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8 Attorneys for Defendant and Cross-Complainant,
9 Palmdale Water District

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

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

Judicial Council Coordination
Proceeding No. 4408

17 **ANTELOPE VALLEY GROUNDWATER
18 CASES**

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

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21 **REPLY MEMORANDUM IN SUPPORT OF
22 MOTION FOR DETERMINATION OF
23 GOOD FAITH SETTLEMENT**

24 Date: January 7, 2014
25 Time: 10:00 a.m.
26 Dept: Old Dept. 1, Los Angeles

27
28 **1. Introduction.**

The court should grant the motion for three reasons:

- District No. 40's fear is misplaced. The non-settling defendants will not be responsible for more than their share of any future fee award.
- A good-faith settlement determination is proper under Code of Civil Procedure section 877.6, because the Wood Class alleges that the defendants are joint tortfeasors.
- The allocation formula proposed in the Willis Class settlement is an adequate basis to make a rough approximation of the settling defendants' proportionate liability.

1 **2. The non-settling defendants will not be responsible for more than their share of any future**
2 **fee award.**

3 District No. 40's opposition is founded on an erroneous premise—that the non-settling
4 defendants will be forced to pay more than their fair share of Wood Class attorney fees. (Opposition at
5 p.1.) As the court recognized at the December 11 hearing, and as the motion demonstrated, this is not the
6 case. The court has discretion in any future fee motion to allocate the responsibility for the fees among
7 the parties. (See *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 592-93.) If the amount
8 attributable to the settling defendants is greater than the amount they have paid, then they will not be
9 required to pay any more, because their liability is capped by the settlement agreement. But the only
10 effect of this on the non-settling defendants will be to reduce the amount they have to pay. (See
11 Transcript of Dec. 11, 2013, hearing at page 9:4-13, attached as Exhibit 1.) As long as two conditions
12 are met—first, any future fee award will include an allocation of responsibility among the parties, and
13 second, the responsibility will not be joint and several—then District No. 40's fears are groundless. It is
14 appropriate for the court to include these two conditions in today's order awarding fees, and the settling
15 defendants respectfully request that it do so.

16
17 **3. A good-faith settlement determination is proper under Code of Civil Procedure section**
18 **877.6, because the Wood Class alleges that the defendants are joint tortfeasors.**

19 District No. 40 devotes much of its opposition to the argument that there is no legal basis for a
20 good-faith settlement determination, because the settling defendants are neither joint tortfeasors nor co-
21 obligors on a contract debt. That argument is incorrect. The first amended complaint of the Wood Class
22 (attached as Exhibit 2) includes, among other things, causes of action for the torts of nuisance, trespass
23 and conversion against all defendants.

24 Code of Civil Procedure section 877.6 provides in part, "Any party to an action in which it is
25 alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to
26 a hearing on the issue of the good faith of a settlement ..." (Civ. Proc. Code 877.6, subd. (a)(1).) "All
27 that is required for a good faith settlement hearing is that two or more parties are *alleged* to be joint
28 tortfeasors." (*Mid-Century Ins. Exchange v. Daimler-Chrysler Corp.* (2001) 93 Cal.App.4th 310, 316

1 (italics in original).) That is clearly true in this case, and the settling defendants are entitled to the
2 benefits of section 877.6.

3
4 **4. The allocation formula proposed in the Willis Class settlement is an adequate basis to make**
5 **a rough approximation of the settling defendants' proportionate liability.**

6 In making a good-faith settlement determination, the court is required to evaluate, among other
7 factors, the settlor's proportionate liability, compared to the amount paid in settlement. (See *Tech-Bilt,*
8 *Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499.) In this case, the total attorney fees of
9 class counsel were allocated among all ten defendants according to the same formula proposed by the
10 Willis Class, which was based on the relative groundwater production of the defendants. (See
11 Declaration of Michael D. McLachlan in Support of Motion for Approval of Award of Attorney Fees
12 and Costs, filed Nov. 17, 2013, at page 5:13-17.) District No. 40 does not contest this allocation per se,
13 but argues that it is premature, because both the Wood Class and the settling defendants will continue to
14 participate in the case. While it is certainly true that the Wood Class will continue to press its case
15 against the non-settling defendants, and will be required to prove up its reasonable and beneficial use of
16 water in order to obtain a water right, its claims against the settling defendants are completely resolved
17 by the settlement. Thus, it is appropriate to apply the *Tech-Bilt* factors now, and using the Willis formula
18 is a reasonable way to do it. Further, any remaining concerns about future fees can be resolved by
19 allocating those fees as described above.

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5. Conclusion

The settling defendants request the court to include a statement in its order approving fees that any future fee award will include an allocation of responsibility among the parties, and the responsibility will not be joint and several. The court should grant the motion and find that the settlement was entered into in good faith.

Dated: December 30, 2013

Lagerlof, Senecal, Gosney & Kruse LLP

By: _____ /s/_____
Thomas S. Bunn III
Attorneys for Palmdale Water District

PROOF OF SERVICE

1
2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years,
3 and am not a party to the within action; my business address is 301 North Lake Avenue, 10th Floor,
4 Pasadena, California 91101-4108.

5 On December 30, 2013, I served the document(s), described as **REPLY MEMORANDUM IN**
6 **SUPPORT OF MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** on the
interested parties in this action as follows:

7 _____ (BY REGULAR MAIL) As follows: I am "readily familiar" with the firm's practice of
8 collection and processing correspondence for mailing. Under that practice it would be deposited
9 with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena,
10 California in the ordinary course of business. I am aware that on motion of 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.

11 X (VIA ELECTRONIC MAIL) Electronically filed on the Santa Clara County Superior Court's
12 website, <http://www.scefiling.org>, on December 30, 2013, pursuant to the guidelines on this case.

13 _____ (VIA FACSIMILE) On ***, I caused the above-referenced document(s) to be transmitted via
14 facsimile to the offices of the addressee(s) as follows: A true and correct copy of the
transmission report indicating transmission without error is attached hereto.

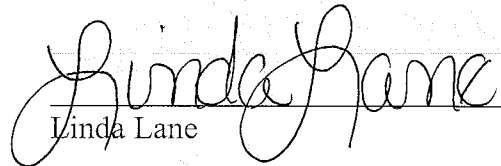
15 _____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be delivered by air courier, with next
16 day service.

17 _____ (BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the
18 addressee(s).

19 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 _____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
22 whose direction the service was made.

23 EXECUTED at Pasadena, California on December 30, 2013.

24 
25 Linda Lane