an Overlying Right to a correlative share of 85%..." [Settlement Stipulation, 10:6-8 and 10:11-12.]

The Willis Class has not prevailed on its first cause of action for declaratory relief. Through the settlement, the Willis Class has abandoned their claims of absolute ownership of the natural water resource and agreed to share proportionally in the resource. The settlement expressly makes the rights of the party correlative to the natural groundwater. It elevates the Public Water Suppliers' interests in water from merely appropriative interest to prescriptive interest.

Likewise, the Willis Class did not prevail on their cause of action for injunctive relief. The eighth cause of action requested an order of this court preventing the Public Water Suppliers from pumping the native safe yield. In contrast, the settlement *permits* the Public Water Suppliers to pump a defined percentage of the native safe yield.

The third and fourth causes of action requested the court order the Public Water Suppliers to pay the Willis Class compensation based on the property value of the water that was pumped by the Public Water Suppliers for public use. In contrast, the settlement agreement allows the Public Water Suppliers to pump a defined percentage of the native safe yield without compensation to the Willis Class of any kind. Accordingly, the Willis Class's net monetary recovery under the settlement is zero.

The Willis Class's fifth cause of action of alleges the use of the Public Water Suppliers of the native safe yield constitutes the tortious interference of their property rights. On this basis, the Willis Class alleged they were entitled to compensation based on the torts of nuisance, trespass, and conversion. Through the settlement agreement, the Willis Class has walked away from these claims entirely. The settlement agreement does not recognize any interference by the Public Water Suppliers with property owned by the Willis Class. In fact, it expressly permits this alleged "tortious" pumping to continue. Accordingly, it is clear that the Willis Class did not "prevail" on any of these causes of action.

In their moving papers, Plaintiffs entirely side-step the issue of prevailing party. They acknowledge that they did not receive a favorable judgment. They then assert, without evidence, that "defendants have agreed to limit the water they use from the basin, release their claims for prescriptive rights, and respect the Class's correlative rights." (Motion, p. 4:12-16.)

However, these supposed "victories" do not relate to disputed issues. The Willis Class's status as overliers was undisputed. What was in dispute was the status of the *Public Water Suppliers'* rights to

pump water. Prior to the settlement, the Public Water Suppliers' rights were purely appropriative and, therefore, inferior to the rights of the Willis Class with regard to native safe yield. As a result of the settlement, the Public Water Suppliers' right to pump the native safe yield are correlative to the Willis Class. The Willis Class claims this represents a victory because the settlement does not indicate that the Public Water Suppliers' rights are prescriptive and therefore superior to the Willis Class. In effect, they are claiming victory on the basis that they did not lose everything. On the other hand, they are claiming the Water Suppliers "lost" because of the Water Suppliers' rights were only elevated to equal their rights and not above them. It is very difficult to understand how it is a victory for the Willis Class to have their superior right reduced to correlative with the Public Water Suppliers while it is a "loss" for the Public Water Suppliers to have their water rights elevated to the level of an overlying right.

This settlement represents a classic case of "no prevailing party." The "no prevailing party" condition has been described as follows:

> "Typically, a determination of no prevailing party results when both parties seeks relief, but neither prevails, or when the ostensibly prevailing party receives only a part of the relief sought. In other words, the judgment is 'considered good news and bad news as to each of the parties,'" (*Deane Gardenhome Association v. Denkatas* (1993) 13 Cal.App.4th 1394, 1398 [16 Cal.Rptr.2d 816, 818].)

There is no question this settlement is "good news and bad news" for all parties to the settlement. It is good news for the Public Water Suppliers because they now have a right to pump a percentage of the naïve safe yield. It is "bad news" for the Willis Class in that they may no longer pump the groundwater unfettered, but shall be restricted by the physical solution (which may include water meters, among other things). As the court noted:

> "[r]equiring a determination for one party or the other every case would encourage absurd results for if the court determines that neither party actually prevailed, it would be unreasonable to award attorneys' fees." (*Nasser v. Superior Court* (*Gaydos*) (1984) 156 Cal.App.3d 52, 59 [202 Cal.Rptr. 552, 555-556].)

Therefore, Plaintiffs have not shown they obtained a favorable judgment on their complaint. Accordingly, in order to qualify for fees, Plaintiffs must provide evidence that either the lawsuit motivated the public entities to provide the relief sought or the litigation substantially contributed setting

in motion the process which eventually achieved the desired result. However, as described more fully below, Plaintiffs have provided no such evidence.

3. The Willis Class Has Failed To Present Evidence Sufficient To Support A Finding Under The "Catalyst Theory"

a. The Willis Class Provided No Discussion Of The Catalyst Theory In Their Moving Papers

To find the Willis Class are the "prevailing party" the court must examine whether or not the Willis complaint "activated" the Public Water Suppliers "to modify their behavior . . . or if [Plaintiffs' complaint] . . . was demonstrably influential in setting in motion the process which eventually achieved the desired result." (*Belth, supra*, 232 Cal.App.3d at 903.) This is sometimes called "the catalyst theory." (*Id.*) Three requirements must be met to obtain attorneys' fees under the catalyst theory: "A plaintiff must establish that (1) the lawsuit was a catalyst to motivating the defendants to provide the primary relief sought; (2) the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dent of nuisance and threat of expense . . ..; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 [21 Cal.Rptr. 371, 375].) To support a motion for attorneys' fees, the plaintiff must present substantial evidence to support each finding. (*Godinez v. Schwarzenegger* (2005) 132 Cal.App.4th 73 [33 Cal.Rptr.3d 270].) Failure to provide such evidence is reversible error. (Id.)

There are three very significant problems with the application of the catalyst theory to this case. First, Plaintiffs have not provided any evidence to suggest that the settlement will result in *any change in behavior* by the Public Water Suppliers. Second, Plaintiffs have not provided any evidence to suggest their complaint – as opposed to the cross-complaint filed by the Public Water Suppliers – was a significant catalyst in bringing about the settlement. Finally, the Willis Class has not provided any evidence about precisely what the "desired result" was from their complaint or how this result is supported by the settlement.

b. Plaintiffs Have Provided No Evidence The Settlement Will Result In The Public Water Suppliers' Modifying Their Behavior

Plaintiffs provided no evidence the settlement will result in the Public Water Suppliers "modifying their behavior." Plaintiffs may claim the settlement requires the Public Water Suppliers to pump less water from the groundwater basin. However, without additional evidence, this claim cannot be supported. The settlement permits the Public Water Suppliers to pump up to 15% of the native water of the basin with the return flows from imported and other sources. This might be sufficient to cover existing pumping of the Public Water Suppliers. It is certainly sufficient to support the pumping of the parties represented by Lemieux & O'Neill.

The order does not limit the pumping of the Public Water Suppliers or the Willis Class (who do not currently pump at all) but makes findings for court supervised management of the Basin. It is unclear at this time whether the management will result in any modified behavior by the Public Water Suppliers. In any case, basin management is directly antithetical to the relief requested in their complaint: the right of overlying owners to unrestricted pumping. In any case, this evidence is not before the court and without it, there is no good faith basis to sustain the attorneys' fees request at this time.

c. Second, Plaintiffs Have Not Provided Any Evidence To Suggest Their Complaint Was A Significant Catalyst In Bringing About The Settlement

This case arose from litigation filed by Diamond Farming Company (and later Wm. Bolthouse Farms, Inc.) against County Waterworks District No. 40 ("County") and a small number of public water suppliers. These farming operations were claiming that pumping by certain public water suppliers was interfering with their ability to pump the natural groundwater of the Basin. In response to this litigation, the County elected to file a cross-complaint against various parties, including the Federal Government. This complaint requested the Basin be subjected to a general adjudication, requested that the court recognize the County's right acquired pursuant to prescription, and requested the court create a physical solution to manage the groundwater of the basin.

The Federal Government asserted the court lacked jurisdiction to hear the dispute unless all potential rights holders were added as necessary parties. The County of Los Angeles amended its cross-

complaint to include among other parties and two of the public water suppliers represented by our firm, Desert Lake Community Services District and North Edwards Water District. The County of Los Angeles also filed a complaint against approximately 65,000 "dormant landowners" (i.e., parties who owned land, but were not currently pumping water from the groundwater basin).

Counsel for the Willis Class initially appeared in the lawsuit in response to the County's cross-complaint. Counsel were willing to represent the class not simply as a "defendants' class" but, also as a plaintiffs' class prosecuting their own complaint." Plaintiffs' class subsequently filed a complaint requesting the affirmative relief described above. This complaint was simply the tail wagging the dog. Although the Willis Class was nominally "plaintiffs," the real objectives of the underlying lawsuit was the County's objective to have the County's pumping legitimized as a prescriptive right and the County's desire to have the court supervise pumping in the Basin to avoid the resource from becoming depleted. The County, and the other Public Water Suppliers met this objective through the settlement with the Willis Class.

The first amended cross-complaint by the Public Water Suppliers requests a declaration of the following rights:

> "(A) The right to pump groundwater from the Antelope Valley Groundwater Basin in an annual amount equal to the highest volume of groundwater extracted by each of the Public Water Suppliers in any year preceding entry of judgment in this action;
> (B) The right to pump or authorize others to extract from the Antelope Valley Groundwater Basin an amount of water equal in quantity to that amount of water previously purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency; and which as augmented the supply of water in the Basin in any year preceding entry of judgment in this action.
> (C) The right to pump or authorized others to extract from the Antelope Valley Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency which augments the supply of water in the Basin; and
> (D) The right to pump or authorize others to extract from the Antelope Valley Basin an amount of water equal in quantity to that volume of water injected into the Basin or placed within the Basin by each of the Public Water Suppliers or on behalf of any of them." (See First Amended Cross-Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights, p. 13:12-26.)

The Public Water Suppliers have required the Willis Class to accede to these demands as a condition of settlement. The settlement agreement acknowledges the right of each public water supplier to produce and use the groundwater of the Basin. Next, the settlement agreement recognizes the right of the Public Water Suppliers to extract return flows from imported water as follows:

> "The Settling Parties acknowledge and agree that they all have the right to recapture Return Flows from Imported Water that they put to reasonable and beneficial use in the Basin, consistent with California law." [Settlement Stipulation, 11:8-12.]

More importantly, the settlement establishes the legal foundation to support the County's request for a physical solution to manage the water resources of the Basin. The settlement acknowledges the County's assertion the water resources of the Basin are currently over-taxed by pumping, including pumping by the Willis Class. It acknowledges the need of this court to manage the Basin on an ongoing basis. It provides as follows:

> "The Settling Parties expect and intend that this Stipulation will become part of a Physical Solution entered by the Court to manage the Basin and that the Court will retain jurisdiction in the Coordinated Actions. The Settling Parties agree to be part of such a Physical Solution to the extent it is consistent with the terms of this Stipulation and to be subject to Court-administered rules and regulations consistent with California and Federal law and the terms of this Stipulation. The Settling Parties agree that the Physical Solution may require installation of a meter on the groundwater pump by a Willis Class member before a Willis Class Member may produce groundwater. The responsibility for the cost of such meters will be determined by the Court." [Settlement Stipulation, 11:28, 12:1-7.]

The settlement is in marked contrast to the Willis complaint which seeks a declaration that their rights are paramount to the Public Water Suppliers, and that no prescription has occurred, and seeks an order enjoining the Public Water Suppliers from pumping at all. These allegations are antithetical to the result reached in the settlement.

Accordingly, the most reasonable readings of the pleadings in this case is that Plaintiffs' lawsuit was not "a catalyst to motivating" the settlement. The settlement arose from and is directly motivated by the adjudication filed by the Public Water Suppliers. Unless the Willis Class presents evidence that their complaint was a motivating factor for the settlement, there is no basis to award attorneys' fees here.

d. Finally, the Willis Class Has Not Provided Any Evidence About Precisely What The "Desired Result" Was From Their Complaint Or How This Result Is Supported By The Settlement

The Willis Class has provided no statement regarding their class's objectives in filing the complaint. They have not provided evidence about the objectives or desires of any party. The only evidence before the court of the party's objectives comes from the pleadings. However, a review of the procedural history of this case and the pleadings reveals the settlement is calculated to reach the Public Water Suppliers' objectives, not the objectives of the Willis Class.

4. This Court Should Reduce The Attorneys' Fees Request By At Least 75% To Reflect Plaintiffs' Failure To Obtain The Requested Relief

The Public Water Suppliers believe it is inappropriate to award attorneys' fees where, as here, the "plaintiff" has failed to provide evidence to support the assertion they are the prevailing party under the complaint. If this court is still inclined to award attorneys' fees, it has the authority to reduce the attorneys' fees award based on the degree of "success" obtained by the plaintiffs. (*Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 846-847 [216 Cal.Rptr. 649].) A multiplier on attorneys' fees is only appropriate where the plaintiffs have obtained a "total success." (*Guardians of Turlock's Integrity v. Turlock City Council* (1983)149 Cal.App.3d 584 [197 Cal.Rptr. 303].) Where, as here, Plaintiffs have obtained something less than complete victory, the court is authorized to reduce the attorneys' fees award to reflect the result. (Id.) Therefore, if this court is still inclined to award some attorneys' fees to the Willis Class, the Public Water Suppliers request these fees be *sharply* reduced to reflect the marginal degree by which the Willis Class is judged as "prevailing."

Because the Willis Class did not receive payment on their damages claims, and because the settlement consists of non-monetary relief that benefits the Public Water Suppliers, it is very difficult to meaningfully assess the degree of "success" achieved by the Willis Class. To do so, the court must weigh the litigation goals against the outcome. (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 249, 261 Cal.Rptr. 520.) The litigation goals are best expressed in the complaint. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40.) The Plaintiffs received *none* of the relief requested in the complaint. This would suggest the attorneys' fees should be sharply reduced.

In some cases, the court will decide the degree of success of an action by examining how many causes of action the plaintiff prevailed upon. (See *Center For Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 610 [115 Cal.Rptr.3d 762, 768].) Of the eight causes of action asserted by the Public Water Suppliers, six requested monetary relief. As the Willis Class receives no monetary relief in the settlement, these causes of action were indisputably "lost." Likewise, as the Public Water Suppliers will continue pumping native water under the settlement, there is no question that the Willis Class "lost" their injunction to stop pumping.

The Willis Class's first cause of action sought a declaration that their water rights were superior to the water rights to the Public Water Suppliers. If this court were to conclude that the Willis Class "prevailed" in any way under the settlement, it would have to be based on this cause of action. However, their status as overliers was never in dispute, and since settlement does not describe their rights as in any way "superior" the Public Water Suppliers, any "success" with regard to this cause of action is marginal, at best.

Therefore, the Public Water Suppliers would recommend that the attorneys' fees award be steeply reduced to reflect the fact that the Willis Class did not prevail on seven of eight causes of action and only partially prevailed on one. This should result in a significant reduction of the attorneys' fees. Public Water Suppliers propose that this reduction of 90% to reflect a "partial" victory on only one of eight causes of action. Concurrently with this motion, the County of Los Angeles has provided briefing demonstrating that the Willis Class has only submitted approximately $460,000 in valid billing. The Public Water Suppliers request the negative modifier be applied to the appropriate billing so that the total awarded fees are not more than $50,000.

B. THE PUBLIC INTEREST IN THIS CASE WAS REPRESENTED BY THE PUBLIC WATER SUPPLIERS, NOT BY THE WILLIS CLASS

1. The Benefit of Plaintiffs' Complaint Does Not Inure Primarily To The Public

To prevail on a fee request pursuant to CCP section 1021.5, the Plaintiffs must demonstrate a "general requirement that the benefit provided by the litigation inures primarily to the public." (*Vasquez v.*

State (2008) 45 Cal.4th 243 [85 Cal.Rptr.3d 466].) The public will receive a benefit from the settlement. However, this benefit comes from the work of the Public Water Suppliers *against* the Willis Class.

The California Constitution and the Water Code specifically charges the Public Water Suppliers with the responsibility to administer the water as a "public trust." Water Code section 102 provides that "all water within the state is a property of the people of the state . . .." (Water Code § 102.) Water Code section 104 further provides:

> "It is hereby declared that the people of the state have a paramount interest in the use of all water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection."

Littlerock Creek Irrigation District and Palm Ranch Irrigation District are special districts called "irrigation districts" that formed pursuant to the provisions of Water Code section 20500, *et seq.* Water Code section 22075 *et seq.* lists the powers and duties of irrigation districts. Section 22425 describes the property rights of irrigation districts. Water Code section 22430 provides:

> "There is given, dedicated, and set apart for the uses and purposes of each district all water and water rights belonging to the state within the district." (Water Code § 22430.)

This section authorizes a police power regulatory authority of Irrigation Districts over water rights in the boundaries of the District. Irrigation Districts are specifically charged with the powers necessary to pursue the public interest regarding the public's use of such water.

Through their first amended complaint, the Willis Class alleged the Districts were improperly using the water resource because this water had already been put to private use. The Districts alleged they were properly using the resource because the public had acquired a right to use the water by prescription. The Districts claimed the public's right to use the water resource had become correlative to the private property rights of the Willis Class. This dispute pits the property rights of a large group of private parties directly against the prescriptive rights of the public to use the same water. Willis asked the court to limit the public trust in the water resource for private financial gain.

The Willis Class argued they are a "public interest" because they are a very large collection of private interests. However, for purposes of Code of Civil Procedure section 1021.5, the term "public

interest" has a special definition: It is only meant to include interests where there is insufficient pecuniary interest to justify the cost of litigation. Unless the litigation costs "transcend [Plaintiffs'] pecuniary interest[s] to an extent requiring subsidization," an attorneys' fees award is not warranted. (*Serrano III,* p. 46, 141 Cal.Rptr. 315, 569 P.2d 1303.) The Willis Class has not provided any information regarding the value of the water rights of its customers. However, the Willis Class claims it represents as many as 65,000 landowners. As the availability of water often affects the value of land, it is reasonable to conclude this represents a very substantial pecuniary interest. Therefore, the court should not consider this a "public interest" for purposes of 1021.5, at least, as compared against the directly public interest of the Public Water Suppliers.

Typically, class actions are needed where a large number of people have been harmed by a particular defendant's conduct and it is in the interest of justice that these claims be consolidated and handled as a single action. Where the public as a whole has benefited from the judgment against a particular defendant it makes sense to award the costs of attorneys' fees to promote such litigation. However, these factors are not at all present in the instant case. The class action at issue here came about solely as a result of an unusual circumstance related to jurisdiction over the federal government. The Class here did not correct a wrong perpetrated against a class of people and they did not obtain a verdict against a responsible defendant. In fact, the Class's position in this case, and in the settlement, is much more analogous to that of a defendant. The Class representatives, in an attempt to get attorneys' fees, attempted to recast their group as a "plaintiffs class" by seeking affirmative relief that went beyond the scope of the underlying action. *They failed on all of these claims.* As a result, their status in the settlement remains that of a defendant, not a vindicating plaintiff.

Therefore, public policy is not served by an award of attorneys' fees in this case. Application of section 1021.5 here stretches it intent and creates the absurd result that the general public is forced to pay

for both sides of the litigation. This is particularly unfair where the public is being asked to pay for the cost of the class counsels decision to file meritless affirmative claims which were ultimately unsuccessful.

2. The Fact That The Public Is On Both Sides Of The Litigation and That Tax Payer Money Will Be Used To Satisfy The Attorneys' Fees Supports A Reduction In Attorneys' Fees

Even if this court determines the issues described above do not serve to completely bar an award of attorneys' fees, these issues should serve to reduce the fees awarded. The courts have held they may reduce an attorneys' fees award where there are public interests represented on both sides of the litigation and where, as here, the award will be satisfied from tax payer money. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49, 141 Cal.Rptr. 315, 569 P.2d 1303.)

If the court is inclined to award some portion of the requested fees, it should only award fees directly related to defense of the adjudication as opposed to Plaintiffs' affirmative claims for damages and other relief. Not only were these affirmative claims unsuccessful, they were directly counter to the public's interest in establishing correlative rights and management of the basin. Plaintiffs' counsel elected to pursue these claims of their own volition and at their own risk.

Again, it is difficult to apportion which percentage of the fees relate to the affirmative claims as opposed to the defense of the underlying adjudication. The Public Water Suppliers request this "public interest issue" serve as an additional basis to reduce the fees as described above.

III. CONCLUSION

Based on the foregoing, Defendants' respectfully request that Plaintiffs' motion for attorneys' fees is denied or, in the alternative, that the fees requested by Plaintiffs are severely limited.

DATED: March 9, 2011

LEMIEUX & O'NEILL

By: _____
WAYNE K. LEMIEUX
W. KEITH LEMIEUX
Attorneys for LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT
And Cross-Defendants, NORTH EDWARDS WATER DISTRICT and DESERT LAKE COMMUNITY SERVICE DISTRICT

PROOF OF SERVICE

STATE OF CALIFORNIA,)
) ss.
COUNTY OF VENTURA)

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 4165 E. Thousand Oaks Blvd., Suite 350, Westlake Village, California 91362.

On **March 9, 2011**, I posted the following document(s) to the website http://www.scefiling.org, a dedicated link to the Antelope Valley Groundwater Cases, and upon which the parties have agreed this posting constitutes service.

OPPOSITION TO MOTION FOR ATTORNEYS' FEES

By electronically serving through http://www.scefiling.org, and addressed to all parties appearing on the http://www.scefiling.org electronic service list, the file transmission was reported as complete and a copy of the http://www.scefiling.org Filing/Service Receipt will be maintained with a copy of the document in our office.

I am readily familiar with the business practice for collection and processing of pleadings and discovery for electronic service with http://www.scefiling.org, and that the pleadings and discovery shall be electronically served this same day in the ordinary course of business.

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

Executed on March 9, 2011, in Westlake Village, California.

Kathi Miers

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Superior Court of California County of Los Angeles Stanley Mosk Courthouse – Dept. 1, Rm 534 111 North Hill Street Los Angeles, CA 90012	**Original Document(s) to be filed at this location.**
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