

1 Ralph B. Kalfayan, SBN133464  
2 David B. Zlotnick, SBN 195607  
3 KRAUSE, KALFAYAN, BENINK  
4 & SLAVENS LLP  
5 625 Broadway, Suite 635  
6 San Diego, CA 92101  
7 Tel: (619) 232-0331  
8 Fax: (619) 232-4019

9 Attorneys for Plaintiff  
10 Rebecca Lee Willis and the Willis Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 **ANTELOPE VALLEY**  
14 **GROUNDWATER CASES**

15 This Pleading Relates to Included Action:  
16 REBECCA LEE WILLIS, on behalf of herself  
17 and all others similarly situated,

18 Plaintiff,

19 vs.

20 LOS ANGELES COUNTY WATERWORKS  
21 DISTRICT NO. 40; CITY OF LANCASTER;  
22 CITY OF PALMDALE; PALMDALE WATER  
23 DISTRICT; LITTLEROCK CREEK  
24 IRRIGATION DISTRICT; PALM RANCH  
25 IRRIGATION DISTRICT; QUARTZ HILL  
26 WATER DISTRICT; ANTELOPE VALLEY  
27 WATER CO.; ROSAMOND COMMUNITY  
28 SERVICE DISTRICT; PHELAN PINON HILL  
COMMUNITY SERVICE DISTRICT; and  
DOES 1 through 1,000;

Defendants.

) RELATED CASE TO JUDICIAL  
) COUNCIL COORDINATION  
) PROCEEDING NO. 4408  
)

) **PLAINTIFF'S MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF MOTION FOR A**  
) **SUPPLEMENTAL AWARD OF**  
) **ATTORNEYS' FEES**

) Date: August 25, 2011  
) Time: 10:00 a.m.  
) Dept.: 15 (CCW)  
) Judge: Hon. Jack Komar

1 **I. INTRODUCTION**

2 By Order dated May 4, 2011, this Court granted an award of fees to counsel for the Willis  
3 Class against the Public Water Suppliers (“PWS”) with respect to services that counsel provided  
4 to the Class during the period from the inception of this case in late 2006 through December  
5 2010. Class counsel now seek a supplemental fee award for the services they rendered during  
6 the four and one-half months from January 1, 2011 through May 13, 2011 when the Court  
7 entered Judgment approving the settlement.  
8

9 Under the terms of the parties’ Stipulation of Settlement, Class Counsel were entitled to  
10 seek an award of fees for all efforts they rendered prior to the Court’s entry of Judgment  
11 approving the settlement (as well as certain limited efforts thereafter, not currently at issue).  
12 Class Counsel and their water law consultant, Greg James, have collectively spent some 472.78  
13 hours of professional time and their paralegals and clerks have spent an additional 115.9 hours  
14 on this case during the four and one-half months at issue. They are entitled to be compensated  
15 for those efforts pursuant to the Code and the terms of the parties’ agreement.  
16

17 Pursuant to Section 1021.5 of the Code of Civil Procedure, Willis Class Counsel now  
18 seek an award of fees and expenses to compensate them for their efforts on this matter during the  
19 period from January 1, 2011 through May 13, 2011.

20 **II. RELEVANT FACTS**

21 The relevant facts are set forth in the accompanying declarations of counsel. In  
22 summary, during the first months of this year, Class Counsel expended substantial efforts  
23 bringing the settlement of this matter to completion and fighting for an award of fees over  
24 determined opposition. Class counsel have collectively spent 472.78 hours during that period  
25 litigating this matter, and their clerks and paralegals have spent another 115.9 hours. Their  
26 collective lodestar is \$209,624.50. They have not been paid a penny for their efforts and have  
27 handled this matter on a contingent basis, with no guarantee that they would ever be paid for  
28

1 their time.

2 **III. ARGUMENT**

3 A fee award is appropriate here under Section 1021.5 of the Code of Civil Procedure,  
4 which provides as follows:

5 Upon motion, a court may award attorneys' fees to a successful party against one  
6 or more opposing parties in any action which has resulted in the enforcement of  
7 an important right affecting the public interest if: (a) a significant benefit, whether  
8 pecuniary or nonpecuniary, has been conferred on the general public or a large  
9 class of persons, (b) the necessity and financial burden of private enforcement,  
or of enforcement by one public entity against another public entity, are such as to  
make the award appropriate, and (c) such fees should not in the interest of justice  
be paid out of the recovery, if any.

10 As discussed below, this case satisfies all of the requirements for an award of fees under CCP  
11 Section 1021.5.

12 **A. THIS MATTER SATISFIES ALL OF THE CRITERIA FOR AN**  
13 **AWARD OF FEES UNDER CCP SECTION 1021.5**

14 This case meets all of the criteria for an award of fees from the water purveyors under  
15 Section 1021.5 of the California Code of Civil Procedure. Specifically, (a) the action has  
16 resulted in the enforcement of an important right affecting a large group of people as well as the  
17 public interest; (b) the action has conferred a significant benefit on a large class of persons; (c)  
18 the necessity and financial burden of private enforcement are such as to make a fee award  
19 appropriate; and (d) there is no pecuniary recovery out of which fees can be paid. *See*  
20 *generally Graham v. DaimlerChrysler*, 34 Cal. 4<sup>th</sup> 553 (2005).

21 **1. The Class Is a Prevailing Party For Purposes of Section 1021.5.**

22 In evaluating whether a party is the "prevailing party" for purposes of an award of  
23 attorneys' fees, the court looks to the impact of the action, not whether there was a "verdict" for  
24 one side or the other. *Graham, supra*, 34 Cal. 4<sup>th</sup> at 566. If a party obtains some relief as a result  
25 of the lawsuit, then that party is a prevailing party. *Id.* Courts consider litigants prevailing  
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1 parties when they reach reasonable settlements that afford them relief. “[A] plaintiff need not  
2 achieve favorable final judgment in order to be a successful party. A defendant’s voluntary  
3 action induced by plaintiff’s lawsuit will still support an attorney’s fee award on the rationale  
4 that the lawsuit spurred defendant to act or was a catalyst speeding defendant’s response.”  
5 *Californians for Responsible Toxics Mgmt. v. Kizer* (1989) 211 Cal. App. 3d 961, 967. *See,*  
6 *Graham, supra*, 34 Cal. 4<sup>th</sup> at 575. Plaintiff handily meets this standard here. Defendants have  
7 agreed to limit the water they use from the Basin, release their claims for prescriptive rights, and  
8 respect the Class’ correlative rights. Plaintiff is a prevailing party for purposes of Section  
9 1021.5.  
10

## 11 **2. The Action Has Resulted in the Enforcement of an Important Right**

12 First, the action has resulted in the enforcement of an important right affecting a large  
13 group of persons in that the case protected the property and water rights of some 65,000  
14 landowners in the Basin. It cannot reasonably be controverted that landowners’ ability to make  
15 use of the groundwater under their properties is a critical interest, particularly in an arid  
16 environment like the Basin. Moreover, the California Constitution declares the public interest in  
17 the proper use of the State’s water resources. Absent the involvement of the Class, a  
18 comprehensive adjudication of the Basin would not have been possible because, without the  
19 participation of these 65,000 landowners, the Court would not have had jurisdiction over all of  
20 the parties necessary for a comprehensive adjudication. Thus, Willis and her counsel have not  
21 only protected the rights of the 65,000 Class members, their involvement has facilitated a  
22 resolution of this large Basin’s problems.  
23

24 As the California Supreme Court explained in *Graham, supra*, “[t]he trial court in its  
25 discretion must realistically assess the litigation and determine, from a practical perspective,  
26 whether or not the action served to vindicate an important right so as to justify an attorney fee  
27 award under section 1021.5.” *Id.* at 147-48 (quotations and citation omitted). In *Graham*, the  
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1 Supreme Court upheld a fee award in a case that was the catalyst for defendant's offer to  
2 repurchase trucks that had been sold based on misrepresentations about their towing capacity.  
3 The result here is at least as significant.

4         The California Courts have consistently concluded that cases less significant than this one  
5 resulted in the enforcement of an important right affecting the public interest and have therefore  
6 awarded fees under Section 1021.5. *See, e.g., Graham*, 34 Cal 4<sup>th</sup> at 156 (“It is well settled that  
7 attorney fees under section 1021.5 may be awarded for consumer class actions benefitting a large  
8 number of people’); *Friends of the Trails v. Blasius*, 78 Cal. App. 4<sup>th</sup> 810 (2000)(fees awarded in  
9 case enforcing common law right to easement for public trail); *Beasley v. Wells Fargo Bank*,  
10 235 Cal. App. 3d 1407 (1991)(action challenging credit card overcharges was a “consumer  
11 protection action” and satisfied requirements for fee award). If the preservation of an easement  
12 for a trail is enough to warrant a fee award, certainly such an award is warranted here.

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14         Further, it is clear that this case satisfies the requirement that it confer a significant  
15 benefit on a large number of persons. In *Graham, supra*, there were fewer than 1,000 California  
16 purchasers of the trucks at issue. This case involves a class of over 65,000 landowners and, as  
17 noted above, has served the important public interest of protecting the Basin.

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19         **3. The Case Has Conferred a Significant Benefit on the Class and Public.**

20         Plaintiff's prosecution of this case has conferred a significant benefit on the Class. The  
21 Settlement involves not only the Public Water Suppliers' compromise and release of their  
22 prescription claims against the class members, but also their agreement to recognize the  
23 correlative rights of the dormant landowner class. Absent counsel's willingness to prosecute  
24 this action for the Class, the Class members' rights to make beneficial use of the groundwater  
25 under their properties could well have been reduced or lost due to the prescription claims of the  
26 Public Water Suppliers. Although the Agreement does not preclude other parties from attempting  
27 to subordinate the Class, the simple fact is that only the Suppliers expressly challenged the Class'  
28

1 rights and no one else has attempted to do so during the last four years. Given the integral  
2 importance of water in this arid environment, it is no overstatement to say that counsel’s efforts  
3 have substantially preserved the value of the hundreds of thousands of acres owned by the class  
4 members. Moreover, by enabling a comprehensive action, the Class’ and counsel’s involvement  
5 have done much to facilitate a long-term solution of the Basin’s water issues. In short, counsels’  
6 efforts have conferred significant benefits.

#### 7 **4. The Necessity of Private Enforcement**

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9 Third, the necessity and burden of private enforcement are such as to make a fee award  
10 appropriate here. This element involves two issues – whether private enforcement was necessary  
11 and whether the financial burdens of private enforcement warrant an award of fees to the  
12 plaintiffs. Both elements are satisfied here. It is clear that private enforcement was necessary,  
13 given the fact that no one else stepped to the plate to represent the interests of the small  
14 landowners.<sup>1</sup> See *City of Santa Monica v. Stewart*, (2005) 126 Cal. App. 4<sup>th</sup> 43; *City of*  
15 *Sacramento v. Drew* (1989) 207 Cal. App. 3d 1287. In any event, the governing standard is  
16 whether the plaintiffs “had an individual stake that was out of proportion to the costs of the  
17 litigation.” *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal. App. 3d 213, 231;  
18 *City of Sacramento, supra*. That standard is easily met here. Rebecca Lee Willis’ ten acres of  
19 land, though very significant to her, could not possibly justify the expense involved in complex  
20 and protracted litigation like this. Indeed, many larger landowners have joined or remained in  
21 the Class because of the burdens and expense of getting involved in this complicated case.  
22 Clearly, the costs of the litigation were out of proportion to Ms. Willis’ stake.

#### 23 **5. The Court Should Award Fees Here Under § 1021.5.**

24 As discussed above, the various criteria justifying a fee award under Section 1021.5 are  
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27 <sup>1</sup> Indeed, the Public Water Suppliers initially suggested that the State of California represent  
28 the dormant landowner Class, but the State refused to take on that burden.

1 met here. And, although the statute is worded in discretionary terms (“a court *may* award  
2 attorneys’ fees”), the case law is clear that, where the statutory criteria are met, fees *should* be  
3 awarded absent special circumstances that mandate a different result. *See Serrano v. Unruh*, 32  
4 Cal 3d 621, 633 (1982) (fees should be awarded except where “special circumstances would  
5 render such an award unjust”); *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1297 n.3  
6 (1989)(no discretion to deny a fee award if criteria are met); *Schmid v. Lovette*, 154 Cal. App. 3d  
7 466 (1984)(defendant’s good faith belief that it was complying with law is not a basis to deny or  
8 reduce a fee award).

9  
10 **B. COUNSEL ARE ENTITLED TO THEIR LODESTAR.**

11 **1. The Lodestar Approach is the Proper Means to Determine Counsel’s Fees.**

12 Where, as here, attorney’s fees are not paid from a common fund, the lodestar method,  
13 rather than the “percentage of recovery method,” is the appropriate manner to determine the  
14 reasonableness of the fee. The lodestar method is also fitting because the benefit bestowed on the  
15 class cannot be easily quantified. *See Dunk, supra*, 48 Cal.App.4th at 1809 (“common fund” is  
16 useful only when the value of the settlement is easily determined.)

17  
18 The lodestar method is produced by multiplying the number of hours reasonably  
19 expended by counsel by a reasonable hourly rate. *In re Consumer Privacy Cases* 175  
20 Cal.App.4th at 556 [citations omitted]; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311,  
21 322. “Once the court has fixed the lodestar, it may increase or decrease that amount by applying  
22 a positive or negative ‘multiplier’ to take into account a variety of other facts, including the  
23 quality of the representation, the novelty and complexity of the issues, the results obtained, and  
24 the contingent risk presented.” *In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1052  
25 [citations omitted]. Regardless of the method utilized, the goal is to award a reasonable fee to  
26 compensate counsel for their efforts. *Apple Computer, Inc. v. Superior Court* (2005) 126  
27 Cal.App.4th 1253, 1270.  
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1                   **2. Counsel’s Lodestar is Reasonable Given the Complexity of the Case**

2                   Plaintiff’s Counsel’s lodestar for the time period at issue is \$209,624.50, based on 588.68  
3 hours of work multiplied by the attorneys’ ordinary hourly rates that they charge other clients.  
4 (Kalfayan Decl. ¶23 & NOL, Exh. 3).

5                   The detailed time records supporting counsel’s efforts were contemporaneously  
6 maintained by the attorneys during their prosecution of this case and the relevant information is  
7 being submitted herewith. Given the magnitude of the case and counsel’s efforts, counsel’s  
8 expenditure of time has been reasonable.

9                   Counsel’s billing rates are also reasonable. Generally, the reasonable hourly rate is the  
10 prevailing rates for comparable work in the community where the court is located. *Davis v.*  
11 *Mason County* (9th Cir. 1991) 927 F.2d 1473, 1488. Although the plaintiff has the burden of  
12 proving the reasonable hourly rate in determining the appropriate lodestar, “the moving party  
13 may satisfy its burden through its own affidavits, without additional evidence.” *Davis v. City of*  
14 *San Diego* (2003) 106 Cal.App.4th 893, 902-904 (approving hourly rate based on evidence that  
15 attorney had earned the same hourly rate in similar matters.) Counsel’s rates here are their  
16 normal hourly rates, and are well within the norms for rates charged by other lawyers in the  
17 community for comparable work. Plaintiff’s Counsel’s lodestar was based on hourly rates of  
18 \$400 per hour for partner Ralph B. Kalfayan, \$475 for Counsel, David B. Zlotnick, and lesser  
19 amounts for the associates who worked on the case. These are the hourly rates the firm charges  
20 their hourly-rate clients. (Kalfayan Decl. ¶ 23.) The firm handles complex securities, antitrust,  
21 qui tam, and consumer litigation, and Messrs Kalfayan and Zlotnick have achieved recoveries of  
22 more than \$500 million in the various actions they have handled over the past 20 years. Their  
23 rates have been approved by a number of Federal and State courts in recent years.

24                   In brief, counsel’s lodestar is reasonable given the nature and complexity of this litigation  
25 and the efforts involved. Moreover, counsel do not seek reimbursement for the several  
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1 thousands of dollars in costs they incurred during this time frame.

2 **3. Public Policy Favors an Award of a Reasonable Fee to Encourage Competent**  
3 **Counsel**

4 Public policy supports awarding counsel the fees they seek. Awarding a fair fee is  
5 favored because it ensures that competent lawyers will be willing to take on high-risk cases, such  
6 as this. *See Estate of Stauffer* (1959) 53 Cal.2d 124, 132 (stating that purpose of awarding fees in  
7 representative actions is to encourage counsel to undertake and diligently prosecute the action.)  
8 The complexity and societal importance of this type of representation calls for the most able  
9 counsel obtainable. This Court will undoubtedly recall the difficulties in getting counsel to  
10 represent the classes in this risky matter. Fee awards should be sufficient to encourage capable  
11 attorneys to represent plaintiffs on a contingent basis in this type of complex litigation.

12 **IV. CONCLUSION**

13 For the forgoing reasons, Plaintiff respectfully requests that the Court award the fees  
14 being requested.  
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16 Dated: July 12, 2011

KRAUSE, KALFAYAN, BENINK &  
SLAVENS, LLP

17  
18  
19 /s/ Ralph B. Kalfayan

Ralph B. Kalfayan, Esq.

David B. Zlotnick, Esq.

Attorneys for Plaintiff and the Class  
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