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12 **LOS ANGELES COUNTY WATERWORKS**

13 **DISTRICT NO. 40**

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

Included Actions:

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

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

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

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
BRIEF RE EQUITABLE
APPORTIONMENT OF WILLIS CLASS
FEE AWARD

DATE: MARCH 22, 2011

TIME: 10:00 A.M.

DEPT: 1

JUDGE: HON. JACK KOMAR

1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 (“District 40”) opposes Plaintiff’s
3 motion for attorney’s fees under Code of Civil Procedure (“CCP”) section 1021.5 and requests the
4 Court deny Plaintiff’s fee request in its entirety for the many reasons set forth in the oppositions
5 filed with the Court. However, in the event that the Court sees fit to award fees, District
6 40 respectfully requests that the Court significantly reduce Plaintiff’s fee award in fair
7 consideration of all parties’ interests and, most importantly, the public’s interest. Further, the
8 Court should apportion fees to each party that pumps from the Antelope Valley Groundwater
9 Basin (“Basin”) based on a pro rata share of their pumping.¹

10 This separate brief addresses the equitable apportionment of any Willis Class attorney’s
11 fee award. Appellate Courts in California have determined that a party may be ordered to pay
12 fees under section 1021.5 as long as the party has an interest in the outcome of the case and
13 participates in the case. *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151; *Connerly v.*
14 *State Personnel Bd.* (2006) 37 Cal.4th 1169. Importantly, the party paying fees does not have to
15 be adverse to the party seeking attorney’s fees. *Id.* In the present case, as discussed in detail
16 below, each pumping party, whether named as a party or not, has a sufficient interest and
17 sufficiently participated in the action filed by the Willis Class to justify being ordered to pay class
18 counsel fees. Moreover, the Willis Class action judgment eventually will be incorporated into the
19 final judgment and physical solution in this comprehensive adjudication. Thus, each pumping
20 party not only has a certain level of interest in the Willis Class action, but should receive a certain
21 benefits arising from a managed groundwater basin and future certainty regarding their pumping
22 from the Basin.

23 Many actions taken by pumping parties who are not named as defendants in the class
24 action provide clear evidence that these parties have an interest in the outcome of the Willis Class
25 action. This is reflected in filings made, statements made on the record, and the billing records of
26 class counsel. For example, several large landowner parties strenuously opposed the Court’s

27 _____
28 ¹ Any allocation should exclude the Wood Class members because this Court should minimize the financial burden
on small pumpers and the Wood Class Notice specifies that class members will not incur any costs.

1 approval of the Willis Class settlement on the grounds that they have an interest in the outcome of
2 that case and their interests are not adequately represented in the settlement. While the court
3 properly rejected those arguments on the grounds that the landowners do not have a sufficient
4 interest in the Willis Class action to justify not approving settlement, the landowners do have a
5 sufficient interest in this action to justify allocating responsibility to them for class counsels'
6 attorney's fees.

7 This is demonstrated by the fact that the landowner pumping parties, despite not being
8 named as parties in the Willis action, have participated in it at every turn, never wasting any
9 opportunity to delay the ultimate outcome of this case or challenge the public water suppliers'
10 rights. Considerable time has been spent by all attorneys in this action, including class counsel,
11 responding to delay tactics and maneuvers undertaken by the landowner pumpers, including
12 appeals and redundant objections and motions. Many landowner pumpers have profited
13 significantly by delaying the outcome of this case in order to pump groundwater without
14 restriction or regard for the health of the Basin. Equity dictates that the landowner pumping
15 parties participate in paying for class counsel fees, if any are awarded by the Court.

16
17 **II. REAL PARTIES IN INTEREST CAN BE REQUIRED TO PAY ATTORNEYS**
18 **FEE AWARDS**

19 The pumping landowners (those not named as defendants in the Willis Class Complaint)
20 have a direct interest in and have actively participated in this litigation and are thus "opposing
21 parties" within the meaning of CCP section 1021.5 and therefore are responsible for a portion of
22 the Willis Class attorney's fees.

23 In *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151 (hereafter *Mejia*) the court
24 found that a real party in interest (a developer in a CEQA mandamus action) was an "opposing
25 party" under CCP section 1021.5 and was therefore responsible for paying attorneys fees. (*Id.* at
26 p. 161.) The *Mejia* court recognized that the term "opposing party" was not defined in section
27 1021.5 and noted that, although the usual meaning of a party ordinarily means a plaintiff or a
28 defendant, a real party in interest also is regarded as a party to the litigation. (*Id.* at p. 160.)

1 *Mejia* thus held that a real party in interest that has a “direct interest in the litigation, more than
2 merely an ideological or policy interest, and actively participates in the litigation is an **opposing**
3 **party** within the meaning of Code of Civil Procedure section 1021.5.” (*Id.* at p. 161.) (Emphasis
4 added.)

5 One year earlier, in *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169 (hereafter
6 *Connerly*), the California Supreme Court found that a **party’s active participation alone** can
7 convert an amicus curiae into a real party in interest that is liable for attorneys fees under CCP
8 section 1021.5. (*Id.* at pp. 1181-1182.) (Emphasis added.)

9 In determining the propriety of a CCP section 1021.5 attorneys fee award, it is sufficient
10 that the party has some interest in the outcome of the case—no finding of fault or misconduct is
11 required. (See *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 588 [“no finding of fault is
12 required under the statute”].) Thus, in *San Bernardino Valley Audubon Society, Inc. v. County of*
13 *San Bernardino et al.* (1984) 155 Cal.App.3d 738 (hereafter *Audubon*), the Appellate Court held:

14 [F]ees granted under the private attorney general theory are not
15 intended to punish those who violate the law but rather to ensure
16 that those who have acted to protect public interest will not be
17 forced to shoulder the cost of litigation. In this case, Gold
18 Mountain was a major party, **actively litigating from the inception**
19 **of the action in order to protect its interests.** As the real party in
20 interest, it had the most to gain. When a private party is a real party
21 in interest and actively participates in litigation along with the
22 governmental agency, it is fair for that party to bear half the fees.

23 (*Id.* at 756.) (Emphasis added.)

24 The circumstances here fit squarely within the holdings of these cases. As in *Mejia*, the
25 pumping landowners have a **direct interest** in the outcome of this Adjudication, specifically as it
26 concerns the future security of their water supply, which will be dramatically affected by the
27 implementation of a physical solution and ensuing Basin-wide management plan. Because of
28 this, the pumping landowners have as much to gain by the outcome of this litigation as any other
party. In fact, it was several of the pumping landowners who initiated this litigation.

Although not named as defendants in the Willis Class Complaint, the pumping
landowners have actively participated in this litigation. Their position is well documented by a
review of the court’s pleadings and throughout the Willis Class time entries submitted as part of

1 their Fee Motion. Notably, as one example, out of approximately 223 phone calls and meetings
2 itemized in Mr. Kalfayan’s bills, over 116 of those calls and meetings—more than fifty percent—
3 are with the pumping landowners’ attorneys. Additionally, the pumping landowners participated
4 in settlement discussions with the Willis Class, filed several briefs and made arguments regarding
5 many matters concerning the class. Specifically, several of the pumping landowners opposed the
6 class settlement. Under the standards set forth in *Audubon* and *Connerly*, the pumping
7 landowners’ participation alone warrants that they be apportioned their fair share contribution of
8 attorney’s fees.

9 **III. THE COURT CAN EXERCISE ITS DISCRETION AND APPORTION FEES**
10 **AMONGST PARTIES**

11 The decision to award attorneys fees is addressed to the sound discretion of the trial court.
12 (*Woodland Hills Residents Association, Inc., et al. v. City Council* (1979) 23 Cal.3d 917, 938;
13 *Sundance v. Municipal Court for the Los Angeles Judicial District of Los Angeles County* (1987)
14 192 Cal.App.3d 268, 272 (*Sundance*)). In actions involving multiple defendants, courts have
15 apportioned CCP section 1021.5 attorneys fees **equally** among co-defendants, based on the
16 defendants’ mere contribution to the dispute that gave rise to the fee request and independent of
17 the degree of liability/responsibility borne on the part of each defendant individually. (See, *e.g.*,
18 *Sundance, supra*, 192 Cal.App.3d at p. 272; see also *Friends of the Trails et al. v. Blasius et al.*
19 (2000) 78 Cal.App.4th 810, 837-38.)

20 Thus, for example, in *Sundance*, the court apportioned fees equally between a city and a
21 county, even though the fee award largely addressed the city’s abusive practices, over and above
22 that of the county’s. (*Sundance, supra*, 192 Cal.App.3d at 272.) As the court explained, “the
23 County took an active part in opposing the litigation and thus in generating the expenses []
24 compensated by the award of attorneys’ fees” and thus an equal division of the fee award was
25 appropriate. (*Ibid.*) Here, like in *Sundance*, the pumping landowners played a role in generating
26 the expenses that Willis class counsel now seek to recover. For example, the pumping
27 landowners’ role in opposing the Willis Class formation and their contribution in generating the
28 expenses in litigating that issue alone warrants that they be apportioned fees.

1 Thus, because the allocation of the fee award is in the sound discretion of the Court,
2 District 40 respectfully requests that the pumping landowners be responsible for their share of the
3 costs involved for the reasons set forth above.

4 **IV. IF THE WILLIS CLASS CONFERRED A BENEFIT, WHICH IT DID NOT, THE**
5 **BENEFIT WAS TO ALL PUMPERS, NOT JUST THE PUBLIC WATER**
6 **SUPPLIERS**

7 As a large landowner in this Basin, the United States had to be included in this
8 Adjudication. In order to obtain jurisdiction over the United States, it was necessary to comply
9 with the “comprehensiveness” requirement of the McCarran Amendment. (43 U.S.C. § 666; *In re*
10 *Gen. Adjudication Of All Rights To Use Water In the Gila River Sys. & Source* (1993) 175 Ariz.
11 382, 393-394) To comply with the comprehensiveness requirement of the McCarran Amendment
12 it was necessary to include the almost 70,000 Willis Class members who own land but have not
13 and do not currently pump water.

14 The creation of the Willis class was one method to allow this Court to comprehensively
15 adjudicate the Basin. As discussed above, this Adjudication is beneficial to all pumpers because,
16 through a physical solution, the court will manage the Basin and provide certainty as to future
17 pumping from the Basin. Indeed, in *Sundance, supra*, 192 Cal.App.3d at page 272, the cessation
18 of the city’s abusive practices was a benefit incurred on the county (the city’s co-defendant) and
19 was another reason, apart from the county’s contribution to the total fee amount (discussed
20 *supra*), that warranted the county share equally in paying the fee award.

21 If the Willis Class has conferred a significant benefit, which it has not, the benefit is to all
22 who pump from the Basin and it would be inequitable for the Court to place the burden of
23 attorney’s fees solely on the Public Water Suppliers.

24 ///
25 ///
26 ///
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28 ///

1 **V. CONCLUSION**

2 If the Court awards the Willis Class attorneys fees, which it should not,² the Public Water
3 Suppliers respectfully request that the Court exercise its equitable powers and apportion the cost
4 amongst each party who pumps water from the Basin.

5 Dated: March 9, 2011

BEST BEST & KRIEGER LLP

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ERIC L. GARNER
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Attorneys for Defendant and Cross-
Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

² See the Oppositions filed by the Public Water Suppliers.

1 **PROOF OF SERVICE**

2 I, Stefanie D. Hedlund, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Best Best & Krieger LLP, 400 Capitol
5 Mall, Suite 1650, Sacramento, California 95814. On March 9, 2011, I served the within
6 document(s):

7 **LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S BRIEF RE**
8 **EQUITABLE APPORTIONMENT OF WILLIS CLASS FEE AWARD**

9 by posting the document(s) listed above to the Santa Clara County Superior Court
10 website in regard to the Antelope Valley Groundwater matter.

11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at Irvine, California addressed as set forth
13 below.

14 by causing personal delivery by ASAP Corporate Services of the document(s)
15 listed above to the person(s) at the address(es) set forth below.

16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.

18 <input type="checkbox"/>	19 I caused such envelope to be delivered via overnight delivery addressed as 20 indicated on the attached service list. Such envelope was deposited for delivery 21 by Federal Express following the firm's ordinary business practices.
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22 I am readily familiar with the firm's practice of collection and processing
23 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
24 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
25 am aware that on motion of the party served, service is presumed invalid if postal cancellation
26 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct.

Executed on March 9, 2011, at Truckee, California.

/s/ Original Signed
Stefanie Hedlund

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