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

**ANTELOPE VALLEY  
GROUNDWATER CASES**

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

Plaintiff,

vs.

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

Defendants.

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR WRIT OF MANDATE**

Date: August 30, 2011  
Time: 10:00 a.m.  
Judge: Hon. Jack Komar

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR WRIT OF MANDATE**

**I. INTRODUCTION**

Pursuant to Section 1085 of the Code of Civil Procedure, Petitioners Rebecca Lee Willis (“Willis”) and Krause Kalfayan Benink & Slavens LLP (“KKBS”) request that this Court issue a writ of mandate compelling Respondents Los Angeles County Waterworks District No. 40; the City Of Palmdale; Littlerock Creek Irrigation District; Palm Ranch Irrigation District; Desert Lake Community Services District; North Edwards Water District; and Quartz Hill Water District (collectively “Respondents”) to pay the outstanding fees and costs that this Court awarded by its Order dated May 4, 2011 (the “Fee Order”) or, in the alternative, issue an Order to Show Cause to Respondents. Although they did not appeal from the Fee Order, Respondents have failed to pay any portion of the fee award and have refused to agree to make payment. Because respondents are public entities, a writ of mandate is the appropriate means to enforce the Court’s Fee Order

**II. RELEVANT FACTS**

In or about September, 2010, Plaintiff Willis entered into a Stipulation of Settlement (the “Stipulation”) with Defendants Los Angeles County Waterworks District No. 40; City Of Palmdale; Palmdale Water District; Littlerock Creek Irrigation District; Palm Ranch Irrigation District; Quartz Hill Water District; Antelope Valley Water Co.; Rosamond Community Service District; and Phelan Pinon Hill Community Service District. A true and correct copy of the Stipulation is attached to the accompanying Notice of Lodgment (the “Lodgment”) as Exhibit A. On or about February 24, 2011, this Court held a fairness hearing and approved the Stipulation. On or about May 12, 2011, this Court entered Judgment (the “Judgment”) approving the Stipulation and dismissing this action, but reserving jurisdiction over subsequent related

proceedings. A true and correct copy of the Court's Judgment is attached to the Lodgment as Exhibit B. No appeal has been taken from the Court's Order approving the Stipulation or the Judgment.

The Stipulation provided in pertinent part as follows:

"The Settling Parties understand that Willis Class counsel intend to seek an award of their fees and costs from the Court. . . . If Willis Class Counsel obtain an award of fees, Settling Defendants agree to exercise their best efforts to pay any fee award within a reasonable period of time or as required pursuant to Court order."

Stipulation at p.17, ¶VIII.D. The Stipulation further provides that this Court "shall retain jurisdiction over the implementation, enforcement, and performance of this Stipulation . . . ."

Similarly, The Judgment (the terms of which Respondents also agreed upon) provides similarly.

"The Court retains jurisdiction to consider an application by Plaintiff and Class Counsel for an award of attorneys' fees and reimbursement of costs, . . . as well as any other collateral matters.

Judgment at p. 6, ¶¶ 20-21.

On May 4, 2011, this Court entered an Order awarding attorneys' fees and costs in the amount of \$1,904,551.68 to Petitioners (the "Fee Order"). A true and correct copy of the Court's Fee Order is attached to the Lodgment as Exhibit C. No appeal has been taken from the Fee Order.

On July 19, 2011, Petitioners made written demand that Defendants/Respondents pay the fees and costs awarded by the Court. Defendants Palmdale Water District ("PDW") and Phelan Pinon Hills Community Services District ("PPCSD) have either paid or agreed to pay their respective shares of the fee award; and Defendant "Rosamond Community Services District ("Rosamond") has agreed to consider the matter at its next Board meeting. But Respondents Los Angeles County Waterworks District No. 40; the City Of Palmdale; Littlerock Creek Irrigation District; Palm Ranch Irrigation District; and Quartz Hill Water District have failed to pay any

1 portion of the fee award and have refused to agree to make payment.

### 2 **III. ARGUMENT**

#### 3 A. A Writ of Mandate is Appropriate Under the Law.

4 Section 1085(a) of the Code of Civil Procedure authorizes this Court to issue a writ of  
5 mandate, providing as follows:

6 A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,  
7 or person, to compel the performance of an act which the law specially enjoins, as a duty  
8 resulting from an office, trust, or station, or to compel the admission of a party to the use  
9 and enjoyment of a right or office to which the party is entitled, and from which the party  
is unlawfully precluded by that inferior tribunal, corporation, board, or person.

10 Section 1086 then provides that “[t]he writ must be issued in all cases where there is not a plain,  
11 speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified  
12 petition of the party beneficially interested.” Section 1088 of the Code requires that the  
13 application for such a writ must provide at least 10 days’ notice.

14 It is clear that a writ of mandate is warranted here. Indeed, Section 970.2 of the  
15 Government Code expressly provides that “[a] writ of mandate is an appropriate remedy to  
16 compel a local public entity to perform any act required by this article” (dealing with the  
17 payment of judgments by local public entities). Given Respondents failure to pay the Fee Award  
18 or even agree to make payments over time as permitted by the Government Code, this Court  
19 should issue a writ of mandate directing such payment.  
20

#### 21 B. Respondents Excuse For Not Paying Lacks Merit.

22 Respondents have advanced only one excuse for not paying the Fee Award – that the  
23 award is not itself contained in a formal Judgment. For at least two reasons, that excuse lacks  
24 merit. First, CCP Section 680.230 provides that the term “[j]udgment’ means a judgment,  
25 *order*, or decree entered in a court of this state.” (emphasis added). The Law Revision  
26 Commission comments make clear that this provision was intended to continue the effect of  
27

1 former Section 1007 that an “order [is] enforceable as a judgment.” As Mr. Pearl succinctly  
2 states in his treatise: “Fee orders are judgments.” R. Pearl, CAL. FEE AWARDS § 16.2 (3d ed.  
3 2011), at section 11.64, *citing Alioto Fish Co. V. Alioto* (1994) 27 Cal. App. 4<sup>th</sup> 1669, 1686.

4 Second, when “a court orders payment of fees before judgment, the order is appealable as  
5 a final collateral order.” CAL. FEE AWARDS, *supra* at § 16.2 (3d ed. 2011), *citing cases*. An  
6 order to pay attorneys’ fees pursuant to CCP section 1021.5 is a classic example of an appealable  
7 collateral order because it is not essential to the merits of the case and is an order to pay money.  
8 *California Licensed Foresters Assn. v. State Bd. Of Forestry* (1994) 30 Cal. App. 4<sup>th</sup> 562, 565 n.

9  
10 1. It is therefore irrelevant that the fee order was entered prior to the judgment approving the  
11 settlement (albeit after the Court’s minute order approving the settlement or is not itself  
12 embodied in a “Judgment.”

13 In short, the Court’s May 4, 2011 Order awarding fees is final and not appealable.  
14 Respondents should be compelled to comply with that Order.

#### 15 IV. CONCLUSION

16 For the forgoing reasons, Petitioners respectfully request that the Court issue a writ of  
17 mandate compelling respondents to pay the outstanding fees and costs allowed by this Court in  
18 its May 4, 2011 Order awarding fees and costs to Petitioners.

19 Dated: August 5, 2011

KRAUSE, KALFAYAN, BENINK &  
SLAVENS, LLP

22 /s/ David B. Zlotnick

Ralph B. Kalfayan, Esq.

David B. Zlotnick, Esq.

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