

EXHIBIT 1

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

12 **ANTELOPE VALLEY**
 13 **GROUNDWATER CASES**

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

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

)
) **DECLARATION OF RALPH B.**
) **KALFAYAN IN SUPPORT OF**
) **MOTION FOR AN AWARD OF**
) **ATTORNEYS' FEES;**
) **REIMBURSEMENT OF EXPENSES;**
) **AND CLASS REPRESENTATIVE**
) **INCENTIVE AWARD**

17 vs.

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

) Date: February 24, 2011
) Time: 10:00 a.m.
) Judge: Hon. Jack Komar

24 Defendants.)
 25)

26 I, Ralph B. Kalfayan, declare and state as follows:

27 1. I am a partner at the law firm of Krause Kalfayan Benink & Slavens ("KKBS"),
 28 counsel for the Willis Class in the above captioned matter. I submit this declaration in support of

1 Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Class
2 Representative Incentive Award. The matters stated herein are true to the best of my own
3 personal knowledge and, if called upon as a witness to testify thereto, I would and could
4 competently do so.

5 2. The purpose of this declaration is to summarize the factual and procedural history
6 of this litigation, including, but not limited to, the initial filing and investigation of this action,
7 class certification proceedings, discovery, law and motion practice, settlement negotiations, class
8 notice, and litigation expenses. As counsel for Plaintiff Rebecca Willis and the Willis Class
9 ("Class Counsel"), my firm has been intimately involved in all aspects of this litigation from the
10 outset of the Class case to the present.

11 3. I am an attorney admitted to practice before all the courts in the State of
12 California, Federal District Courts for the Northern District of California, Central District of
13 California, Southern District of California, and the Ninth Circuit Court of Appeals. My firm is
14 located in Southern California and specializes in complex class action litigation. I have been a
15 partner of KKBS for the past sixteen (16) years. Prior to KKBS, I was a partner at the law firm of
16 Borton, Petrini & Conron ("BPC") where I specialized in business litigation for over six (6)
17 years. Before BPC, I was a tax attorney at the national accounting firm of Arthur Andersen &
18 Co. I am a 1985 graduate of the University of San Diego School of Law. A true and correct copy
19 of the firm resume is attached to the NOL as Exhibit 6.

20 4. Over my career I have successfully litigated numerous complex class action cases
21 including but not limited to: *Marsh vs Blue Cross*, San Diego County Superior Court case #; 37-
22 2007-00077967-CU-BC-CTL; *In re Wholesale Electricity Cases*, JCCP 4204; *In re Natural Gas*
23 *Antitrust Consumer cases I, II, III, IV, and V*, JCCP 4221; *In re Natural Gas Antitrust*
24 *Commodity cases*, US District Court Southern District of New York, 03-CV-6186; *In re Tricor*
25 *Antitrust litigation*, US District Court Southern District of Delaware, Case No. 05-360 (SLR);
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1 and *Gilley vs. Arco, et al.*, US District Court Southern District of California Case No. 98-cv-132
2 (BTM).

3 5. My current active caseload includes the following complex class actions that I
4 have been precluded from working on over the past four (4) years due to the workload demands
5 required in the Antelope Valley groundwater adjudication. They include: *In re Korean Airlines*,
6 US District Court Central District of California MDL 1891; *In re Transpacific Airlines*, US
7 District Court for the Northern District of California MDL 1913; *In re Dynamic Random Access*
8 *(DRAM) Antitrust Litigation*, US District Court for the Northern District of California, MDL
9 1486; and, *In re Cipro Antitrust litigation*, San Diego County Superior Court JCCP 4154.
10 DRAM is particularly noteworthy as I gave up the chance to actively continue working on the
11 matter which recently settled in an amount in excess of \$100 million.
12

13 I. INTRODUCTION

14 6. This case deals with groundwater rights, a valuable resource for all residents in
15 Antelope Valley and the public at large. The coordinated and now consolidated cases seek to
16 resolve the groundwater problems that have perplexed landowners and public entities in the
17 entire Antelope Valley for years. The Class's participation was required in large part due to the
18 McCarran Amendment requirement for a comprehensive adjudication and in order to defend
19 against claims of Prescription raised by the various governmental entities.
20

21 7. Since November 2006, Class Counsel has prosecuted this case on behalf of the
22 single largest stakeholder in the Antelope Valley, the Willis Class¹. The Willis Class
23 encompasses over 531,000 acres and includes over 65,000 landowner members who have never
24 pumped groundwater from the groundwater basin and who were facing a loss of all or part of
25

26 ¹ The Willis Class includes: "All private (i.e., non-governmental) persons and entities that own real
27 property within the Basin, as adjudicated, that are not presently pumping water on their property
28 and have not done so at any prior time ("the Class"). The Class includes the successors-in-interest by
way of purchase, gift, inheritance, or otherwise of such landowners.

1 their future rights to extract groundwater from the basin as a result of this litigation. The Class
2 members collectively own 60% of the acreage within the valley. The second single largest
3 stakeholder in terms of acreage is the United States Government which owns Edwards Air Force
4 Base. The Base occupies more than 265,000 acres.

5 8. This case has been prosecuted primarily against the governmental entity Public
6 Water Suppliers² (“Defendants” or “PWS”). These Defendants were represented by highly
7 skilled and well financed law firms who worked diligently to defend against and claim new
8 groundwater rights through claims of prescription against the Willis Class. While not presently
9 adverse to the Willis Class, several large agricultural interests have also been participants in the
10 adjudication. They include but are not limited to the Antelope Valley Groundwater Agreement
11 Association (“AGWA”), Bolthouse Properties LLC, Diamond Farming Company, and
12 Grimmway Enterprises, Inc. (Collectively “Large Pumpers”).

14 9. Prior to filing the complaint, Class Counsel conducted an initial investigation into
15 the merits of this case, reviewed the facts with the Plaintiff Rebecca Willis and other counsel,
16 and formulated the theories on which this case would be litigated. Initially, this work involved
17 reviewing the Superior Court docket in the Antelope Valley Groundwater Cases which contained
18 hundreds of filings; reviewing the judgments in other California basins including Chino, Mojave,
19 and Santa Maria; reviewing prior court orders in the action certifying a defendant class; and,
20 reviewing public information posted on websites by all the Public Water Suppliers.
21 Additionally, Class Counsel consulted with different experts to assist in analyzing draft reports
22 of the technical committee which was formed by the parties prior to Class Counsel’s
23 participation in the litigation. This investigative work continued after the initial complaint was
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27 ² Defendants included: (1) Los Angeles County Waterworks #40; (2) Rosamond Community Services
28 District; (3) Palmdale Water District; (4) Quartz Hill Water District; (5) Cal Water; (6) Phelan Pinion
Hills Community Services District; (7) Little Rock Creek; (8) Palm Ranch; (9) Desert Lake; (10)
North Edwards; (11) City of Lancaster; (12) City of Palmdale.

1 filed and up through the date of settlement.

2 10. Defendants vigorously defended their position throughout the case. Willis'
3 complaints were twice challenged by the PWS with Demurrers and Motions to Strike. Every
4 propounded discovery device was largely objected to by the PWS causing countless "meet and
5 confer" sessions between Class Counsel and counsel for each of the ten (10) PWS. Many of
6 these meet and confer sessions were held in person at the location of the PWS or the offices of
7 their counsel. Class Counsel was also forced to coordinate their discovery effort with all the
8 other landowners and create uniform discovery on behalf of the entire private landowner group.
9 The PWS again objected to uniform discovery devices which caused more in person "meet and
10 confer" sessions. The document production effort in the case was also massive. Class counsel
11 was forced to travel and visit most of the PWS individually, meet and confer with each in person,
12 review their records for relevant documents, and then organize the production in a usable
13 database.
14

15 11. As the case progressed, it became increasingly complex and hotly contested by
16 the PWS. The PWS challenged the Willis Class's right to Jury trial, the Willis Class's right to
17 have an expert appointed for the benefit of the class, the Willis Class's right to have neutral court
18 appointed expert, and the effort of the Class to avoid consolidation of their case with the other
19 actions. Class Counsel also moved the Court to strike or enter judgment on the pleadings with
20 respect to the PWS claim of prescription but was ultimately unsuccessful. The Large Pumpers
21 sought to have the PWS name and serve the Willis Class as defendants in an effort to interfere
22 with the progress of the Class toward settlement. The court denied the request. Class Counsel
23 participated in all the depositions that preceded the phase 2 trial, and limited its participation at
24 the trial since the Class was not yet noticed of the proceedings.
25

26 12. On a separate track, Class Counsel was actively involved in the settlement of the
27 case. The Class participated in a number of mediation sessions with facilitator Bill Dendy. After
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1 this effort proved unsuccessful, the Class participated in a mediation session with Justice Robie.
2 That mediation proved productive. However, the proverbial devil in the details reared its ugly
3 head. It took Class Counsel six (6) months to negotiate the final terms of the Stipulation of
4 Settlement and another six (6) months to get the approval of each PWS member Board. I discuss
5 below in greater detail the major aspects of this case on which counsel has worked over the past
6 51 months.

8 II. THE PLEADINGS

9 13. Willis filed three separate complaints that framed her theories of the case. Two of
10 these pleadings were contested by the PWS through Demurrers and Motions to Strike. Willis
11 also added four (4) new parties to its pleadings and dismissed two (2) before the case was finally
12 at issue. Further, as presented below, the attorneys for the Willis Class were required to engage
13 in a substantial amount of additional work to protect the interests of the Willis Class members
14 and the public.

16 A. Original Complaint (the "OC")

17 14. To initiate her complaint, Plaintiff filed a Petition to coordinate under J.C.C.P.
18 4408 on February 7, 2007 pursuant to section 404.4 of the California Code of Civil Procedure
19 and Rule 3.544 of the California Rules of Court. At the time her Petition was filed, the PWS had
20 a pending motion for class certification to create a defendant class. Different parties to the
21 litigation contested or supported the PWS' motion for a defendant class. In the storm of these
22 briefs Willis filed her response to the PWS motion for class certification on February 22, 2007.
23 On March 12, 2007, after hearing, the Court granted Willis' Petition for Coordination.

25 15. Once coordinated, on April 10, 2007, Willis filed her original complaint as part of
26 this proceeding (Doc #555)³. The complaint sought to (1) protect her right and the rights of Class

27 ³ Hereinafter Doc # ____ refers to the Antelope Valley Superior Court docket
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1 members to make reasonable and beneficial future use of the groundwater underlying their
2 properties within the Antelope Valley Basin (the "Basin") and (2) contest claims of prescriptive
3 rights that certain public water supplier parties had asserted. The PWS challenged the pleading
4 by filing a Demurrer arguing that the takings claims were barred by prescription and the statute
5 of limitations. The PWS also filed a Motion to Strike Plaintiff's request for attorneys' fees.
6 Willis opposed the two motions on May 8, 2007, arguing that prescription had not yet been
7 established to defeat the condemnation claims and that attorneys' fees are appropriate under CCP
8 1021.5. On May 21, 2007, the Court sustained the demurrer with 30 days leave to amend and
9 denied the PWS Motion to Strike. The Court found the complaint lacking in allegations to
10 support inverse condemnation under either federal or state law and expressed doubt as to the
11 viability of any curative amendment. In addition, the Court denied the Motion to Strike the
12 attorneys fees request, finding that the first cause of action for declaratory relief "has the
13 potential of providing a basis for recovering attorneys' fees." (Transcript of May 21, 2007)

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15 **B. First Amended Complaint (the "FAC")**

16 16. On June 20, 2007, Willis filed her FAC (Doc #675). Willis, at this time, withdrew
17 her inverse condemnation claims opting to continue her research and investigation of the facts
18 and allegations in support thereof.

19
20 **C. Second Amended Complaint (the "SAC")**

21 17. After further investigation and research it became apparent to Class Counsel that
22 substantial basis existed to revive the condemnation claims. It also became necessary to revise
23 the Class definition and delete references to the term overdraft from the pleading since the Court
24 had not yet determined the safe yield. On April 11, 2008, Willis filed a Motion for Leave to File
25 a Second Amended Complaint (Doc #1277). On May 5, 2008, the Court granted Willis leave to
26 file a SAC. At the hearing, the Court suggested that Class Counsel broaden the definition of the
27 Class to include all dormant landowners without regard to the number of acres they owned. On
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1 May 6, 2008, Willis complied and filed her SAC (Doc #1309). The PWS again demurred to the
2 SAC on June 6, 2008 (Doc #1370). They argued that the takings claims were predicated on
3 legally incorrect principles in that there were no damages if there is a finding of prescription;
4 and, that the statute of limitations ran against Willis five (5) years after Defendants sought
5 prescriptive rights. On September 2, 2008, the Court entered an order overruling the demurrer as
6 to the condemnation claims and stayed further proceedings related to those claims (Doc #1867).

7
8 Defendants were further ordered to answer the SAC only as to the first two causes of action.

9 18. After the SAC was filed, Willis added and dismissed Parties. There have been at
10 least four (4) amendments to the complaint naming new parties. On July 10, 2008, Plaintiff
11 dismissed the City of Los Angeles (Doc #1500). Plaintiff later dismissed Mojave Public Utility
12 District. Doe Amendment 1 clarified California Water Service Company as a defendant. Doe
13 Amendment 2 added Desert Lake Community Services District (Doc #1400). Doe Amendment 3
14 added North Edwards Water District (Doc #1399). Doe Amendment 4 added Phelan Pinon Hills
15 Community Services District ("PPHCSD") on March 9, 2009 (Doc #2519). All parties
16 ultimately answered the Willis' SAC. PPHCSD answered on April 8, 2009 (Doc #2554)
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18 19 III. LAW AND MOTION

20 A. Plaintiff's Motion to Strike or Enter Judgment on the Pleading

21 19. On June 16, 2008, Willis filed a Motion To Strike or Enter Judgment on the
22 Pleadings as to the affirmative defense of prescription raised by the PWS (Doc #1408). Willis
23 argued that, as a matter of law, there can be no prescription against unexercised dormant
24 landowners since the element of adversity is missing and neither common law nor statutes
25 furnish a basis for the PWS to gain groundwater rights from Willis by prescription. On July 29,
26 2008, Quartz Hill Water District and Palmdale Water district opposed the motion arguing that
27 dormant landowners are not immune from prescription in an overdrafted basin and that the law
28

1 cited by Willis is mere dicta (Doc #1597). The remaining PWS filed a separate opposition and
2 argued that the decision in *In re Waters of Long Valley* suggested that dormant landowners may
3 be prescribed against and the inquiry is a factual one that may not be resolved by motion. A
4 hearing was held on August 11, 2008. On September 2, 2008, the court entered an order denying
5 Willis' Motion to Strike or Enter Judgment on the Pleading (Doc #1869).

6
7 **B. Right to Jury Trial**

8 20. In case management conference statements the parties requested a trial by jury on
9 the elements of prescription. The court invited briefing on the right to jury trial by minute order
10 dated November 25, 2008 (Doc #2310). On December 31, 2008, the City of Los Angeles filed an
11 opposition arguing that the legal issues are inextricably intertwined with equitable issues such
12 that the right to trial by jury should be defeated (Doc #2340). Willis filed her first brief on
13 January 2, 2009 arguing that the Class was in effect defending against a common law legal claim
14 of prescription and expressly demanded a right to trial by jury on the face of her complaint (Doc
15 #2358). The PWS opposed contending that the adjudication is a special proceeding with
16 primarily equitable not legal claims (Doc #2354). On January 26, 2009, Willis filed a
17 supplemental brief addressing the points raised by the PWS. (Doc #2408). Willis argued that the
18 elements of prescription raise factual issues and the claim warrants a determination by a jury.
19 The PWS filed two separate supplemental briefs on February 10, 2009, one proposed a
20 "Reference" to the State Water Resource Control Board and the other argued the equitable nature
21 of the case (Doc #2434 and 2435). Several other parties filed responses on the issue. The court
22 set the matter for hearing on April 24, 2009. On April 24, 2009, the court denied the Motion
23 without prejudice and decided to revisit the issue after the Safe Yield and Overdraft trial.
24

25 **C. Motion to Dismiss**

26 21. On May 28, 2009, more than sixty (60) named and served Cross-Defendants
27 brought a Motion to Dismiss the PWS First Amended Cross-Complaint (Doc #2760). They
28

1 argued that the Willis and Woods Class' were necessary and indispensable parties that must be
2 named and served in the PWS First Amended Cross-Complaint or alternatively the adjudication
3 should be dismissed. On June 8, 2009 the PWS countered by arguing that all the cases have been
4 coordinated and will result in one general adjudication of the basin regardless of whether the
5 Class is named and served (Doc #2800). On June 16, 2009, Class Counsel responded and argued
6 that the Motion was premature and involved procedural complications in compelling the
7 certification of a defendant class and the mailing of new notices (Doc #2884). The court
8 deferred ruling on the matter until the PWS filed a Motion to Consolidate.
9

10 **D. Motion to Consolidate**

11 22. By Minute Order dated June 19, 2009, the Court requested briefing as to the
12 request for consolidation (Doc #2912). On July 15, 2009, the PWS filed a Motion to Transfer
13 and Consolidate for all Purposes (Doc #2976). They argued that complete consolidation would
14 cure the failure to name the Class as necessary and indispensable parties and would further
15 satisfy the requirements of the McCarran Amendment. On August 3, 2009, the Class filed its
16 opposition (Doc #3024). Plaintiff argued that complete consolidation would fail to cure claimed
17 deficiencies as it would not create new claims or new parties in any of the filed pleadings. On
18 September 8, 2009, the PWS filed a supplemental brief in support of the Motion (Doc #3091). In
19 this brief they depicted an alignment of the parties and the common claims among all the
20 pleadings to further support the consolidation effort. On September 18, 2009, Willis filed her
21 supplemental brief arguing that a proposed settlement before Justice Robie would render
22 complete consolidation unnecessary and would jeopardize consummation of a potential
23 settlement (Doc #3103). On October 5, 2009, Willis filed another brief supporting a limited
24 consolidation provided that (1) consolidation did not preclude the entry of a judgment between
25 the settling parties; and, (2) consolidation did not expand the claims asserted by Willis in her
26 pleadings or create claims against the Class (Doc #3124). On October 13, 2009 the Motion was
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1 heard and granted. The Court also ordered the parties to meet and confer regarding the form of
2 the Order to Consolidate (Doc #3135).

3 23. On October 28, 2009, the Court gave further guidance to the parties regarding the
4 form of the order and emphasized that “Other than establishing correlative water rights, the
5 consolidation motion should not affect any other claims or rights or duties between the parties
6 who are not litigating against each other” (Doc #3172). On December 28, 2009, the Court
7 requested updates on the status of the Order for consolidation (Doc #3192). A form of Order
8 was posted by the PWS on January 12, 2010 (Doc #3230). On January 21, 2010 Willis proposed
9 additional language for the Order to address her concerns (Doc #3298). On January 26, the court
10 requested further briefing on the Order of Consolidation (Doc #3315). Willis filed a further
11 response on January 29, 2010 (Doc #3335). On February 19, 2010, the Court entered its Order
12 of Consolidation (Doc #3359).

14 **E. Motion for Appointment of Expert**

15 24. Willis filed a Class Motion for Appointment of Expert on March 3, 2009 seeking
16 a team of experts to assist the Class in the Safe Yield/Overdraft and other future phases of trial or
17 in the alternative that the Court appoint these witnesses as court appointed experts to assist the
18 court in evaluating the conflicting expert opinions offered by the PWS and the large agricultural
19 interests (Doc #2507). Class Counsel spent substantial effort in searching, interviewing, and
20 qualifying these experts for the various assigned tasks. Three highly qualified experts were
21 finally found that were willing to consult and assist the Class or the Court within the areas of
22 their expertise. The offered experts included: (1) David Sunding, professor of agricultural and
23 resource economics at UC Berkeley; (2) Thomas Harter, the Chair person at UC Davis for Water
24 Management and Policy with a PHD in Hydrology; and, (3) Stephen Grattan, a plant relations
25 specialist with a PHD in plant water relations also from UC Davis. On April 13, 2009, the PWS
26 opposed the motion arguing that (1) the court was capable of making a finding on Safe Yield
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28

1 without an expert for the Class; (2) the delay and expense did not warrant the appointment; and,
2 (3) there was no authority for a civil litigant to pay the expert witness fee of an adverse parties'
3 expert (Doc #2558). AGWA also opposed Willis' request for an appointment of an expert on
4 April 13, 2009 (Doc #2560). In Reply, Willis limited her relief to the appointment of a neutral
5 court appointed expert (Doc #2573). On April 24, 2009, the Court took the Motion off calendar
6 to be rescheduled (Doc #2595).

7
8 25. The second Motion was filed on July 23, 2009 (Doc #3007). Given the concerns
9 of the Court and defense counsel, Willis now requested that the Court appoint its own expert to
10 assist it in accurately determining the Basin's safe yield. PWS opposed and argued that a
11 number of landowners have retained expert witnesses on the issue of safe yield and the Court
12 does not need another expert (Doc #3030). The Motion was denied without prejudice by Minute
13 Order dated August 18, 2009 (Doc #3074).

14 26. The third and final attempt by Willis to have the Court appoint an independent
15 expert was filed on June 15, 2010 (Doc #3658). Willis sought the appointment of Mr. Harter as a
16 court appointed neutral expert to resolve competing safe yield analysis between the parties and
17 cushion the inability of Class Counsel to proceed to a phase 3 trial without an expert. The PWS
18 opposed (Doc #3667). The Motion was again denied without prejudice on July 16, 2010 (Doc
19 #3752).

21 IV. DISCOVERY

22 A. Written Discovery

23 27. On May 22, 2007, the PWS propounded written discovery on a majority of
24 landowners including Rebecca Willis (Doc #637). Willis responded to the discovery on July 24,
25 2007 (Doc #776). On May 2, 2008, counsel for the Mutual Water Companies propounded a set
26 of Form Interrogatories and Request for Admissions on Rebecca Willis (Doc #1307 and 1308).
27 Willis responded to the discovery on June 2, 2008 (Doc #1355 and 1356).
28

1 28. On May 29, 2008, Plaintiff served her First Set of Requests for Admissions,
2 Special Interrogatories, Documents Request, and Form Interrogatories on each Cross-
3 Complaining PWS. Shortly thereafter, Plaintiff served her First Set of Special Interrogatories,
4 Requests for Production of Documents, Requests for Admissions, and Form Interrogatories on
5 each of the major overlying landowners and each of the mutual water companies. Defendants
6 responded long on objections but short on evidence. Most of the landowners asked for extensions
7 of time or refused to answer pre-consolidation order. On November 21, 2008, Plaintiff served her
8 Second Set of Interrogatories on each Cross-Complaining PWS.
9

10 29. On substantially all occasions, Defendants' responses to Plaintiffs' written
11 discovery contained a myriad of objections. As a result, Plaintiff's counsel was required to
12 pursue alternative avenues in order to acquire documents and information necessary to zealously
13 advocate the interests of the Class. Class Counsel communicated with each of the Defendants'
14 Counsel on many occasions, at first seeking a comprehensive and inclusive "meet and confer"
15 and ultimately resolving to individual "meet and confers" both in writing and orally in efforts to
16 further discover and increase efficiency by attempting to proceed with coordinated discovery.
17 Class Counsel also had one "meet and confer" session with the Court to compel Defendants to
18 respond to certain discovery. Most time consuming was the coordination of the meet and confer
19 sessions with each counsel for PWS, attending those sessions, and creating a spreadsheet that
20 summarized all the responses of the PWS.
21

22 30. In early 2009, the Court directed the landowner group to propound one set of
23 agreed upon uniform discovery to all PWS. Class Counsel was tasked to lead the effort on behalf
24 of the landowners along with other counsel. On March 21, 2009, Plaintiff served her Uniform
25 Request for Admissions, Uniform Form Interrogatories, Uniform Request for Production of
26 Documents, and Uniform Special Interrogatories on each PWS. Again, Class Counsel prepared a
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1 summary chart of all the defendants' responses and was one of the lawyers responsible for the
2 meet and confer sessions to resolve the disputes with each PWS.

3 **B. Deposition Discovery**

4 31. In addition to preparing for depositions, Class Counsel participated in
5 approximately one dozen depositions. Depositions commenced on or about August 28, 2008 and
6 were scheduled on various dates and locations through about October 2008. Depositions took
7 place throughout the state of California and required travel. These depositions were largely in
8 preparation for the phase 2 trial and they provided key insight that assisted counsel in the
9 settlement of the case.
10

11 **C. Document Discovery and Analysis**

12 32. Plaintiffs succeeded in receiving and reviewing approximately 88,468 pages of
13 records from the various parties and defendants in this case (which were culled from the larger
14 productions in certain cases). A list of each parties' document production and number of pages is
15 included below. These documents provided Plaintiffs with valuable information necessary to
16 properly prepare the issue in anticipation of depositions, trials, and settlement. Class Counsel
17 reviewed and analyzed documents in support of many issues including but not limited to the
18 following: (1) the factual and legal bases for the PWS' claim of prescription; (2) volume of
19 historic pumping by each defendant; and, (3) the Basin's safe yield estimates. Class Counsel
20 visited the main offices of some of these defendants and, with the consent of opposing counsel,
21 informally interviewed the responsible managers for information in support of the claims and
22 defenses. In addition, Class Counsel met and conferred with defense counsel at their offices and
23 reviewed documents for copying. Class Counsel assembled the document information in a
24 workable database which was utilized in responding to motions, taking depositions, and
25 negotiating settlement.
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1	Cal Water	5,814 pages
2	LACWW #40 and Rosamond- 1 st production.	6,196 pages
3	LACWW #40 and Rosamond- 2 nd Production	3,270 pages
4	LACWW #40 and Rosamond- 3 rd Production	40,386 pages
5	Little Rock Creek	7,907 pages
6	Palmdale Water District	3,404 pages
7	Quartz Hill Water District	757 pages
8	Joe Scalmanini	9,448 pages with media CD
9	US Government	1,086 pages
10	Technical Committee report	700 pages
11	Phelan Pinion Hills	7,500 pages (estimate)
12	North Edwards	1,000 pages (estimate)
13	Desert Lake Water District	1,000 pages (estimate)
14	Total	88,468 pages

V. CLASS CERTIFICATION

33. Willis filed her Motion for Class Certification on July 23, 2007 (Doc #773). She argued that because the legal and factual issues impact a large class of persons identically and because there is a need for a comprehensive adjudication of the water rights in the basin, this case was ideally suited for class treatment. The proposed class definition included all private landowners that were not presently pumping water on their property and had not done so for the past two (2) years. On August 9, 2007, the PWS filed a statement seeking a modified Class definition (Doc #802). They sought to expand the class definition to include pumpers and non-pumpers. Part of their submission included an extensive declaration by Mr. Scalmanini to establish that all landowners overlie one single aquifer. Many landowners objected to the class definition proposed by the PWS. On August 14, 2007, Class Counsel withdrew their Motion without prejudice (Doc #815).

34. After argument, on September 11, 2007, Willis went forward with her Motion and the Court certified a class that included all private landowners that were not presently pumping water on their properties and had not done so over the past five (5) years. The proposed order

1 governing class notice was posted on September 25, 2007 (Doc #884). Different parties filed
2 objections (Doc #900, 907, 911, 913). The PWS objected and requested that Class Counsel
3 handle opt outs and represent pumpers. Because of the potential conflicts between pumpers and
4 non-pumpers, Class Counsel searched for new counsel to represent the small pumpers. The
5 search extended for a period over six months. On May 21, 2007, the PWS also reported that they
6 were unable to find a defendant class representative and legal counsel to represent the “pumper
7 group” (Doc #1299). The State of California had earlier refused to act on behalf of a defendant
8 class.

9 35. A second proposed order governing class notice was posted on January 4, 2008
10 (Doc #1093). On January 14, 2008 the court ordered briefing on the PWS motion to modify the
11 class definition (Doc #1150). The PWS filed their opening brief on January 30, 2008 (Doc
12 #1169). They asked the court to modify the class definition to include the Willis class
13 landowners who pump a modest amount of groundwater. On February 15, 2008, Willis
14 responded and recognized that expanding the scope of the class definition was imperative in
15 order to advance the litigation and accomplish the overriding public need to achieve a
16 comprehensive adjudication (Doc #1182). However, Willis also recognized that to expand the
17 class would create several problems. Namely, there was no pleading filed on behalf of the class
18 of landowners that pump groundwater, no class representative, and self help issues raised a
19 number of class-wide concerns (Doc #1233).

20 36. On April 11, 2008, Willis posted another proposed class notice (Doc #1280). On
21 May 2, 2008, Willis posted a proposed order modifying the class definition (Doc #1303 and
22 1336). By that time attorney David Zlotnick, after months searching for new counsel for the
23 pumper class, found attorney Michael McLachlan. On May 27, 2008, the court entered an order
24 modifying the Willis class definition and approved the Willis’ class notice (Doc #1345).

25 37. On July 11, 2008 the PWS filed yet another motion to modify the definition of the
26 Willis class (Doc #1518). They claimed that the existing Willis definition together with the
27 definition of a new class of small pumpers (the Wood Class) omitted certain landowners from
28 either class. Willis did not oppose the motion. On August 15, 2008, Willis posted another

1 proposed order to exclude from the non-pumper Class all persons to the extent they own
2 properties within the basin on which they had pumped water at any time, as well as those who
3 have "improved" values on their assessor's parcel (Doc #1812). The court signed the order on
4 September 2, 2008 (Doc #1866).

5 38. On November 21, 2008 the PWS requested that one single notice document be
6 mailed to both class members (Doc #2275). Willis responded on November 24, 2008 and
7 opposed (Doc #2288). Willis submitted another proposed order to the court governing class
8 notice on December 16, 2008 (Doc #2312). The court signed the order on the same day (Doc
9 #2314).

10 VI. CLASS NOTICE

11 39. Class Counsel met and conferred with expert William Leever from Wildermouth
12 and Associates to discuss, review, and help assemble the list of Willis Class members.
13 Compilation of the list was handled and administered by Best, Best & Krieger ("BBK"). Class
14 counsel helped design the website for class members and drafted the notice after meeting with a
15 committee of other interested counsel.

16 40. LACWW #40 mailed out the original notice to over 65,000 landowners on
17 December 30, 2008, and published the summary notice in three (3) separate journals including
18 the Los Angeles Times, the Bakersfield Californian, and the Antelope Valley Press (Doc #2454).
19 After the notice was mailed, Class Counsel worked diligently in responding to telephone and
20 email inquiries from class members. During that process, numerous Class members contacted
21 Class Counsel regarding the action, and we were able to gather valuable insights into the desires
22 and priorities of those persons. As of February 23, 2009, over twelve hundred (1,200) phone
23 calls and over two hundred (200) emails were received and processed (Doc #2465). On average
24 Class Counsel processed approximately twenty five (25) calls per day and approximately five (5)
25 emails per day for an extended period of time after the mailing of the notice. Since that date,
26 Class Counsel has received and responded to over three hundred (300) further phone calls and
27 emails. Class Counsel made their best effort to return all phone calls and emails to class
28

1 members as promptly as possible. Because of the volume of calls and emails, Class Counsel
2 suggested extending the deadline for class members to submit their response form to BBK. It
3 was communicated to Class Counsel that over 17,000 class members submitted the response
4 form that was attached to the original notice and 1,720 forms were processed via the
5 avgroundwater.com website.

6
7 41. The Settlement notice was mailed out to the Willis class on January 10, 2011. We
8 are informed that the summary notice was also published in the same periodicals as the original
9 notice. As of the date of this declaration, Class Counsel has received an average of ten (10) calls
10 per day and ten (10) emails per day. Class Counsel is using their best effort to return all these
11 calls and emails as promptly as possible. The volume of calls and emails has increased slightly as
12 a result of calls from landowners that originally opted out of the Willis class but now seek to
13 rejoin it. BBK has forwarded these calls to Class Counsel for handling. To date, no Class
14 member has filed objections to the Settlement.

15 VII. SETTLEMENT

16
17 42. The first significant settlement negotiations in which we participated were at a
18 multi-day mediation process with facilitator Bill Dendy. The mediation was well attended. The
19 Dendy mediation educated the parties on each other's litigation positions and on the positions of
20 the key experts who worked on the technical committee. These experts attended the meetings
21 and offered their opinions. At one point it seemed that Mr. Dendy was close to finalizing a
22 settlement. However, the safe yield issue presented a formidable obstacle that could not be easily
23 overcome. Class Counsel attended many of those sessions which took place throughout
24 California, was tasked with drafting and drafted parts of the proposal for settlement, and
25 separately conferred with numerous counsel and their principals. This mediation finally came to
26 a halt in late November, 2008, after Mr. Dendy voluntarily terminated his services.

1 43. In early 2009, Class Counsel engaged in numerous settlement meetings and
2 communications with Defendants' counsel but were unable to reach an agreement. On July 27,
3 2009 the Court referred counsel to Justice Robie for a settlement conference (Doc #3012). The
4 first mediation session with Justice Robie commenced on September 2, 2009. All the PWS,
5 including some of their managers, board members, and counsel for the United States were in
6 attendance. The session started at 9:00 am and lasted until late evening with Class Counsel
7 meeting with county counsel at BBK's office to finalize the terms of the agreement which was
8 reached in principle between the parties.
9

10 44. An outline of the material terms was placed on the record under the supervision of
11 Justice Robie. In October 2009, Class Counsel prepared and circulated a draft settlement
12 agreement for review and comment by all PWS. Many terms and definitions in the agreement
13 were written and re-written numerous times before a final agreement was completed. It is
14 estimated that at least one dozen drafts of the settlement agreement were circulated for review
15 and comment. The effort was time consuming and at times frustrating because the PWS had
16 more than one level of review for each modification. For over six (6) months, Class Counsel
17 worked with the PWS to negotiate, document, and finalize the terms of the settlement.
18 Complicating matters further was the issue of consolidation and its impact on the settlement and
19 the pending trial date.
20

21 45. After considerable effort by all the parties, in March 2010, counsel for the settling
22 parties had finally agreed on the terms of a proposed settlement. However, there were no
23 approvals from the Boards of the PWS.

24 46. Meanwhile, a group of landowners initiated an alternative forum for mediation
25 that if approved would have led to a comprehensive resolution of the entire litigation. The
26 mediation came under the supervision of James Waldo. Class Counsel participated in the Waldo
27 mediation process as we waited for the PWS to approve the settlement agreement.
28

1 47. On July 14, 2010, Class Counsel learned that the Los Angeles County Board of
2 Supervisors approved and executed the Stipulation of Settlement. The document was posted on
3 the AV docket on July 20, 2010. Gradually, the Boards of the remaining PWS then executed the
4 Willis Stipulation of Settlement. After several conversations with counsel for Phelan Pinon Hills
5 Community Services District and its manager, Phelan executed the settlement in September, a
6 full year after the mediation before Justice Robie.

7
8 48. Class Counsel promptly filed a Motion for Preliminary Approval of the
9 Stipulation of Settlement on September 15, 2010 (Doc #3900). The Large Pumpers represented
10 by Messrs. Joyce, Zimmer, and Fife raised numerous objections to the settlement (Doc #s 3912,
11 3915, 3916, and 3966). The objections were responded to with a brief filed by Class Counsel on
12 November 12, 2010 (Doc #3985). After hearing on November 18, 2010, the court preliminarily
13 approved the settlement (Doc #4010). The court also raised certain concerns over the proposed
14 notice which have since been resolved by the Settling parties (Doc #4165).

15 **VIII. STATUS CONFERENCES AND GENERAL MONITORING OF ALL FILINGS**

16
17 49. Class Counsel attended and participated in many Case Management Conferences
18 over the past four (4) years and generally monitored the filings of all the other parties to the
19 coordinated proceedings frequently reviewing cases and other background materials that were
20 cited. These other filings include but are not limited to: (1) Motions to Stay; (2) Trial Phasing;
21 (3) Writ by Large Pumpers for disqualification of the Honorable Judge Komar pursuant to CCP
22 170.6; (4) Writ by the Woods Class related to Order of Consolidation; (5) Sheep Creek Motion
23 to be excluded from adjudication; (6) TRO regarding AGWA's communications with Willis
24 Class Members; (7) Motion to Decertify Woods Class; (8) Class notice issues related to Woods
25 Class; (9) Briefing of the requirements imposed by the McCarran Amendment, 43 USC §666;
26 and, (10) Briefing regarding the Court's jurisdiction over transferees and potential "in-rem"
27 action.
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IX. TRIAL

50. Class Counsel attended the entire Phase 2 trial proceedings though it did not actively participate in the trial. Trial was held on October 6-10 and November 3-5 with the court rendering a final decision on November 12, 2008 (Doc #2231). The specific issue determined at this phase of trial was whether there were any distinct sub-basins within the valley that did not have hydrologic connection to other parts of the aquifer. Three parties claimed the existence of separate sub-basins without hydrologic connection to other parts of the aquifer thereby warranting different safe yield analysis: TejonRanchcorp, Anaverde LLC, and Crystal Organic Farms, LLC. The Court concluded that there was sufficient hydrologic connection between the disputed areas and the rest of the Basin such that the Court must include them within the area of adjudication.

X. ATTORNEYS FEES AND EXPENSES

51. Class Counsel's cumulative lodestar in this case is \$2,300,618 as of December 31, 2010. Counsel also incurred \$65,057.68 in expenses. These expenses are detailed in the accompanying declaration of Ashley Polyascko. Counsel's lodestar is quite justified. This case was extremely complex, risky, and time consuming. Class Counsel prosecuted the case against ten (10) public water suppliers for over four (4) years. The public water suppliers were represented by large, highly skilled, and well financed law firms that specialized in water and environmental law including the law firms of Best Best & Krieger; Lagerlof, Senecal, Gosney & Kruse, LLP; Lemieux & O'Neill; Charlton Weeks, LLP; Richards, Watson & Gershon; and Smith, Trager, LLP.

52. Contributing to the workload of Class Counsel was the participation of the Large Pumpers and Mutual Water companies in the litigation. Those parties were also represented by qualified and capable law firms including Morrison Foerester LLP; Lebeau Thelen LLP; Clifford & Brown; Gresham, Savage, Nolan & Tilden; Covington & Crowe; and Brown Hyatt Farber

1 Schreck LLP. These parties interposed objections to the Class' participation in the case; filed
2 briefs that required response by Class Counsel; relied on Class Counsel to lead part of the
3 discovery effort; and sought the cooperation of the class to accomplish a global resolution.

4 53. Adding to the complexities of the case was the participation of the United States
5 Government and the Cities of Palmdale and Lancaster. These entities were not entirely passive in
6 these proceedings. The United States filed briefs that triggered responses from Class Counsel.
7 The two cities initially sued all landowners for prescription as part of the PWS cross-complaint
8 and only after Class Counsel threatened to file a motion for summary judgment did they dismiss
9 their claims.
10

11 54. Given the number of parties in this adjudication, the novel and complex issues the
12 case presented, and the many divergent interests of the parties, Class Counsel was challenged but
13 prosecuted this case in an efficient manner. Class Counsel's experience in prosecuting complex
14 class action litigation proved helpful in identifying issues, marshalling evidence, and devising
15 strategies to prosecute this case to a successful conclusion. Different lawyers within the firm
16 handled different aspects of the case. Very little work was delegated outside the firm in order to
17 maintain continuity. When necessary, Class Counsel consulted with water law expert Greg James
18 to assist in the settlement discussions and highlight nuances of water law.
19

20 55. Class Counsel has received no compensation during the four plus years that this
21 case has been pending. Class Counsel's fees and expenses are wholly contingent and dependent
22 on a fee and award by this Court. The outstanding settlement achieved for the class was the
23 direct result of Class Counsel's knowledge, effort, and skill. Class Counsel took this highly
24 complex case on a wholly contingent basis with no guarantee that their fees would ever be paid.
25 The result obtained for the Class despite significant litigation risk and a vigorous defense by
26 defendants is remarkable. Defendants were seeking at least one third (1/3) of the native safe yield
27 through prescriptive rights. The settlement eliminates the risk of prescription for the Class from
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1 those entities and preserves their correlative water rights. Accordingly, it is fair and reasonable
2 that Class Counsel be compensated for their efforts on behalf of the Class and reimbursed for
3 their time and expenses incurred from successfully protecting the Class's rights.

4 56. The chart attached as Exhibit 1 to the NOL presents a summary of all the time
5 expended on the litigation for the respective attorneys, clerks, and paralegals at their current
6 billing rates. The chart attached as Exhibit 2 to the NOL presents one proposal for the allocation
7 of attorney fees, costs, and incentive award among the PWS based on historical pumping
8 between the years 2000 to 2006. The slip listing attached as Exhibit 3 to the NOL presents an
9 itemized detail of all the time entries for each lawyer, paralegal and clerk that worked on the case
10 with exception of Messrs. Zlotnick and James. Exhibits 4 and 5 to the NOL present the daily
11 time records for Messrs. Zlotnick and James. The daily time records submitted by counsel were
12 prepared contemporaneously with the task performed. The hourly rates for the attorneys are the
13 regular billing rates charged for non-contingent cases and have been approved by courts in other
14 complex litigation.
15

16 **XI. LODESTAR ADJUSTMENT**

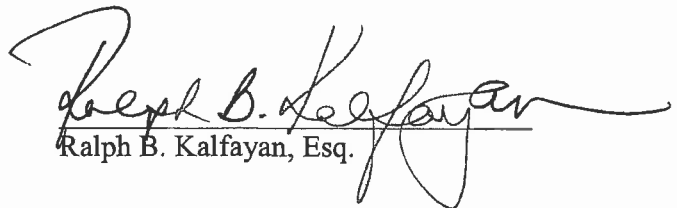
17 57. In addition, to determine a fee that reflects the actual legal marketplace, factors in
18 addition to hours and rates, especially contingent risk, should be considered. Without the
19 possibility of an enhanced fee recovery, or "multiplier" of the lodestar fee amount, it will
20 continue to be difficult for skilled attorneys in the private sector to take on plaintiffs' public
21 interest litigation. I was at all times aware that Rebecca Willis would be unable to pay the firm's
22 fees and costs and that water rights cases are notoriously lengthy and complex. I was also aware
23 that the class would very likely be unable to recover damages or create a fund for their benefit.
24 Thus, I recognized that there was a substantial risk of sustaining financial losses if the Class did
25 not prevail or conclude a favorable settlement. Despite the risks involved in undertaking this
26 action, I agreed that KKBS would represent Ms. Willis and the Class because of the public
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28

1 interest nature of the case, and the importance of the issues at hand. In my opinion, given the
2 procedural and substantive complexities of the case, the number of party participants, the novelty
3 of the issues involved, the sheer size of the Class, the importance of groundwater rights at stake,
4 and the contingent nature of the engagement, a 1.50 multiplier is reasonable.

5 **XII. INCENTIVE AWARD FOR CLASS REPRESENTATIVE**

6
7 58. Class Counsel requests that the Court approve an incentive award for the Class
8 representative, Rebecca Willis, who represented the Class throughout this litigation, in the
9 amount of \$10,000. The case and the settlement would not exist without the efforts of Ms. Willis
10 who came forward to challenge the PWS and their claim of prescription. Ms. Willis was integral
11 in helping Class Counsel analyze the claims and the evidence. She met with Class Counsel at the
12 outset of the action, responded to interrogatories, searched for and produced documents to
13 forward the litigation, requested and received reports from Class Counsel, regularly
14 communicated with Class Counsel, and monitored the status of the case. She is deserving of
15 some recompense for the many hours she devoted to this matter.
16

17 59. I declare under penalty of perjury and under the laws of the State of California
18 that the foregoing is true and correct. Executed on the 24th day of January, 2011, in San Diego,
19 California.

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21 
22 Ralph B. Kalfayan, Esq.
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