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12 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER
CASES**

18 Included Actions:

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

21 Los Angeles County Waterworks District No.
22 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
23 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 California,
26 County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**OPPOSITION TO MOTION FOR AN
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND CLASS REPRESENTATIVE
INCENTIVE AWARD; DECLARATION
OF JEFFREY DUNN**

**DATE: MARCH 22, 2011
TIME: 10:00 A.M.
DEPT: 1
JUDGE: HON. JACK KOMAR**

1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 (“District 40”) opposes Plaintiff’s
3 motion for attorney fees under Code of Civil Procedure section 1021.5 and requests the Court
4 deny Plaintiff’s requests in their entirety. Alternatively, if the court is inclined to award fees,
5 District 40 requests the court use its “equitable discretion” to significantly reduce Plaintiff’s
6 requested award in fair consideration of all parties’ interests and most importantly the public’s
7 interest.¹

8 Plaintiff’s attorneys are not entitled to all the fees they are seeking. Plaintiff’s attorneys
9 seek a staggering \$2.3 million in lodestar fees with a multiplier of 1.5, for a total attorney fee
10 request of \$3.4 million. They also seek over \$65,000 in costs, and a \$10,000 incentive payment
11 for plaintiff herself. Plaintiff’s attorneys seek these fees and costs even though the case settled
12 and Plaintiff’s counsel did not have to prepare for the Phase 3 trial. In fact, as documented below,
13 very little work was necessary for Plaintiff’s counsel to obtain settlement. Furthermore, a large
14 percentage of the time entities are excessive, unreasonable and duplicative. Disturbingly, even
15 though Plaintiff’s counsel knew from the beginning that it would seek attorneys fees against the
16 Public Water Suppliers, Plaintiff’s counsel block billed their time. Block billing is disfavored by
17 Courts and is not adequate evidence of the time spent on particular tasks. Block billing also fails
18 to satisfy Plaintiff’s burden to show the fees incurred are reasonable.

19 It was unreasonable for Plaintiff’s counsel to have incurred nearly \$2.3 million to settle
20 this case, and even a cursory review of the bills submitted shows that counsel spent days
21 performing unreasonable and unjustified work, including almost daily conference calls among the
22 top billing partners simply to discuss the status of the case. Plaintiff’s counsel over-staffed the
23 case, and there are numerous examples of work that high-rate partners and senior associates
24 performed that lower rate billing professionals should have done. Plaintiff’s counsel also
25 incurred a tremendous amount of time getting up to speed on the basics of water law and inverse
26 condemnation, but then also hired a “water lawyer,” Mr. James, to advise them on the very same

27 _____
28 ¹ The briefs concurrently submitted address these issues. This brief primarily discusses the unreasonable nature of
the fee request. District 40 joins the briefs submitted by the other Public Water Suppliers.

1 topics. Plaintiff's counsel also fail to provide bills or other evidence to support much of the work
2 that was allegedly performed. Finally, as discussed herein, Plaintiff is not entitled to any award
3 of costs or other litigation expenses, nor is Plaintiff herself entitled to any payment for her work
4 as the class representative. This motion should be denied in its entirety, or any award should at
5 least be substantially reduced.

6 **II. THE COURT SHOULD DENY THE REQUEST FOR ATTORNEYS' FEES OR**
7 **REDUCE ANY AWARD BASED ON BOTH THE EXCESSIVE TIME SPENT**
8 **AND HOURLY RATES CHARGED**

9 The private attorney general doctrine provides that a successful party in litigation may
10 under certain circumstances recover attorneys' fees if the action resulted in the enforcement of an
11 important right affecting the public interest. (Code Civ. Proc. § 1021.5.) The Supreme Court has
12 found, "California courts have consistently held that a computation of time spent on a case and
13 the reasonable value of that time is fundamental to a determination of an appropriate attorneys'
14 fee award." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) In a case where a
15 party is awarded fees under this statute, the award must be limited to reasonable attorneys' fees
16 based on a careful compilation of time spent and a reasonable hourly rate for each attorney, i.e.
17 the "lodestar". (See *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 833; *Best v.*
18 *California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1470, quoting *Serrano v. Priest*
19 (*Serrano III*) (1977) 20 Cal.3d 25, 48.) In this matter, the Court should reduce any award,
20 because the amount of time Plaintiff's counsel spent, and their hourly rates, were unreasonable.

21 **A. The Court Should Deny this Motion, Or Substantially Reduce Any Award,**
22 **Because Much of the Time Spent Was Excessive, Duplicative and**
23 **Unnecessary**

24 A fee request may be denied outright if it appears that the requested fee is unreasonable
25 and inflated. (See *Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d 621, 635; *Meister v. Regents*
26 *of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 447-48; *Chavez v. City of Los Angeles* (2010) 47
27 Cal.4th 970.) In *Serrano IV*, the Supreme Court recognized the importance of reducing awards to
28

1 counsel who unreasonably inflate their applications, stating: “If...the Court were required to
2 award a reasonable fee when an outrageously unreasonable one has been asked for, claimants
3 would be encouraged to make unreasonable demands, knowing that the only unfavorable
4 consequence of such misconduct would be a reduction of their fee to what they should have asked
5 for in the first place.” (*Serrano IV, supra*, 32 Cal.3d at 635.) Here, plaintiff’s counsel are
6 requesting reimbursement for almost 6,000 hours of professional work in this case. To put that in
7 perspective, that is three entire attorney-years worth of work over a four-year period. The Court
8 should deny or significantly reduce any award to plaintiff’s counsel because the time spent was
9 unreasonable, and the request is inflated in several aspects.

10 1. *The Court Should Reduce any Award on Account of Plaintiff’s Counsel’s*
11 *Practice of “Block Billing”*

12 Court’s generally look unfavorably upon the practice of “block billing” because it leads to
13 billing inflation, and it makes it far more difficult to analyze the reasonableness of a fee request.
14 (*See Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 689; *Christian Research*
15 *Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325; *Welch v. Metro. Life Ins. Co.* (9th Cir.
16 2007) 480 F.3d. 942, 948.) In *Welch*, the Ninth Circuit affirmed a 20% across-the-board
17 reduction to a fee request “based on a report by the California State Bar’s Committee on
18 Mandatory Fee Arbitration, which concluded that block billing ‘may increase time by 10% to
19 30%.’” (*Id.* (citing The State Bar of California Committee on Mandatory Fee Arbitration,
20 Arbitration Advisory 03-01 (2003).)

21 In this case, Plaintiff’s counsel “block billed” virtually all of their time entries. This
22 makes an analysis of the fee request far more difficult, and according to the State Bar and the
23 *Welch* case, may well have led to inflated billing. If the Court awards any fees in this case, all
24 such fees should be significantly reduced.²

25
26
27 ² The Ninth Circuit in *Welch* further affirmed the District Court’s decision to cut all time billed
28 for inter-office conferences. (*Welch, supra*, 480 F.3d at 949.) As is discussed herein, Plaintiff’s
counsel’s bills are filled with inter-office conference entries.

1 2. *Plaintiff's Counsel's Research on Water Law and Inverse Condemnation*
2 *was Excessive and Unreasonable, And Plaintiff Cannot Recover for This*
3 *Time and for Hiring a Water Lawyer*

4 Plaintiff's counsel spent an extremely large amount of time studying the basics of water
5 law and inverse condemnation. Plaintiff's counsel Messrs. Gibson, Watson and Oudom all spent
6 numerous days in 2007 conducting unspecified research on takings, water rights and prescription,
7 and preparing memos on these subjects. (*See Ex. 3, pp. 2-7.*) Mr. Gibson, apparently a senior
8 associate with over five years of experience, was the most prolific biller during this time period,
9 spending multiple full billable days (i.e. 8 to 10 billable hours) doing nothing but research and
10 memo writing at his "senior associate" rate of \$300 per hour. (*See e.g. Ex. 3, (1/19/07, 1/26/07,*
11 *1/30/07, 1/31/07, 2/1/07, 2/2/07, 2/5/07 and 2/6/07).*) Mr. Watson also appears to have re-done a
12 lot of the same research in mid-2008, when he again performed research on takings and water law
13 issues. (*See Ex. 3, p. 17.*)

14 In total, three associates spent roughly 140 billable hours doing nothing but research and
15 memo drafting on water law and inverse condemnation. While some time is needed at the outset
16 of any case in researching legal issues, this amount is excessive. Moreover, it appears that much
17 of the research was never used. Neither Mr. Kalfayan nor any of the other partners who worked
18 on the file appear to have reviewed any of these associate memos, and Mr. Kalfayan himself later
19 billed multiple days conducting his own legal research, apparently on the same topics. (*See e.g.*
20 *Ex. 3, (3/18/08, 3/19/08, 3/20/08, 3/27/08, 4/10/08, 4/14/08, 5/8/08, 5/9/08, 5/12/08, 5/13/08,*
21 *5/14/08, 5/15/08, 5/19/08).*³ Also, in April 2008, Plaintiff's counsel retained Mr. James as a
22 water law specialist, and Mr. James billed \$106,000 on this case. (*See Exs. 1, 5.*) While it may
23 be reasonable and cost-efficient to hire an expert to advise on specialized areas of law, it is
24

25 ³ On April 10, 2008, Mr. Kalfayan billed 8.2 hours simply for "research and review of cases," all
26 at his partner rate of \$400 per hour. On April 14, 2008, Mr. Kalfayan billed more research as part
27 of another full billable day, including reading the water law book authored by District 40's lead
28 counsel, Eric Garner. Mr. Kalfayan should not have had to conduct any research of his own
given the days of research that his team of associates conducted at the outset of the action. This is
but one example of the unreasonableness of the fees request.

1 unreasonable and inefficient *both* to do that *and* to spend large amounts of time researching the
2 same topics. The combination of days and days of researching the basics of water law and
3 inverse condemnation, followed by the hiring of Mr. James as a water lawyer, was excessive and
4 duplicative, and the Court should not award any of it to Plaintiff's counsel.⁴ The Court should cut
5 the research time and reduce the award for Mr. James' work.

6 3. *Mr. Kalfayan Spent Considerable Time Performing Tasks that Should have*
7 *been Done by Associates and Paralegals, And Much of his Work was*
8 *Excessive and Inflated*

9 Mr. Kalfayan is a partner, and with over \$1.2 million dollars in total time entries, he was
10 by far plaintiff's highest billing attorney on this file. (See Plaintiff's Ex. 1.) Mr. Kalfayan's \$1.2
11 million dollars in entries means he averaged approximately 750 billable hours per year on this
12 case. Mr. Kalfayan has numerous billing entries where he spent entire days just talking on the
13 phone, conducting research, reviewing documents or otherwise performing tasks that should be
14 done by associates or paralegals. Mr. Kalfayan billed at \$400 per hour on this file, while
15 associates and paralegals billed at rates of \$125 to \$250 to perform many of the same
16 administrative and lower level tasks. Plaintiff's counsel should not be reimbursed at all for these
17 entries, and if they are, they certainly should not recover at a partner's rate for low level work,
18 (See e.g. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 64.)

19 In addition, it is difficult to understand how the tasks described could possibly have taken
20 the amount of time billed. To quote just a few of the most egregious examples:

- 21 • 4/28/08 Meeting with Dave Z to discuss CMC statement. Telephone conference
22 with Norm Hinckley (sic) with Antonovich's office regarding mediation.
23 Telephone conference with Jeff Green regarding prescription issues. **7.6 hours**
24 • 7/10/08 Conference call with all water purveyors regarding discovery. Telephone

25 _____
26 ⁴ Plaintiff's counsel also should not recover anything for research on inverse condemnation, as it
27 is black letter law that landowners cannot recover in inverse based upon public water purveyors'
28 prescriptive claims to underground water. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35
Cal.3d 564, 575.) While Plaintiff pursued an inverse claim for much of this action, she ultimately
abandoned the claim, and nobody in the class recovered any takings damages in the settlement.

1 conference with BHJ regarding experts for overlies. **9.2 hours**

- 2 • 10/3/2008 Review of filings. Telephone conference with Kush, BHJ, and
3 McClachalan (sic) regarding case. Meeting with Dave Z regarding case and filing
4 regarding trial. Telephone conference with Fred Kia. **9.1 hours**

5 Numerous additional examples are collected in Table "A" attached hereto.

6 Mr. Kalfayan also spent considerable blocks of time performing routine junior associate or
7 paralegal tasks such as talking to class members, setting up and administering a website and 800
8 number for providing class notice, summarizing pleadings and discovery, and preparing exhibits
9 for hearings. (*See e.g.* Ex. 3, (7/11/08, 7/14/08, 11/11/08, 11/19/08, 11/21/08, 12/8/08, 12/22/08,
10 1/5/09, 1/22/09, 1/24/09, 2/5/09, 2/10/09, 2/12/09, 2/25/09, 6/23/09, 7/1/09, 10/21/09, 10/30/09,
11 11/19/09, 10/15/10).) Mr. Kalfayan also billed 12.9 hours attending a "groundwater conference,"
12 and did not provide any explanation as to what this conference was or why his attendance should
13 be charged as billable work. (Ex. 3, (5/22/08, 2/19/09, 2/20/09).)⁵

14 Mr. Kalfayan also spoke to his co-counsel, Mr. Zlotnick, on a near daily basis regarding
15 the status of the case, and he billed for every conversation. Because of the block billing, it is
16 impossible to tell how long these conversations lasted, but they appear to have been lengthy. It is
17 also unclear whether Mr. Zlotnick also billed for these conversations, because Mr. Zlotnick's time
18 records are not provided except for 2009 and 2010. Plaintiff's counsel should not be awarded
19 fees for these block billed conversations.

20 Finally, Mr. Kalfayan had 223 billing entries that note telephone conferences or meetings,
21 of these 223 entries, 102 are calls or meetings with Mr. Joyce, counsel for Diamond Farming
22 Company. This amount and type of communication is excessive, unnecessary and unreasonable
23 and plaintiff's counsel should not recover for it.

24
25
26 ⁵ Mr. Kalfayan is not the only attorney who saw fit to bill for time attending a water conference.
27 On May 30, 2008, Mr. Watson billed 11 hours attending a water conference in Valencia, again,
28 with no explanation of what it was about or why it should be counted as billable time, as opposed
to non-billable MCLE time. (Ex. 3, p. 15.)

1 4. *Mr. Zlotnick's Work was Duplicative, Unnecessary and Unsupported*

2 Mr. Zlotnick is of counsel, and with \$613,687 in entries, he was the second highest billing
3 attorney on this file. (See Ex. 1.) Moreover, at \$450 per hour, Mr. Zlotnick had the highest
4 billing rate of any attorney in this case (other than Mr. Krause). Mr. Zlotnick only provides time
5 sheets for 2009-10, which only show 670.25 hours of work, not 1,300 hours. (Ex. 4.) Mr.
6 Zlotnick has only offered proof of \$301,612 in bills, and even if the Court awards Mr. Zlotnick
7 fees, which it should not, it should automatically discount the \$312,075 for which there is no
8 support.

9 Moreover, regarding the bills Mr. Zlotnick has produced; it is hard to find any substantive
10 work on the case. (See Ex. 4) Mr. Zlotnick's bills are filled with entries showing nothing other
11 than emails and telephone conferences with class members and his co-counsel, Mr. Kalfayan, to
12 discuss the case. Mr. Zlotnick's declaration is no help, stating only that he "serv[ed] as the
13 primary contact with Plaintiff Willis." (Zlotnick declaration at 3). Mr. Zlotnick traveled to and
14 attended various hearings and conferences, but Mr. Kalfayan often attended the same hearings
15 and conferences, and it was not necessary to have two partner-rate billing attorneys doing the
16 same work.⁶ Mr. Zlotnick is not a water law expert, and he does not have any experience or
17 expertise that Mr. Kalfayan did not otherwise possess. (See Ex. 6.) In short, Mr. Zlotnick's work
18 was duplicative and unnecessary, and should not be compensated. (See *Jordan v. Multnomah*
19 *County* (9th Cir. 1987) 815 F.2d 1258, 1263 fn. 8 ("It is not sufficient for prevailing counsel to
20 opine that all of the time claimed was usefully spent, and the district court should not uncritically
21 accept counsel's representations concerning the time expended. (Citation omitted.) The fee
22 claimant must show that the time spent was reasonably necessary and that counsel made a good

23
24 ⁶ As an example, on April 23 and 24, 2009, Mr. Kalfayan and Mr. Zlotnick billed a combined 26
25 hours traveling to Los Angeles and attending a CMC. (Ex. 3 (p. 65), Ex. 4 (p. 5).) As another
26 example, on August 17, 2009, Mr. Kalfayan and Mr. Zlotnick billed a combined 24 hours
27 travelling to San Jose for a hearing and meeting with an expert. (Ex. 3 (p. 82), Ex. 4 (p. 10).) As
28 a third example, on September 1 to 3, 2009, Messrs. Kalfayan, Zlotnick and James billed a
combined 61 hours traveling to and attending a mediation. Ex. 3 (p. 83), Ex. 4 (p. 10), Ex. 5 (p.
5).) That adds up to about a \$25,000 mediation, without even counting the preparation of
mediation briefs. These examples show a pattern of unnecessary duplication that substantially
increased plaintiff's total bill.

1 faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise
2 unnecessary. (quoting *Hensley v. Eckerhart* (1983) 461 U.S. 424, 434.)

3 5. *Plaintiff's Counsel's Work in Opposing the 2008 Demurrer Was Excessive,*
4 *And Their Work was Duplicative*

5 Plaintiff's counsel spent an excessive amount of time preparing and arguing the demurrer
6 in August 2008. Defendants filed a demurrer and the hearing was scheduled for August 11, 2008,
7 and from June 26th through the date of the hearing, Plaintiff's counsel Mr. Kalfayan, Mr. James
8 and Mr. Watson, billed up to a combined 366 hours researching, drafting, reviewing and revising
9 the opposition, and then reading the reply, preparing for and attending the hearing.⁷ (See Ex. 3,
10 pp. 19-28, Ex. 5, pp. 3-4.) It is impossible to tell if Mr. Zlotnick also billed time, because his time
11 records for this period are not included. The total cost for opposing the demurrer was up to
12 \$146,400. This kind of expenditure for a demurrer opposition is beyond the bounds of reason,
13 and the Court should deny any recovery, or at least substantially reduce this award.

14 6. *Plaintiff's Counsel Spent a Considerable Amount of Time Preparing a*
15 *Motion for Summary Judgment that was Never Filed*

16 Plaintiff's counsel also spent considerable time (up to 67 billable hours) in researching
17 and drafting a motion for summary judgment that was never filed. (See Ex. 3, (pp. 30-33, 47, 59,
18 90), Ex. 4 (p. 7), Ex. 5 (p. 2).) Mr. Kalfayan's declaration contains no justification for this work.
19 Moreover, plaintiff's contemplated (and un-filed) summary judgment motion had no impact on
20 the terms of the settlement of the case. (Dunn Decl., ¶ 2.) Plaintiff's top billing rate attorneys did
21 all of the work on this un-filed and un-pursued motion, and thus the motion probably cost about
22 \$26,800. Plaintiff's counsel should not recover for this work that had no impact on the case.

23 7. *Plaintiff Attendance At the Phase 2 Trial Was Not Necessary*

24 The Phase 2 trial was solely to determine whether or not there were any sub-basins that
25 were not hydrologically connected to the basin as a whole. This determination had no effect on
26

27 ⁷ Plaintiff's counsel appear to have performed other tasks on some of the days when they were
28 also working on the demurrer opposition, and they probably did not spend all 366 hours working
on the opposition. However, because counsel "block-billed," there is no way to tell, and the
Court should assume that most of the time was spent working on the opposition to the demurrer.

1 Plaintiff's case and it was unreasonable for Plaintiff's counsel to have attended the Phase 2 trial.
2 Plaintiff has provided no justification for attending the trial. Plaintiff did not participate in the
3 Phase 2 trial and called no witnesses, made no arguments and did not take a position on the Phase
4 2 issues. Yet Mr. Kalfayan attended 5 out of 6 days for the Phase 2 trial and also billed 8.0 hours
5 to review the trial transcript, presumably for the day he did not attend. Mr. Kalfayan attended
6 Phase 2 depositions regarding the subbasin issue, even though they were not relevant to Plaintiff's
7 case. These billing entries add up to approximately 161 hours, for a total of \$64,440. (See Table
8 "B.") Moreover, it is likely that Mr. Zlotnick also billed to attend the Phase 2 trial. However,
9 because Mr. Zlotnick did not provide time sheets for his 2008 time, it is not possible to confirm
10 this. Because attendance at the Phase 2 trial provided no benefit to Plaintiff, all the fees for
11 attending should be disallowed.

12 8. *Discovery and Review of Documents Conducted By Plaintiff's Counsel*
13 *Was Unnecessary, Premature and Not Necessary To Settle*

14 Mr. Kalfayan spent approximately 230 hours conducting, reviewing and traveling to
15 discuss discovery. The discovery was largely directed at the pumping and pumping records for
16 the Public Water Suppliers. Mr. Kalfayan's declaration states that "Class Counsel was also
17 forced to ... create uniform discovery on behalf of the entire private landowner group" (Kalfayan
18 Decl. at 5), but it does not explain why this was so, or why the Public Water suppliers should
19 have to pay for work that was done for the benefit of all the landowners. The motion also does
20 not explain why the discovery was necessary or even helpful. The discovery was irrelevant to
21 Phase 2 and 3 of the trial and will not be relevant until a later phase that has not yet been set by
22 the Court. Furthermore, the discovery did not help Plaintiff's Counsel in the settlement of her
23 claims. As such, the discovery was premature and unnecessary. The fee application should be
24 directly reduced by \$91,680.00, the amount Mr. Kalfayan spent on conducting and reviewing
25 unnecessary discovery. (See Table "C.")
26
27
28

1 **B. The Court Should Deny This Motion, Or at Least Substantially Reduce any**
2 **Award, Because Plaintiff's Billing Rates Were Excessive and are Not**
3 **Supported**

4 In determining the lodestar, courts must also evaluate the reasonable hourly rate for each
5 attorney and other billing professional. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th
6 553, 579.) The court determines a reasonable rate by looking at the reasonable market value of
7 the services rendered, and looks to see whether the requested rate is within the range of
8 reasonable rates charged by comparable attorneys performing comparable work. (*Children's*
9 *Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783.) The moving party bears the burden
10 of proof of its lodestar. (*See Welch, supra*, 480 F.3d at 946.)

11 1. *The Rates Charged by Plaintiff's Counsel Should be Discounted Because*
12 *They were Excessive and are not Supported*

13 Plaintiff's counsel's rates are excessive and unsupported, and the Court should reduce the
14 billing rates in the lodestar calculation for at least two reasons. First, Messrs. Kalfayan's and
15 Zlotnick's respective hourly rates of \$400 and \$450 are excessive in light of their experience.
16 Both attorneys filed declarations in support of their motion, and both identify other class action
17 litigation matters they have worked on in the past. Yet neither attorney identifies a single water
18 rights adjudication case they had worked on prior to this case, and based on the firm biography
19 (Ex. 6), it does not appear that anyone at the Krause firm has any experience in water rights
20 litigation. Water law is a specialized field, and Messrs. Kalfayan and Zlotnick do not have the
21 expertise to warrant such high rates.

22 Second, the rates are also excessive and unsupported because other than Messrs. Kalfayan
23 and Zlotnick, plaintiff's counsel does not identify the experience or expertise of any of the other
24 billing professionals from the Krause firm. Plaintiff's attorneys offer a spreadsheet as Exhibit 1
25 that purports to identify the other billing professionals, their positions and hourly rates. This
26 includes the associates, Messrs. Oudom, Watson, Gibson and Stacy, the clerks, Mr. Connors, Mr.
27 Merjanian and Ms. Gingles, the paralegal, Ms. Polyascko, and Ms. Stewart, who appears to be a
28

1 secretary. These professionals purport to have billed a combined \$342,930 (*see* Ex. 1), and yet
2 Plaintiff's counsel does not offer any testimony or other admissible evidence setting forth the
3 experience of these billing professionals to justify the claimed rates. Plaintiff's counsel have not
4 met their burden, and their motion is fatally defective in regard to the work of these people. The
5 Court should refuse to award any of this \$342,930 in fees.

6 2. *Greg James' Requested Rate far Exceeds his Customary Billable Rate, And*
7 *a Large Mark-up is not Warranted*

8 Mr. James also seeks reimbursement for his fees at inflated and excessive rates, and the
9 Court should reduce his billing rate in the lodestar if it decides to award any of his fees. Mr.
10 James is a water lawyer from Mammoth, and his standard rate is not \$400 per hour. In 2010,
11 Inyo County retained Mr. James to provide water law consulting services at an agreed upon rate
12 of \$140 per hour. (RJN, Ex. "A.") Mr. James should not be permitted to nearly triple his
13 standard rate simply because he is working with the Krause firm on a contingency fee case. The
14 Court should also note that in his declaration, Mr. James makes no mention of his standard hourly
15 rate for other matters, presumably because it is not close to the \$400 per hour he is asking for
16 here. Mr. James has failed to meet his burden as well, and his rate in the lodestar should be
17 substantially reduced, if any fees are awarded.

18 3. *The Court Should Further Discount the Billing Rates for Plaintiff's*
19 *Counsel's Travel Time Between Los Angeles and San Diego*

20 In a case where out-of-town attorneys participate and later make a claim for attorneys'
21 fees, the court should consider the availability of local counsel in setting a lodestar rate or in
22 determining whether to apply an enhancement (or discount). (*Nichols v. City of Taft* (2007) 155
23 Cal.App.4th 1233, 1242.) Messrs. Kalfayan, Zlotnick and Watson billed extensive travel time to
24 and from their home town of San Diego and Los Angeles. (*See* Ex. 3, (3/3/08, 4/5/08⁸, 5/5/08,

25 _____
26 ⁸ On April 5, 2008, Mr. Kalfayan and Mr. James both traveled to Santa Barbara to meet with each
27 other, and both attorneys billed their travel time. (Ex. 3 (p. 9), Ex. 5 (p. 1).) Plaintiff's counsel
28 offers no explanation as to why this meeting had to take place in Santa Barbara, as opposed to
San Diego or Mammoth, or even over the phone, where neither attorney would have needed to
travel at all. This billing entry is frivolous, and Mr. Kalfayan should not recover any of his 8.7
hours billed, and Mr. James should not recover for any of his 12 hours billed.

1 6/12/08, 7/22/08, 8/11/08, 8/29/08, 10/6/08, 10/27/08, 11/3/08, 1/9/09, 1/27/09, 2/2/09⁹, 3/13/09,
2 4/24/09, 7/2/09, 8/4/09, 11/18/09, 2/5/10, 3/8/10, 7/7/10, 11/18/10) Ex. 4, (7/23/09, 2/5/10,
3 3/17/10, 3/31/10, 4/14/10, 4/28/10, 5/12/10, 6/9/10, 6/23/10, 11/18/10, 12/15/10) According to
4 the bills, plaintiff's counsel made a combined 33 trips to the Los Angeles area for hearings,
5 document review, meetings and mediations. Assuming an average of 8 hours of travel time per
6 round trip, this equates to 264 hours of simple drive time that Messrs. Kalfayan, Zlotnick and
7 Watson billed at \$350 to \$450 per hour. If the Court uses Mr. Kalfayan's \$400 rate as an
8 average, this equals roughly \$105,600 for travel time. Plaintiff made no showing that she could
9 not hire local counsel, nor could she ever make such a showing given that this case was in Los
10 Angeles, where there are far more attorneys than there are in San Diego. The Court should cut
11 this travel time altogether, or at the very least, the Court should discount the rate to \$150 per hour,
12 which is what Mr. James did when he billed for travel time. (See Ex. 5.)

13 **III. THE COURT SHOULD NOT APPLY A POSITIVE LODESTAR MULTIPLIER**
14 **BECAUSE IT IS NOT WARRANTED AGAINST PUBLIC AGENCIES AND TO**
15 **DO SO WOULD BE AN UNFAIR "DOUBLE COUNT"**

16 The multiplier (positive or negative) is an independent determination from the lodestar,
17 and the Supreme Court has stated: "a trial court should award a multiplier for exceptional
18 representation only when the quality of representation far exceeds the quality of representation
19 that would have been provided by an attorney of comparable skill and experience billing at the
20 hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double
21 counting and be unreasonable." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) California
22 law provides that once a trial court determines the lodestar figure, it may enhance or decrease the
23 figure through a positive or negative multiplier, depending on the existence (or lack thereof) of
24 several factors. (*Serrano III, supra*, 20 Cal.3d at 49.) The factors include, (1) the novelty and
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26 ⁹ Mr. Kalfayan apparently billed his February 2, 2009 entry twice, and is now attempting to
27 collect for both entries. (Ex. 3 (pp. 49-50).) Moreover, the first time Mr. Kalfayan prepared a
28 time sheet for this day, he billed 8.6 hours, yet the second time he prepared a time sheet for this
day, he only billed 7.8 hours. This billing error should necessarily call into question all of
plaintiff's counsel's bills, as it shows that the entries are random and inaccurate.

1 difficulty of the case, (2) the extent to which the litigation precluded other employment of the
2 attorney, (3) the contingent nature of the award, (4) the fact that the award would eventually fall
3 upon the taxpayers, (5) the public or charitable funding of the attorneys, (6) that the money would
4 accrue not to the individual attorneys but to their organizations, and (7) the results obtained. (*Id.*;
5 *see also Thayer, supra*, 92 Cal.App.4th at 835.)

6 Plaintiff's counsel have requested an upward multiplier of 1.5 on top of their already
7 staggering lodestar request of \$2.3 million. The facts do not justify an upward multiplier, and if
8 anything, the Court should apply a downward multiplier. First, this was not a novel case to
9 lawyers who are experienced in water law. Second, while plaintiff's counsel offer bald, cursory
10 and unsupported claims that they lost out on other work, they really did not explain this factor.
11 Moreover, Messrs. Kalfayan and Zlotnick identify several class actions matters they are working
12 on, and so this action did not preclude all other work. Third, while plaintiff's counsel establish
13 that this was a contingency fee case, it is important to note that this case resolved via settlement,
14 not a judgment, and plaintiff's class did not achieve a money award because plaintiff's counsel
15 ultimately dropped their inverse condemnation cause of action.

16 Finally, this Court should recognize that the defendants in this case are all public agency
17 water purveyors, and thus any attorneys' fee award will fall upon the taxpayers. The Court
18 should not further burden the public agency defendants in this case by forcing them to foot the
19 bill for plaintiff's attorneys, and the defendants certainly should not be forced to pay an
20 unjustified multiplier. Because the public is ultimately paying for plaintiff's counsel's work if
21 fees are awarded, the Court should not allow for any positive multiplier, but rather should actually
22 apply a negative multiplier. (*See San Diego Police Officers Ass'n v. San Diego Police Dep't*
23 (1999) 76 Cal.App.4th 19, 24 (affirming a .20 multiplier when the fee award would be born by
24 the taxpayers).)

25 **IV. PLAINTIFF IS NOT ENTITLED TO COSTS OF SUIT, NOR IS SHE ENTITLED**
26 **TO PAYMENT AS A CLASS REPRESENTATIVE**

27 The private attorney general doctrine only provides for the potential recovery of attorneys'
28

1 fees, not costs. (Code Civ. Proc. § 1021.5; *Benson v. Kwikset Corp.* (2007) 152 Cal.App.4th
2 1254, 1283.) In California, a “prevailing party” in litigation may recover costs of suit, but only to
3 the extent that there is a statutory right to such costs. (Code Civ. Proc. § 1033.5; *Murillo v.*
4 *Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 989.)

5 In their motion, plaintiff’s counsel seek to recover \$65,057 in costs, even though they
6 acknowledge that such costs are not authorized by statute. (Motion, p. 11:24-25.) Plaintiff’s
7 counsel cannot recover such costs. The *Benson* case is directly on point. In *Benson*, plaintiff
8 sought to recover costs and expert fees, as well as attorneys’ fees, under the private attorney
9 general doctrine. The Court emphatically rejected the request, noting that the statute only
10 provided for the recovery of “attorneys’ fees,” and that there was no statute authorizing the costs
11 that plaintiff sought to recover. (*Id.*) Plaintiff is not a “prevailing party” who would be entitled to
12 any costs because the case settled and plaintiff obtained no monetary recover for herself or her
13 purported class. (*See* Code Civ. Proc. § 1032, subd.(a)(4).) Yet even if plaintiff were deemed to
14 be a “prevailing party,” which she is not, plaintiff still cannot recover the requested costs because
15 there is no statutory authorization for such costs. Plaintiff seeks costs for travel expenses,
16 messenger fees, postage and copy costs, which are not recoverable costs. (Code Civ. Proc. §
17 1033.5.) This Court should follow *Benson* and should deny plaintiff’s request.¹⁰

18 Plaintiff also requests that she be paid an incentive award of \$10,000 for her efforts in
19 acting as lead plaintiff. Again, this is not authorized by the private attorney general statute, and it
20 is inappropriate. The incentive award cases plaintiff cites all followed a trial and judgment, and
21 in this case, there was no trial, and there is no judgment. Plaintiff is not entitled to any incentive
22 payment , and the Court should not award one to her.

23 **V. PROPOSED ALTERNATIVES FOR REASONABLE ATTORNEYS’ FEES**

24 The Public Water Suppliers contend that Plaintiff’s counsel should not recover any
25 attorneys’ fees, and this Court should deny this motion outright. However, if the Court is inclined
26

27 ¹⁰ Plaintiff should not be permitted to recover costs under any circumstance by a motion under the
28 private attorney general doctrine. If plaintiff believes she is a prevailing party, she should file a
memorandum of costs, and the issues should be resolved by way of a motion to tax.

1 to grant plaintiff's counsel any attorneys' fees, below are two methods for determining reasonable
2 fees.

3 1. *Reduction of Fees for Block Billing and Unreasonable Billing Entries*

4 For the reasons set forth below the Court should award no more than \$461,900. First, the
5 Court should only award fees based on Messrs, Kalfayan's, Zlotnick's and James' time, because
6 they are the only timekeepers who presented evidence of their hours incurred and reasonable
7 rates. Second, Mr. James should only be awarded a rate of \$140 per hour, because that is in line
8 with rates he typically charges. Third, Mr. Kalfayan and Mr. Zlotnick's billing rates are
9 unreasonable due to their lack of experience in water law and should be reduced to \$300.

10 Finally, for total hours billed, Mr. Kalfayan's bills should be reduced by 60% to account
11 for his block billing, excessive time on the demurrer, the motion for summary judgment that was
12 never filed, travel between San Diego and Los Angeles, and time spent on interoffice conferences
13 and low-level work. The Court should then further reduce the total hours by 390.3¹¹ to account
14 for the unnecessary billing entries related to attending the Phase 2 trial, drafting and reviewing
15 unnecessary discovery, the motion for summary judgment that was never filed, travel between
16 San Diego and Los Angeles, and time spent on interoffice conferences and low-level work. Mr.
17 Kalfayan's total hours billed should thus be 1081 (3,092 hours- 390.3 *.4 = 1080.68). Mr.
18 Zlotnick's total hours billed should be reduced by 50% based upon the overlap and lack in value
19 added, and his rate should not exceed Mr. Kalfayan's rate. Mr. James' hours should be billed at
20 his typical rate of \$140. The total fees should not exceed the following:

| <u>Timekeeper</u> | <u>Hourly Rate</u> | <u>Hours</u> | <u>Total</u> |
|-------------------|--------------------|--------------|---------------------|
| Kalfayan | \$300 | 1081 | \$324,300 |
| Zlotnick | \$300 | 335 | \$100,500 |
| James | \$140 | 265 | \$37,100 |
| | | | ----- |
| Total | | | \$461,900.00 |

27 _____
28 ¹¹ See attached Tables B and C, which outline billing entries for fees associated with discovery and the Phase 2 trial.

2. *Budget For Necessary Tasks and Billing Entries*

Due to block billing it is impossible to reduce every unnecessary and unreasonable task. Thus, the above calculation is based on the billing entries that were wholly unreasonable or unnecessary and it is not possible to capture all of these billing entries. The PWS propose the following budget as an alternative for awarding reasonable fees to Plaintiff's Counsel.

| Task | Hours | Rate | Amount |
|--|-------------|------|---------------------|
| Initial investigation and research; complaint | 100 | 400 | \$ 40,000.00 |
| Petition to add on | 20 | 400 | \$ 8,000.00 |
| Oppose certification of defendant class | 10 | 400 | \$ 4,000.00 |
| Oppose demurrer/motion to strike | 50 | 400 | \$ 20,000.00 |
| First amended complaint | 10 | 400 | \$ 4,000.00 |
| Motions to certify class | 30 | 400 | \$ 12,000.00 |
| Second amended complaint and motion | 20 | 400 | \$ 8,000.00 |
| Motion to strike prescription defenses | 30 | 400 | \$ 12,000.00 |
| Oppose demurrer/motion to strike | 30 | 400 | \$ 12,000.00 |
| Class notice issues | 50 | 400 | \$ 20,000.00 |
| Jury trial issue | 20 | 400 | \$ 8,000.00 |
| Motions re expert witness | 30 | 400 | \$ 12,000.00 |
| Landowners' motion to dismiss PWS cross-complaint | 5 | 400 | \$ 2,000.00 |
| Oppose stay | 5 | 400 | \$ 2,000.00 |
| Oppose motion to consolidate | 10 | 400 | \$ 4,000.00 |
| Oppose motion re transferees | 5 | 400 | \$ 2,000.00 |
| Settlement (discussions, drafts, etc.) | 300 | 400 | \$120,000.00 |
| Motion to approve settlement | 30 | 400 | \$ 12,000.00 |
| Motion for fees | 20 | 400 | \$ 8,000.00 |
| Case management conferences (estimate 10 @5 hours) | 50 | 400 | \$ 20,000.00 |
| Communications with client | 30 | 400 | \$ 12,000.00 |
| Conferences with other parties | 50 | 400 | \$ 20,000.00 |
| Communications with class members | 150 | 125 | \$ 18,750.00 |
| Review Court filings | 30 | 400 | \$ 12,000.00 |
| Respond to Discovery | 5 | 400 | \$ 2,000.00 |
| Subtotal | 1090 | | \$394,750.00 |
| Plus consultations with Mr. James | 265.4 | 140 | \$ 37,156.00 |
| Total reasonable fee | | | \$431,906.00 |

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VI. CONCLUSION

For the reasons stated herein, plaintiff's counsel's motion for attorneys' fees should be denied, and no fees should awarded. If the Court is inclined to grant any fees, such fees should be no more than \$461,900.

Dated: March 9, 2011

BEST BEST & KRIEGER LLP

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WATERWORKS DISTRICT NO. 40

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TABLE A

TABLE "A" EXAMPLES OF OUTRAGEOUSLY INFLATED BILLING BY CLASS COUNSEL

| Date | Entry | Category | Hours | Timekeeper |
|-------------|--|-----------------|--------------|-------------------|
| 2/29/2008 | Meeting with expert (redacted) and Dave X. Conference call with BHJ and DZ regarding motion to amend and class certification . Review of pleadings and file. | Calls/Review | 8.2 | RK |
| 3/5/2008 | Meeting with Dave Z to discuss certification order review of documents filed in case | Calls/Review | 8.3 | RK |
| 3/6/2008 | Meeting with Bob Joyce to discuss status of case and legal issues surrounding class certification. Travel time to and from Bakersfield | Meeting | 8.5 | RK |
| 3/10/2008 | Further review of file and filings. Telephone conference with counsel BHJ and others to discuss status | Calls/Review | 6.9 | RK |
| 3/11/2008 | Review of file and multiple meetings with counsel regarding status | Calls/Review | 8.6 | RK |
| 3/12/2008 | Further review of file and meeting with DZ to discuss May 21 2007 hearing. Telephone conference with BHJ regarding same. | Calls/Review | 8.6 | RK |
| 3/21/2008 | Telephone conference with BHJ and Dave. Exchange of email with Jennifer Headland regarding documents. Review of documents from opposing counsel like list of owners. Telephone conference with Fife regarding service of process | Calls/Review | 8.6 | RK |
| 4/3/2008 | Lengthy telephone conference with BHJ regarding meeting with Purveyors. Meeting with DZ regarding conference with BHJ. | Calls/Review | 8.6 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|-------------|--|-----------------|--------------|-------------------|
| 4/10/2008 | Research and review of cases | Calls/Review | 8.2 | RK |
| 4/28/2008 | Meeting with Dave Z to discuss CMC statement. Telephone conference with Norm Hinckley with Antonovich's office regarding mediation. Telephone conference with Jeff Green regarding prescription issues | Calls/Review | 7.6 | RK |
| 4/29/2008 | Further preparation of CMC statement. Meeting with DZ. Extensive telephone conversation with Rod Smith regarding case. Research docket regarding filings | Calls/Review | 7.8 | Rk |
| 4/30/2008 | Telephone conference with expert and review of consulting agreement with Rod Smith. Meeting with DZ regarding case. Research case law | Calls/Review | 8.6 | RK |
| 5/13/2008 | Further research of cases and filings in court | Calls/Review | 6.2 | RK |
| 5/14/2008 | Further research and review of record | Calls/Review | 8.2 | RK |
| 6/9/2008 | Research parties and their pumping of groundwater. Telephone conference with BHJ regarding demurrer an discovery. Meeting with Dave Z regarding demurrer. Conference call with Zimmer and Joyce regarding upcoming ex parte. Telephone conference with Wayne Lemieux regarding demurrer. | Calls/Review | 9.1 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|-----------|--|--------------|-------|------------|
| 6/30/2008 | Telephone conference with overlies. Preparation of correspondence to Jeff Dunn regarding discovery. Telephone conference with various landowners regarding discovery. Meeting with Dave W to discuss opposition to demurrer | Calls/Review | 9.4 | RK |
| 7/10/2008 | Conference call with all water purveyors regarding discovery. Telephone conference with BHJ regarding experts for overlies | Calls/Review | 9.2 | RK |
| 8/21/2008 | Review of filings and review of documents | Calls/Review | 6 | RK |
| 8/22/2008 | Prepare order; meeting with David Zlotnick to discuss discovery; telephone conference with BHJ. Review of pleadings | Calls/Review | 6 | RK |
| 9/3/2008 | Multiple telephone conversations with landowners. Preparation of emails and spreadsheets regarding copying and transcripts costs. Meeting with Dave Z and Dave W to discuss discovery and settlement. Preparation of correspondence to Lemieux regarding discovery | Calls/Review | 6.5 | RK |
| 9/4/2008 | Review case filings. Review of documents produced by purveyors. Meeting with [redacted]. | Calls/Review | 6.8 | RK |
| 9/16/2008 | Meeting with Dave Z to discuss case. Exchange of email with counsel. Review of documents produced by defendants. | Calls/Review | 6.2 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|------------|---|--------------|-------|------------|
| 10/3/2008 | Review of filings. Telephone conference with Kush, BHJ, and McClachlan regarding case. Meeting with Dave Z regarding case and filing regarding trial. Telephone conference with Fred Kia | Calls/Review | 9.1 | RK |
| 10/24/2008 | Review of pleadings filed and documents produced | Calls/Review | 5.1 | RK |
| 11/10/2008 | Telephone conference with Bob Kuhs regarding class notice. Exchange of email with all counsel regarding case. Preparation for meeting of all landowners. Review of expert reports and websites. Meeting with [redacted] to discuss document production. | Calls/Review | 8.6 | RK |
| 11/17/2008 | Telephone conference with Mike McLachlan regarding class notice. Receipt of email from counsel regarding CMC. Further exchange of email with all counsel | Calls/Review | 8 | RK |
| 11/19/2008 | Research protective order. Multiple telephone conversations with Glotrans regarding document discovery on the website and preparation of suggestions for document protocol. Review of all pleadings filed in case. | Calls/Review | 8 | RK |
| 11/24/2008 | Telephone conference with expert Tom Harter regarding case. Telephone conference with Robert Kush regarding case. Telephone conference with RZ regarding case. Review of pleadings filed. Preparation of reply CMC statement. Multiple meetings with Dave Z regarding case. Preparation of memo to file | Calls/Review | 8.3 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|------------|---|--------------|-------|------------|
| 12/15/2008 | <p>Receipt and review of email from court regarding conference. Exchange of email with counsel regarding conference. Telephone conference with Tom Bunn regarding discovery. Telephone conference with Brad Weeks regarding supplemental discovery. Telephone conference with Bob Joyce regarding discovery. Preparation of notice to all counsel</p> | Calls/Review | 9.2 | RK |
| 2/2/2009 | <p>Travel to LA to meet with Patrick Justafeson from CT Summation to review procedures for global production of documents. Meeting with Patrick to review and discuss same. Conference call with Bill Brunick to discuss document production protocol and ways to improve discovery. Conference call with BHJ to discuss uniform discovery and types of interrogatories to propound. Reviewed current filings</p> | Calls/Review | 8.6 | Rk |
| 2/2/2009 | <p>(entry for same date...) Travel to LA to meet with P. Justafson regarding CT summation. Meeting with Patrick. Conference call with BHJ and Mike Mclachlan regarding discovery . Receipt and review of filings</p> | Calls/Review | 7.8 | RK |
| 2/12/2009 | <p>Meeting with BHJ and other counsel to finalize uniform discovery in Bakersfield</p> | DUP | 8.1 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|-----------|---|--------------|-------|------------|
| 2/12/2009 | Returned emails and calls of class members. Exchange of emails with all counsel to finalize uniform discovery. Further preparation of uniform discovery. Travel to Bakersfield to visit with BHJ and finalize discovery. Telephone conference with Jill Brown and Patrick Justafson regarding CT summation | DUP | 9.1 | RK |
| 2/26/2009 | Telephone conference with Jeff Dunn regarding notice to class members and processing of response forms. Preparation of correspondence to court confirming my conversations with Jeff Dunn. Review of postings to website. Telephone conference with TPA Jennifer Keough regarding mistakes in processing forms. Meeting with Dave Z to discuss status. Preparation for Tomorrow's CMC. Telephone conference with BHJ regarding notice and discovery | Calls/Review | 8.9 | RK |
| 3/12/2009 | Telephone conference with Bob Joyce regarding discovery. Telephone conference with Robert Kuhs regarding meet and confer and summary judgment motion. Telephone conference with Brad Weeks regarding document repository and uniform discovery. Meeting with D. Zlotnick regarding tomorrow's meeting with landowners. Review of discovery in preparation for meeting tomorrow | Calls/Review | 6.3 | RK |

| Date | Entry | Category | Hours | Timekeeper |
|-----------|---|--------------|-------|------------|
| 6/5/2009 | Telephone conference with Keith Lemieux regarding discovery , conflict and attorneys fees. Telephone conference with Francis Logan regarding document production. Telephone conference with BHJ. Meeting with David regarding trial and settlement strategy. Review of filings. Initial preparation for motion for Lis Pendens | Calls/Review | 5.4 | RK |
| 6/9/2009 | Telephone conference with Robert Kush regarding settlement, in rem, and indispensable parties. Meeting with Dave Z to discuss status of case. Review of PWS filing regarding amend to completing. Review of discovery responses by purveyors. | Calls/Review | 4.8 | RK |
| 7/20/2009 | Conference call with all PWS and Landowners regarding alignment of parties and disqualification of counsel Lemieux. Conference call with all landowners regarding discovery. Receipt and review of discovery from PWS. Telephone conference with Tom Bunn regarding settlement of all claims. Meeting with Dave regarding status of case. Review of court filings | Calls/Review | 9.1 | RK |

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TABLE B

TABLE "B" DISCOVERY

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-------------|--|-----------------|--------------|-------------------|-------------|---------------|
| 5/24/2008 | Preparation of special interrogatories and request for admission on all MWP. Review of prior filed documents, special rogs and requests for admissions. | Discovery/Calls | 8.2 | RK | 400 | 3280 |
| 5/27/2008 | Further preparation of all discovery devices including form rogs, requests for documents, special rogs and requests for admissions. | Discovery/Calls | 8.4 | RK | 400 | 3360 |
| 5/29/2008 | Final preparation of discovery propounded on MWPs. Telephone conference with BHJ regarding discovery. Meeting with Dave Z regarding discovery. Attention to filing same. | Discovery/Calls | 8.6 | RK | 400 | 3440 |
| 5/30/2008 | Further preparation of discovery against Overliers. Review of docket and review of expert CV. Telephone conference with Mike McLachlan regarding status. Telephone conference with Dave W regarding meeting. | Discovery/Calls | 8.2 | RK | 400 | 3280 |
| 6/2/2008 | Further preparation of discovery against Overliers. Conference call with Jeff Dunn and Eric Garner Regarding | Discovery/Calls | 8.8 | RK | 400 | 3520 |

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-------------|--|-----------------|--------------|-------------------|-------------|---------------|
| | discovery. Telephone conference with Mike regarding complaint on behalf of pumpers | | | | | |
| 6/4/2008 | Final preparation of discovery on Overliers and Mutual Water Companies. Research delay in discovery and preparation of to protective order threatened by Jeff Dunn | Discovery/Calls | 8.9 | RK | 400 | 3560 |
| 6/5/2008 | Further preparation of discovery against AVEK and US DOJ. Research case law. Review of filings | Discovery/Calls | 9.2 | RK | 400 | 3680 |
| 7/11/2008 | Preparation of discovery on all municipal water purveyors. Exchange of email with counsel for overlies regarding CMC statement. Preparation of blow ups for hearing. Research cases in support of statute of limitations | Discovery/Calls | 9.5 | RK | 400 | 3800 |
| 7/14/2008 | Meeting with graphic designer to prepare blow ups. Meeting with Dave Z to discuss opposition to demurrer. Review of responses to discovery. | Discovery/Calls | 9.4 | RK | 400 | 3760 |
| 8/19/2008 | Telephone conference with Tejon Ranch regarding condemnation. Exchange of emails with Co-counsel regarding discovery and settlement. Telephone | Discovery/Calls | 6.4 | RK | 400 | 2560 |

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-------------|---|-----------------|--------------|-------------------|-------------|---------------|
| | conference with BHJ. Review of discovery. Review of Fife filing | | | | | |
| 8/28/2008 | Review of documents produced by Landowners. Exchange of emails with landowner counsel regarding notice | Discovery/Calls | 6.2 | RK | 400 | 2480 |
| 11/11/2008 | Review of document discovery. Exchange of email with counsel. Review other websites in preparation of notice and AV website | Discovery/Calls | 8.3 | RK | 400 | 3320 |
| 11/12/2008 | Further review of documents produced by all defendants. Research expert and attorney fees recovery. Telephone conference with Bob Joyce regarding discovery | Discovery/Calls | 7.9 | RK | 400 | 3160 |
| 1/7/2009 | Receipt and review of documents and discovery responses from Copa De Oro. Review of Interactive voice recording script. | Discovery/Calls | 8.2 | RK | 400 | 3280 |
| 2/2/2009 | Travel to LA to meet with Patrick Justafeson from CT Summation to review procedures for global production of documents. Meeting with Patrick to review and discuss same. Conference call with Bill Brunick to discuss document production protocol and ways to improve discovery. | Discovery/Calls | 7.8 | RK | 400 | 3120 |

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-----------|--|-----------------|-------|------------|------|--------|
| | Conference call with BHJ to discuss uniform discovery and types of interrogatories to propound. Reviewed current filings | | | | | |
| 2/18/2009 | Final preparation of uniform discovery to all public water suppliers. Telephone conference with BHJ regarding changes to all discovery. Telephone conference with Donna Luis to incorporate all changes to discovery. Exchange of emails with opposing counsel regarding document depository | Discovery/Calls | 8.4 | RK | 400 | 3360 |
| 3/6/2009 | Multiple telephone conferences and exchange of emails with Brad Weeks regarding standardized discovery. Receipt and review of standardized discovery from the Public Water Suppliers. Review of documents produced by RCSD and LAWW. Meeting with Dave Z to discuss same. Meeting with Patrick Justafson to prepare document protocols and update CT Summation | Discovery/Calls | 8.6 | RK | 400 | 3440 |
| 7/1/2009 | Exchange of email with Mike Moore and Stefanie Headland regarding | Discovery/Calls | 8.1 | RK | 400 | 3240 |

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-----------|---|-----------------|-------|------------|------|--------|
| | communications with class members. Review of filings. Review of emails. Telephone conference with class members. Preparation of summary of discovery responses | | | | | |
| 7/2/2009 | Travel to Pasadena to meet with all PWS counsel and landowner counsel regarding discovery. Meeting with all counsel to discuss discovery | Discovery/Calls | 8.4 | RK | 400 | 3360 |
| 7/21/2009 | Conference call with Keith and BHJ regarding tomorrow's meet and confer and document production. Review of one disc received from Dunn regarding newspaper clippings. Review of one disc from John Tootle regarding deeds | Discovery/Calls | 8.2 | RK | 400 | 3280 |
| 7/22/2009 | Travel to and from Little Rock Creek ID. Meeting with Brad Bones and firm of Lemieux to review documents and meet and confer on discovery. | Discovery/Calls | 9.2 | RK | 400 | 3680 |
| 7/28/2009 | Travel to Palmdale to meet and confer on discovery with Brad Weeks and BHJ. Meeting with BHJ post meet and confer. Review of Quartz Hill documents at Brad Weeks' office | Discovery/Calls | 10.1 | RK | 400 | 4040 |
| 7/29/2009 | Travel from Littlerock Creek. Meeting with | Discovery/Calls | 8.7 | RK | 400 | 3480 |

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|-------------|---|-----------------|--------------|-------------------|-------------|--------------------|
| | opposing counsel Kristine Carson to discuss document production and document copying. Meeting with LDSI to discuss copying of Littlerock Creek documents. Preparation of memo to file regarding document inspection of Quartz Hill. | | | | | |
| 8/4/2009 | Travel to Anaheim to review and inspect documents of Phelan Pinion. Meeting with Susan Trager and Francis Logan. Review of documents. | Discovery/Calls | 8.2 | RK | 400 | 3280 |
| 8/5/2009 | Travel to Palm Desert and North Edwards to review documents. Meeting with Counsel Kristen Carson and general manager Roseana. Review of documents | Discovery/Calls | 10.3 | RK | 400 | 4120 |
| 8/6/2009 | Review of briefs that were field. Attention to document copying. Review of documents produced by LA county regarding notice | Discovery/Calls | 8.4 | RK | 400 | 3360 |
| 8/10/2009 | Travel to Irvine to review documents of Phelan. Meeting with Frances Logan. Telephone conference with David Sunding regarding expert work on quantification of rights, correlative rights, and land use planning. | Discovery/Calls | 8.6 | RK | 400 | 3440 |
| | | | 229.2 | | | \$91,680.00 |

TABLE C

TABLE "C" PHASE 2 TRIAL

| Date | Entry | Category | Hours | Timekeeper | Rate | Billed |
|--------------|---|-----------------|--------------|-------------------|-------------|--------------------|
| 9/22/2008 | Preparation for deposition. Travel to Sacramento for deposition of Uttley | Phase 2 | 10 | RK | 400 | 4000 |
| 9/23/2008 | Appearance at deposition of Uttley. Meeting with counsel post deposition | Phase 2 | 9.5 | RK | 400 | 3800 |
| 9/24/2008 | Appearance at deposition of Scalmanini and travel back to San Diego | Phase 2 | 10 | RK | 400 | 4000 |
| 9/25/2008 | Appearance at deposition of Rhone | Phase 2 | 8 | RK | 400 | 3200 |
| 9/26/2008 | Appearance at deposition of List | Phase 2 | 8 | RK | 400 | 3200 |
| 9/28/2008 | Travel to Sacramento for depositions. Review of expert report in preparation for deposition | Phase 2 | 8 | RK | 400 | 3200 |
| 9/29/2008 | Appearance at deposition of Durbin; Meeting with BHJ post deposition | Phase 2 | 10 | RK | 400 | 4000 |
| 9/30/2008 | Appearance at deposition of Lambie. Travel back from Sacramento | Phase 2 | 12 | RK | 400 | 4800 |
| 10/2/2008 | Review of filings before trial. Meeting with Dave Z and review of trial briefs | Phase 2 | 8.5 | RK | 400 | 3400 |
| 10/6/2008 | Appearance at trial and travel to LA | Phase 2 | 10 | RK | 400 | 4000 |
| 10/7/2008 | Appearance at trial re Basin | Phase 2 | 8 | RK | 400 | 3200 |
| 10/8/2008 | Appearance at trial re Basin | Phase 2 | 8 | RK | 400 | 3200 |
| 10/9/2008 | Appearance at trial re Basin | Phase 2 | 8 | Rk | 400 | 3200 |
| 10/10/2008 | Review of transcripts and meeting with Dave Z | Phase 2 | 8 | RK | 400 | 3200 |
| 10/27/2008 | Travel to Pasadena. Appearance at deposition of Tom Sheehan | Phase 2 | 11 | RK | 400 | 4400 |
| 10/28/2008 | Appearance at deposition of Tom Sheehan. Review of documents and filings | Phase 2 | 8 | RK | 400 | 3200 |
| 10/30/2008 | Review of transcripts from trial | Phase 2 | 8 | RK | 400 | 3200 |
| 11/3/2008 | Appearance at Trial and travel to LA. Preparation of memo to the file regarding witnesses and judge's rulings from the bench. Travel from LA to San Diego | Phase 2 | 8.1 | RK | 400 | 3240 |
| 161.1 | | | | | | \$64,440.00 |

1 BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
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STEFANIE D. HEDLUND, Bar No. 239787
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5 Attorneys for Cross-Complainant
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
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COUNTY WATERWORKS DISTRICT NO. 40

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY**
18 **GROUNDWATER CASES**

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

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

25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 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

**DECLARATION OF JEFFREY V. DUNN
IN SUPPORT OF OPPOSITION TO
MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND CLASS
REPRESENTATIVE INCENTIVE AWARD**

**DATE: MARCH 22, 2011
TIME: 10:00 A.M.
DEPT.: 1
JUDGE: HON. JACK KOMAR**

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DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare as follows:

1. I am a partner with the law firm of Best, Best & Krieger LLP, counsel for cross-defendant Los Angeles County Waterworks District No. 40 (the "County"). I have personal knowledge of the facts stated herein and if called upon to do so, I could and would competently testify to these facts.

2. I have been one of the lead attorneys representing the County throughout this action. I observed upon reviewing Plaintiff Willis Class Counsel's motion for an award of attorneys' fees and litigation expenses that Class Counsel performed legal work in researching, drafting and preparing a motion for summary judgment and/or summary adjudication, as this purported work is described in the attorney bills attached to the motion. During the course of the litigation, Class Counsel made vague references to their filing a motion for summary judgment/adjudication, although they never filed such a motion. Together with other legal counsel in the case, I agreed any such a motion should not be granted and would, in fact, be frivolous. I attended the mediation sessions and negotiations during which the litigation with Plaintiff Willis Class was ultimately resolved, and a potential Willis Class motion for summary judgment and/or adjudication from Plaintiff Willis had no bearing on the resolution of the case. I gave no consideration to such a proposed motion when analyzing settlement proposals.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3 day of March, 2011, at Irvine, California.



Jeffrey V. Dunn

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11 Attorneys for Defendant and Cross-Complainant
12 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER
CASES**

18 **Included Actions:**

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

21 Los Angeles County Waterworks District No.
22 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
23 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 California,
26 County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND LITIGATION
EXPENSES**

**DATE: MARCH 22, 2011
TIME: 10:00 A.M.
DEPT: 1
JUDGE: HON. JACK KOMAR**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Evidence Code Sections 452 and 453, Los Angeles County Waterworks District No. 40 ("County") requests that the Court take judicial notice of the following documents attached hereto:

EXHIBIT A County of Inyo, Board of Supervisors, Minutes of June 2, 2009 Board of Supervisors Meeting

Dated: March 9, 2011

BEST BEST & KRIEGER LLP

By: *Eric L. Garner* *Stefanie D. Hedlund*
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Defendant and Cross-Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

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EXHIBIT A

MINUTES**County of Inyo
Board of Supervisors****June 2, 2009**

The Board of Supervisors of the County of Inyo, State of California, met in regular session at the hour of 9:00 a.m., on Tuesday, June 2, 2009, in the Board of Supervisors Room, County Administrative Center, Independence, with the following Supervisors present: Chairperson Beverly Brown presiding, Linda Arcularius, Susan Cash, Marty Fortney and Richard Cervantes. Supervisor Cervantes provided the Invocation, and Supervisor Cash led the Pledge of Allegiance.

- Public Comment** The Chairperson announced the public comment period. Supervisor Richard Cervantes informed the Board of a letter he had received from Mark Long, which indicates that the information the Board received regarding private airplane business use and insurance requirements was wrong. Supervisor Cervantes provided the letter to County Counsel who said that he would forward it to the County's Risk Manager, who had contacted the FAA directly, prior to providing the information regarding private planes to the Board.
- County Department Reports** The Chairperson announced the County Department Report period. Ms. Jean Turner, Director of Health and Human Services, updated the Board on ramifications of proposed State budget actions. Mr. Ted Pedersen, Public Works Director, updated the Board on road projects. Supervisor Brown notified Mr. Pedersen that because of the construction on Red Hill Road there is a large bump that is not well marked and could cause a problem. Supervisor Fortney asked Mr. Pedersen to check on the Independence widening project, which is denying access to private driveways for extended periods of time. Mr. Marvin Moskowitz, Environmental Health Director, updated the Board on an incident in Tecopa, which resulted in the water to the Tecopa Community Center being shut off for several days. Dr. Bob Harrington, Inyo County Water Director, updated the Board on the development of an Integrated Regional Water Management Plan. The County Administrator, Mr. Kevin Carunchio, informed the Board that he had participated in a CSAC budget conference call. He provided information on the impact to local programs as a result of the cuts being proposed by the State.
- HHS-Hlth. Serv./ Lone Pine Office Space Lease** Moved by Supervisor Cash and seconded by Supervisor Cervantes to approve the Lease Agreement between the County of Inyo and Donald Christenson, M.D., for property at 380 Mt. Whitney Drive in Lone Pine, at the rate of \$2,536 per month for the period of July 1, 2009 through June 30, 2010, contingent upon the Board's adoption of a FY 2009-10 budget; and authorize the Chairperson to sign. Motion carried unanimously.
- HHS-Hlth. Serv./ Health Officer Contract** Moved by Supervisor Cash and seconded by Supervisor Cervantes to approve Amendment No. 1 to the Contract between the County of Inyo and Richard O. Johnson, M.D., amending the scope of work and reducing the Contract amount for Health Officer services by \$105,044.78 to a total amount not to exceed \$355,189.32 for the period of November 1, 2007 through June 30, 2012, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign. Motion carried unanimously.
- Sheriff/Vacancies** Sheriff Lutze and the Board discussed the Sheriff's request to fill one vacant Lieutenant position and two vacant deputy sheriff positions. Moved by Supervisor Arcularius and seconded by Supervisor Fortney to find that, consistent with the adopted Extraordinary Budget Control Policies: A) the availability of funding for requested positions comes from the General Fund, as certified by the Sheriff and concurred with by the County Administrator and Auditor-Controller; B) where internal candidate meet the qualifications for the position, the vacancy could be filled through an internal recruitment; and C) approve the hiring of the following vacancies within the Sheriff's Safety Division – one Lieutenant at Range 79SC (\$5,624 - \$6,842); and two Deputy Sheriff at Range SA67 (\$3,948 - \$4,804). Motion carried unanimously.
- Recess/ Reconvene** The Chairperson recessed the regular meeting at 10:00 a.m., to reconvene in open session at 10:10 a.m., with all Board Members present.

**BofS/AB 1409
Revisions to Public
Contracting Code**

The Board discussed the current status of AB 1409, which would revise the public contract code in such a manner as to negatively impact small remote rural counties. Mr. Ted Pedersen, Public Works Director, provided additional information regarding the impacts of the proposed changes. The Board went on to discuss proposed amendments to the bill, which are being proposed to address the oppositions concerns, as well as the possibility of exclusions for small population counties. The Board expressed a desire to have a letter supporting the bill if it is amended made available to our State legislators before they are requested to consider the bill. Prior to taking action on the request for a position on AB 1409, the Board asked Staff to check with CSAC or RCRC to find out the status of the Bill, explaining that if the Bill is in the suspense file, there is no need for immediate action. The Board directed that the Chairperson sign a letter to our State Legislators, which identifies the impact of the legislation on Inyo County and relaying the County's support for AB 1409, which would revise the Public Contract Code §20395(c) if it is amended to protect and/or has a population exclusion for Inyo County and other small rural counties.

**BofS/Legislative
Platform**

The Board discussed the amendments to the 2009 Legislative Platform. They discussed the two proposed amendments, which were (a) to oppose legislation that amends the State's prison sentencing guidelines to negatively impact the County and (b) oppose legislation that increases costs to private industry. The Board talked about amending the proposed language on the sentencing guidelines by adding the following at the end of the sentence "including but not limited to commutation of sentences and commutation of variable sentencing options (i.e., wobblers), without corresponding dedicated long-term reliable revenue stream and the ability to administer it locally." Supervisor Cervantes expressed concern with the impact of Federal regulations on the State of California as a result of the Federal Environmental Species Act and suggested that the Legislative Platform be amended to incorporate opposition of these regulations. The Board discussed Supervisor Cervantes' suggestion and it was determined that the current Platform, under the Planning and Land Use Section, incorporates sufficient statements to provide for the County to oppose these types of regulations. Supervisor Fortney informed the Board of new State Fire Code regulations, which will require sprinkler systems in new construction. He explained that the regulations are not being implemented through legislation, but would have a tremendous negative impact on Inyo County. The Board talked about adding a blanket statement at the beginning of the Legislative Platform that qualifies that the County's positions on legislation extends to rules, regulations, guidelines, etc., that are set by other governing agencies and departments that impact the County. The Board went on to request that the statement drafted regarding private industry be amended to read "Oppose legislation that is unduly burdensome to private industry." Moved by Supervisor Cash and seconded by Supervisor Fortney to approve the 2009 Legislative Platform, as amended. Motion carried unanimously.

**DA/Budget
Amendment**

Moved by Supervisor Arcularius and seconded by Supervisor Fortney to amend the FY 2008-09 District Attorney Budget Unit 022400 as follows: increase estimated revenue in Restitutions (*Revenue Code #4676*) by \$10,066 and increase appropriations in Special Appropriations (*Object Code #5321*) by \$10,066. Motion carried unanimously.

**P.W./Shoshone A/P
Budget Amendment**

Moved by Supervisor Cervantes and seconded by Supervisor Cash to amend the FY 2008-09 Shoshone Airport Special Aviation Budget Unit 150800 as follows: increase appropriations in External Charges (*Object Code #5124*) by \$9,021, Travel (*Object Code #5331*) by \$576, and Utilities (*Object Code #5351*) by \$100. Motion carried unanimously.

**P.W./Transportation
& Planning Budget
Amendment**

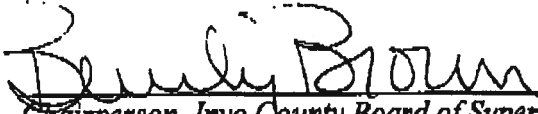
Moved by Supervisor Arcularius and seconded by Supervisor Cash to amend the FY 2008-09 Transportation & Planning Budget Unit 504605 as follows: increase estimated revenue in State Other (*Revenue Code #4499*) by \$50,000 and increase appropriations in External Charges (*Object Code #5124*) by \$50,000. Motion carried unanimously.

**Water Dept./CA
Water Plan Update
2009**

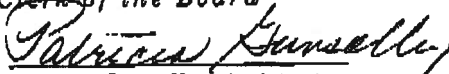
Dr. Bob Harrington, Inyo County Water Director, provided a brief history of the California Water Plan and the scheduled 2009 Update. He reviewed the Update in detail and highlighted the areas of the Plan which were not in line with Inyo County water policy, which included the General Plan mandates, the areas of origin for water and the use of the term "blue printing" and its implications. Dr. Harrington confirmed that he would amend his letter to the California Department of Water Resources, incorporating today's discussion so that it is sent by the June 5th deadline.

- County Counsel/
Kirby Contract
Amendment** Moved by Supervisor Cervantes and seconded by Supervisor Arcularius to approve Amendment No. 3 to the Agreement between the County of Inyo and John D. Kirby, A.P.C., exercising the option to extend the Contract for the provision of civil litigation services, for the period of July 1, 2009 through June 30, 2010, at the rate of \$180 per hour and with a Contract limit of \$200,000 for the period of the Contract extension; contingent upon the Board's adoption of a FY 2009-10 budget; and authorize the Chairperson to sign. Motion carried unanimously.
- County Counsel/
James Yucca
Mountain Services
Contract** Moved by Supervisor Cash and seconded by Supervisor Fortney to approve the Agreement between the County of Inyo and Gregory L. James, Attorney at Law, for the provision of legal services to the County related to the Yucca Mountain Repository Licensing Proceedings before the Nuclear Regulatory Commission and related Court actions for the period of July 1, 2009 through June 30, 2010, at a base rate of \$185 per hour, and as further set forth in Attachment B to the Contract, with travel time paid at \$50 an hour, in an amount not to exceed \$160,000, contingent upon the Board's adoption of a FY 2009-10 budget; and authorize the Chairperson to sign. Motion carried unanimously.
- County Counsel/
James Water
Services Contract** Moved by Supervisor Cervantes and seconded by Supervisor Arcularius to approve the Agreement between the County of Inyo and Gregory L. James, Attorney at Law, for the provision of Water/Environmental Attorney services to the Water Department for the period of July 1, 2009 through June 30, 2010, at the rate of \$140 for every hour of legal services except travel time which will be paid at \$50 an hour, in an amount not to exceed \$60,000; contingent upon the Board's adoption of a FY 2009-10 budget; and authorize the Chairperson to sign. Motion carried unanimously.
- CAO-Info Serv./
USDA-RC&D
Support Letter re:
Broadband Needs
Study Grant** The Board reviewed the memo from the USDA-Natural Resources Conservation Services, Desert Mountain RC&D, asking for a letter of support from the Board of Supervisors for submission of an application to the California Emerging Technology Fund (CETF) for funds to complete a study to assess the broadband needs and existing infrastructure in the three county areas of Kern, Inyo and Mono. Moved by Supervisor Fortney and seconded by Supervisor Cash to authorize the Chairperson to sign the letter of support, as drafted. Motion carried unanimously.
- Recess/
Reconvene** The Chairperson recessed the regular meeting at 11:30 a.m., to reconvene in open session at 11:45 a.m., with all Board Members present.
- Ag Comm./Public
Hearing O.V.
Mosquito Abatement
Program and
Mosquito Control
and Disease
Prevention
Assessments** The Chairperson opened the public hearing at 11:45 a.m., on the proposed continuation of the assessments for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment" to receive public input on the proposed continuation of the assessments, the proposed assessments budget for Fiscal Year 2009/2010 and the services and programs, the assessments fund, and any other issues related to the assessments. The Agricultural Commissioner, Mr. George Milovich, introduced the representative of the firm that conducted the Benefit Assessment, who reviewed the Staff Report and recommendations. The Board and staff discussed the report in detail and at length. There was no public comment forthcoming regarding these assessments. The Chairperson closed the public hearing at 11:55 a.m.
- Resolution No.
2009-22/Adopting
Mosquito
Assessments** On a motion by Supervisor Arcularius and a second by Supervisor Cervantes, Resolution No. 2009-22 was adopted, approving the Engineer's Report, confirming the diagram and assessments for FY 2009-2010 for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment;" motion unanimously passed and adopted.
- Emerg. Serv./Mud
Flow Emergency
Cont'd.** The County Administrator recommended the local emergency as a result of the Oak Creek Mud Flows be continued until the permanent diversion structures are in place. He noted that DWP has estimated the diversions will be in place by late fall. Moved by Supervisor Fortney and seconded by Supervisor Cervantes to continue the local emergency as a result of the Inyo Complex Oak Creek Mud Flows. Motion carried unanimously.
- Board Members and
Staff Reports** The Board Members reported on their activities during the preceding week, including an IMAAA Meeting, a Lone Pine Museum Meeting, an interagency Visitor Center Meeting, the reopening of the Mt. Whitney Fish Hatchery ceremony, and a Big Pine Volunteer Fire Commissioners Board Meeting.

- Recess/Reconvene** The Chairperson recessed the regular meeting at 12:30 p.m., to reconvene in open session at 1:22 p.m., with all Board Members present.
- Board Members and Staff Reports Con'd.** The Board Members continued their reports including a detailed report on the State Budget situation and the CSAC Legislative Conference, including the proposal by the State to not pay the counties their portion of the gas tax revenues and its impact on Inyo County.
- Public Comment** The Chairperson announced the public comment period and there was no one from the public wishing to address the Board.
- Closed Session** The Chairperson recessed open session at 2:00 p.m., to convene in closed session, with all Board Members present, to discuss and take action as appropriate on Agenda Items No. 19. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: - CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion; No. 20. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriff's Association (DSA) - Negotiators: CAO Kevin Carunchio, Sheriff Bill Lutze, and Labor Relations Administrator Sue Dishion; No. 21. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistant Association (EOAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion; No. 22. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion; No. 23. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators' Association (LEAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion; and No. 25. **PERSONNEL [Pursuant to Government Code §54957] - Public Employee Performance Evaluation** - Title: Director of Health and Human Services.
- Report on Closed Session** The Chairperson recessed closed session at 3:35 p.m., to reconvene in open session, to receive a report on closed session. County Counsel reported there were no actions taken in closed session, which are required by law to be reported on in open session.
- Adjournment** The Chairperson adjourned the regular meeting at 3:35 p.m., to 9:00 a.m., Tuesday, June 9, 2009, in the Board of Supervisors Room, at the County Administrative Center, in Independence.


 Chairperson, Inyo County Board of Supervisors

Attest: KEVIN D. CARUNCHIO
 Clerk of the Board

by 
 Patricia Gunsolley, Assistant

PROOF OF SERVICE

I, Patricia Alshabazz, 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, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On March 9, 2011, I served the within document(s):

OPPOSITION TO MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARD; DECLARATION OF JEFFREY DUNN; REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

- 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 March 9, 2011, at Irvine, California.



Patricia Alshabazz