

Exhibit B

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

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

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARING ON
MOTION BY PLAINTIFF
REBECCA LEE WILLIS AND THE
CLASS FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES
AND CLASS REPRESENTATIVE
INCENTIVE AWARD**

Hearing Date(s): March 22, 2011
Time: 10:00 a.m.
Location: Central Civil West

Judge: Honorable Jack Komar

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3 Plaintiff Rebecca Lee Willis and the Class have entered into a stipulation of settlement
4 with defendants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale
5 Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill
6 Water District, California Water Service Company, Rosamond Community Service District,
7 Phelan Piñon Hills Community Services District, Desert Lake Community Services District,
8 and North Edwards Water District (collectively, the "Settling Defendants").

9 On November 18, 2010, the Court granted Plaintiff's motion for preliminary approval of
10 class action settlement and on March 1, 2011, the Court granted final approval of the settlement.
11 Plaintiff and the Willis Class now move for an award of attorneys' fees, reimbursement of
12 expenses, and an incentive award for lead plaintiff Rebecca Lee Willis.

13 On March 22, 2011, at 10:00 a.m., the Court heard oral argument on the motion seeking
14 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 as a prevailing party in its action
15 against the Public Water Suppliers based on the settlement between the parties. The Willis
16 Class asserts that its attorneys have collectively spent approximately 5,293.9 hours of time on
17 the case from late 2006 through December 31, 2010 on a contingency basis and have incurred
18 unreimbursed expenses of over \$86,000, of which over \$64,000 were out of pocket costs.

19 The Willis Class's counsel state that the attorneys' collective lodestar, including work
20 spent by counsel and by clerks and paralegals and a consultant, is \$2,300,618. The Willis Class
21 requests a multiplier of 1.5, for a total fee request of \$3,450,927. The Willis Class
22 acknowledges that certain of its \$86,000 in expenses are not recoverable and seeks an award of
23 \$65,057.68 in costs. The Willis Class also requests the Court's approval to give plaintiff
24 Rebecca Willis an incentive payment of \$10,000, which would come out of the attorneys' fee
25 award.

26 The various opposing parties assert a myriad of reasons why the motion should be
27 denied in its entirety or the amount awarded significantly reduced, including that the fees are
28 unreasonable, that the settlement does not achieve a significant benefit for the class, that the

1 class should not be considered a prevailing party since it did not prevail on all causes of action,
2 that the class did not enforce an important public right, and that the public interest was not
3 represented by the Willis Class but rather was represented by the public and other water
4 producers.

5 The City of Lancaster additionally contends that the motion should be denied in its
6 entirety as it relates to Lancaster because (1) Lancaster does not claim prescriptive rights and
7 dismissed its claim for prescription long ago, and (2) Lancaster has not signed the settlement
8 agreement and therefore the Willis Class cannot be considered a "prevailing party" on any
9 claim involving Lancaster.

10 Palmdale did not file a written opposition but contended at oral argument that any
11 determination of benefit was premature and the request for fees should be continued to a later
12 date when the final resolution and the benefits to the class became clear.

13 At the conclusion of the oral argument on the motion, the Court ordered counsel for the
14 Willis Class to file a declaration from Ms. Willis setting forth her participation in the case in
15 justification of an incentive award within thirty days and ordered the matter submitted upon
16 receipt of such declaration.

17 Therefore, the Willis incentive award declaration having been filed, and good cause
18 appearing, the Court makes the following order.

19
20 **ORDER**

21 **Entitlement to Attorneys' Fees**

22
23 The Willis Class seeks attorneys' fees pursuant to Code of Civil Procedure § 1021.5.
24 Section 1021.5 is a codification of the private attorney general doctrine adopted by the
25 California Supreme Court in *Serrano v. Priest* (1977) 20 Cal.3d 25 [141 Cal.Rptr. 315, 569
26 P.2d 1303] (Serrano III). This section allows an award of attorneys' fees to "a successful party"
27 in an action which has resulted in the enforcement of an important right affecting the public
28 interest if: a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the

1 general public or a large class of persons, the necessity and financial burden of private
2 enforcement make the award appropriate, and such fees should not in the interest of justice be
3 paid out of any recovery. (Code Civ. Proc. § 1021.5; *Press v. Lucky Stores, Inc.* (1983) 34
4 Cal.3d 311, 317-318 [193 Cal.Rptr. 900, 667 P.2d 704].)

5
6 The fundamental objective of the private attorney general theory is to encourage
7 suits effecting a strong public policy by awarding substantial attorney fees to
8 those whose successful efforts obtain benefits for a broad class of citizens.
9 (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933
10 [154 Cal.Rptr. 503, 593 P.2d 200].) Without a vehicle for award of attorney
11 fees, private actions to enforce important public policies will frequently be
12 infeasible. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142 [185 Cal.Rptr. 232, 649
13 P.2d 874].)

14 The decision to award attorney fees rests initially with the trial court: utilizing
15 its traditional equitable discretion, the trial court must “realistically assess the
16 litigation and determine, from a practical perspective,” whether the statutory
17 criteria have been met. (*Baggett v. Gates, supra*, 32 Cal.3d 128, 142; *Mandicino*
18 *v. Maggard* (1989) 210 Cal.App.3d 1413, 1416 [258 Cal.Rptr. 917].)

19 (*Hull v. Rossi* (1993) 13 Cal. App. 4th 1763, 1766-1767.)

20 Section 1021.5 states, in relevant part:

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

29 The first step in establishing whether the Willis Class is entitled to fees pursuant to
30 Section 1021.5 is a determination of whether the Willis Class is a “successful party.”

31 Although it is true that the Willis Class did not obtain all of the relief they requested in
32 their pleadings, a trial court need not rule in favor of petitioners on every single issue litigated
33 for petitions to be “successful” within the meaning of section 1021.5. (*Hull v. Rossi, supra*, 13

Antelope Valley Groundwater Litigation (Consolidated Cases)

Los Angeles County Superior Court, Lead Case No. BC 325 201

*Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and The Class for Attorneys’ Fees, Reimbursement of Expenses
and Class Representative Incentive Award*

1 Cal. App. 4th at p. 1768.) By eliminating the Public Water Suppliers' prescription claims and
2 maintaining correlative rights to portions of the Basin's native yield, the Willis Class members
3 achieved a large part of their ultimate goal -- to protect their right to use groundwater in the
4 future and to maintain the value of their properties. Under these circumstances, they must be
5 considered "successful parties" for purposes of Code of Civil Procedure § 1021.5.

6 However, the Willis Class is not a successful party with regard to Lancaster. Lancaster
7 ultimately made no claim on dormant owners' water rights so that it was not acting adversely to
8 the class. Moreover, Lancaster is not a signatory to the settlement. Consequently, the Willis
9 Class has not prevailed in any way against Lancaster at this point in the litigation. Therefore,
10 Lancaster is not responsible for any part of the fees to be paid to the Willis Class.

11 The next step in the Section 1021.5 analysis is a determination of whether a significant
12 benefit, pecuniary or nonpecuniary, has been conferred on the general public or a large class of
13 persons. There can be no dispute that the Willis Class is a large class of persons as it is made
14 up of approximately 70,000 class members. As for the benefit conferred, although the Willis
15 Class did not recover any monetary payment, it was successful in achieving a significant benefit
16 by preventing the Public Water Suppliers from proceeding on their prescription claims and by
17 maintaining certain correlative rights to the reasonable and beneficial use of water underlying
18 their land. By virtue of the Willis Class Action (and the Woods Class Action), the Court is able
19 to adjudicate the claims of virtually all groundwater users in the entire Antelope Valley which
20 adheres to the benefit of every resident and property owner in the adjudication area. Without
21 virtually all such users as part of the adjudication, the Court could not have complied with the
22 McCarran Amendment which was necessary to maintain jurisdiction over the federal
23 government (purportedly the largest land owner and a very large water user) which was
24 necessary to adjudicate all correlative rights in the basin.

25 Even without the federal government involvement, without the filing of the class action,
26 it would have been impossible to adjudicate the rights of all persons owning property and water
27 rights within the valley. The impossibility of 70,000 individual claims by land owners to water
28 rights being adjudicated in any other fashion needs little further discussion. The inability of the

1 judicial system to conduct such adjudication in any other way is beyond argument. The benefit
2 to all class members is clear and the benefit to all others living or owning property in the
3 Antelope Valley is enormous - all water rights will ultimately be established and if necessary
4 (as alleged) the reasonable and beneficial use of the water will be preserved for all under the
5 California Constitution.

6 The Willis Class has not received any direct pecuniary benefit. The burden on any
7 individual class member to maintain this action would have been significantly higher than any
8 potential benefit to that class member. Only by banding together in a class action were the
9 members of the Willis Class able to litigate this case.

10 In sum, the Willis Class has met the requirements of Code of Civil Procedure § 1021.5
11 and is entitled to attorneys' fees.

12
13 **Amount of Attorneys' Fees**

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15 "The starting point of every fee award, once it is recognized that the court's role
16 in equity is to provide just compensation for the attorney, must be a calculation
17 of the attorney's services in terms of the time he has expended on the case.
18 Anchoring the analysis to this concept is the only way of approaching the
19 problem that can claim objectivity, a claim which is obviously vital to the
20 prestige of the bar and the courts."

21 (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48, fn. 23, quoting *City of Detroit v.*
22 *Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470.)

23 [T]he fee setting inquiry in California ordinarily begins with the "lodestar," i.e.,
24 the number of hours reasonably expended multiplied by the reasonable hourly
25 rate. "California courts have consistently held that a computation of time spent
26 on a case and the reasonable value of that time is fundamental to a
27 determination of an appropriate attorneys' fee award." [Citation.] The
28 reasonable hourly rate is that prevailing in the community for similar work.
[Citations.] The lodestar figure may then be adjusted, based on consideration of
factors specific to the case, in order to fix the fee at the fair market value for the
legal services provided.

1 (*Plcm Group v. Drexler* (2000) 22 Cal. 4th 1084, 1095.)

2 Factors to be considered in adjusting the lodestar figure include:

- 3 (1) The novelty and difficulty of the questions involved, and
4 the skill displayed in presenting them;
- 5 (2) The extent to which the nature of the litigation precluded
6 other employment by the attorneys;
- 7 (3) The contingent nature of the fee award, both from the point
8 of view of eventual victory on the merits and the point of view
9 of establishing eligibility for an award;
- 10 (4) The fact that an award against the state would ultimately
11 fall upon the taxpayers;
- 12 (5) The fact that the attorneys in question received public and
13 charitable funding for the purpose of bringing law suits of the
14 character here involved;
- 15 (6) The fact that the monies awarded would inure not to the
16 individual benefit of the attorneys involved but the
17 organizations by which they are employed; and
- 18 (7) The fact that in the court's view the two law firms involved
19 had approximately an equal share in the success of the
20 litigation.

21 (See *Serrano III, supra*, 20 Cal.3d at p. 49.)

22 Other factors that may be considered include the benefits obtained or results achieved,
23 the promptness of the settlement, and the amount of attorneys' fees typically negotiated in
24 comparable litigation. (See *Lealao v. Benefit Cal.* (2000) 82 Cal.App.4th 19, 40, 47, 52.)

25 "If . . . a plaintiff has achieved only partial or limited success, the product of
26 hours reasonably expended on the litigation as a whole times a reasonable
27 hourly rate may be an excessive amount. This will be true even where the
28 plaintiff's claims were interrelated, nonfrivolous, and raised in good faith.
Congress has not authorized an award of fees whenever it was reasonable for a
plaintiff to bring a lawsuit or whenever conscientious counsel tried the case with
devotion and skill. Again, the most critical factor is the degree of success
obtained.

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2 “There is no precise rule or formula for making these determinations. The [trial]
3 court may attempt to identify specific hours that should be eliminated, or it may
4 simply reduce the award to account for the limited success. The court
necessarily has discretion in making this equitable judgment....”

5 (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 247-248, quoting *Hensley v.*
6 *Eckerhart* (1983) 461 U.S. 424, 436-437, 439-440.)
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8
9 The Willis Class argues that its counsel’s lodestar of \$2,300,618 is reasonable given the
10 complexity of the case. The Opposing Parties contend that the amount of time expended by
11 Class Counsel was excessive and, in many instances, unnecessary. While it is possible to use
12 hindsight to look back and determine that effort expended by Class Counsel on a particular
13 issue or motion might have been unnecessary, that does not mean that Class Counsel is not
14 entitled to fees for that work. Absent circumstances rendering the award unjust, an attorneys’
15 fee award should ordinarily include compensation for all the hours *reasonably* spent, including
16 those relating solely to the fee. (*Keitchum v. Moses* (2001) 24 Cal. 4th 1122, 1133.) Further, the
17 trial court has broad authority to determine the amount of a reasonable fee. (*Id.* at p. 1095.) A
18 trial court may make its own determination of the value of the services contrary to, or without
19 the necessity for, expert testimony. (*Id.* at p. 1096.) Therefore, the Court can use its knowledge
20 of the case and the efforts of Class Counsel to determine an equitable fee award.

21 Although an attorneys’ fee award is generally based on the lodestar amount, in this
22 instance there are several factors that weigh in favor of reducing the lodestar amount. First,
23 even though the Willis Class obtained significant relief in this action, the Willis Class did not
24 prevail on a number of causes of action and was unsuccessful in recovering any direct monetary
25 benefit. Second, the fee award in this case will ultimately fall on taxpayers. Moreover, as
26 pointed out by the Opposing Parties, some taxpayers are also ratepayers of various public
27 agencies and would, in effect, have to pay their portion of the fee award twice. Additionally,
28 although nobody can dispute that this is a complicated case, Class Counsel did not come into
the case with much, if any, expertise in water law and properly associated other counsel with

1 such expertise. Then, additional time was spent by counsel educating themselves, thereby
2 increasing fees somewhat beyond what appears reasonable necessary. Also, in reviewing the
3 time spent on certain law and motion matters, it appears that an unnecessary amount of time
4 was spent by counsel on various matters, in particular pleading matters, involving well settled
5 legal principles. Moreover, by "block billing," counsel have made it impossible for the Court to
6 analyze the time spent on the various functions performed by each counsel.¹

7 This case included many parties who were not directly adverse to the Willis Class
8 because they were not part of the Willis Class's action, many of whom had a common interest
9 in defending against prescription. The Public Water Suppliers should not be required to pay
10 attorneys' fees that were generated as a result of actions taken by non-parties to the Willis
11 Class's action.

12 The Willis Class asserts that it is only seeking fees from the parties that have asserted
13 claims to prescriptive rights. Los Angeles County Waterworks District No. 40 ("District 40")
14 requests that the attorneys' fee award should be apportioned among each party that pumps from
15 the Basin due to the involvement of those parties in this case even though those parties are not
16 named as defendants in the Willis Class's action. If the Court were to order that other parties
17 must also pay fees, the Court would be going beyond the scope of the requested relief.
18 Moreover, in the Court's consolidation order, the Court states that "[c]osts and fees could only
19 be assessed for or against parties who were involved in particular actions." (Order Transferring
20 and Consolidating Actions for all Purposes, p. 3:13-14.) Such other parties are not parties to the
21 settlement; the adjudication as it relates to them is ongoing and the Willis Class cannot be
22 considered a prevailing party as to them. Accordingly, any fee award that is granted at this
23 point may only be awarded against the parties to the settlement.

24 Regarding Class Counsel's billing rates, Class Counsel have provided evidence that
25 their billing rates are reasonable. The lodestar was based on hourly rates of \$400 per hour for
26 Ralph B. Kalfayan, \$450 per hour for David B. Zlotnick, and lesser amounts for associates who

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28 ¹ Block Billing involves showing various functions performed lumping together time expended without indicating how much time is allotted to each function.

1 worked on the case. These rates are reasonable. The Court notes, however, that in at least one
2 case (Greg James) a higher billing rate was used because this was a contingent fee case. The
3 fact that this is a contingent fee case should not be counted twice as a factor for raising the
4 amount of the award – in the hourly rate charged and in the multiplier awarded.

5 This Court has presided over this case since the order of coordination and is familiar
6 with the work of counsel for all parties, the complexity of the various issues, and the time
7 necessarily involved in effectively representing the Willis Class. The Court has carefully
8 reviewed all of the time claimed in the lodestar computation. The principal cause of action
9 brought on behalf of the class was the declaratory relief cause of action which concededly was
10 defensive in substance. Importantly, the fees should reflect the necessity of bringing the action
11 to protect the class members' water rights against the claim of prescriptive rights by the Public
12 Water Producers. However, the lodestar should also be reduced to account for the fact that the
13 fees requested include fees incurred as a result of the involvement of parties that are not parties
14 to the Willis Class's case. The lodestar should also be reduced based on the following other
15 factors: the Willis Class did not prevail on a number of causes of action and was unsuccessful in
16 recovering any direct monetary benefit; the fee award in this case will ultimately fall on
17 taxpayers; and Class Counsel did not come into the case with much, if any, expertise in water
18 law and appear to have spent more time educating themselves than would otherwise be
19 necessary.

20 Accordingly, in reviewing all the time spent by counsel and others, considering the time
21 accorded to various of the issues by relative import and consequence, it is the decision of the
22 Court that reasonable attorneys' fees for the class in this matter is the sum of \$1,839,494.

23 24 Costs

25
26 The Willis Class seeks an award of \$65,057.68 in costs. District 40 argues that Code of
27 Civil Procedure § 1021.5 only authorizes recovery of attorneys' fees, not costs. District 40 is
28 correct. (See *Benson v. Kwikset Corp.* (2007) 152 Cal. App. 4th 1254, 1283.) Costs are

1 authorized, however, by Code of Civil Procedure §§ 1032 and 1033.5. (Code Civ. Proc.
2 §§ 1032 and 1033.5; see also *Benson v. Kwikset Corp.*, *supra*, 152 Cal. App. 4th at p. 1283.)
3 No party has moved to tax the costs requested by the Willis Class. Moreover, the costs
4 requested appear to have been reasonably necessary. Accordingly, the Willis Class's request
5 for costs is GRANTED.

6
7 **Incentive Award**

8 The Willis Class seeks to give lead plaintiff Rebecca Lee Willis an incentive award of
9 \$10,000 to be paid out of the attorneys' fee award. Based upon the declaration submitted by
10 Ms. Willis, the Court finds that an incentive award is justified. This class action would not
11 likely have been initiated but for her involvement in this case. Counsel are authorized to pay
12 her an incentive award in the sum of \$10,000 from the attorneys' fee award.

13
14 **CONCLUSION**

15
16 The Willis Class's request for costs is GRANTED.

17
18 Lead plaintiff Rebecca Lee Willis may be awarded an incentive payment in the sum of
19 \$10,000 to be paid by counsel out of attorneys' fees awarded.

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21 Attorneys' fees in the sum of \$1,839,494 are awarded to counsel for the Willis Class
22 against Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water
23 District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water
24 District, California Water Service Company, Rosamond Community Service District, Phelan

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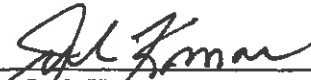
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1 Piñon Hills Community Services District, Desert Lake Community Services District, and North
2 Edwards Water District.

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4 SO ORDERED.

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6 Dated: 5-4-2011

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8 Hon. Jack Komar
9 Judge of the Superior Court
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