

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

Attorneys for Plaintiff
Rebecca Lee Willis and the Willis Class

**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

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

) Date: August 30, 2011
) Time: 8:00 a.m.
) Dept.: 15 (CCW)
) Judge: Hon. Jack Komar

1 **I. INTRODUCTION**

2 Since moving for a supplemental fee award, Petitioners Willis and Krause Kalfayan
3 Benink & Slavens LLP have now settled that matter with Defendants Palmdale Water District,
4 Phelan Pinon Hills Community Services District, Rosamond Community Services District, and
5 Quartz Hill Community Services District (collectively, the “Settling Entities”).¹ One entity –
6 Los Angeles County Waterworks District No. 40 (“District 40”) – has opposed the Supplemental
7 Fee Petition. As discussed below, its factual and legal positions lack merit. *Five other entities*
8 *have not opposed Plaintiff’s request for an award of supplemental fees* – specifically, California
9 Water Services Company, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
10 North Edwards Irrigation District, and Desert Lake Community Services District. The full fees
11 requested of \$209,624.50, less the \$66,912.14 that the Settling Entities have paid or agreed to
12 pay, should be awarded against those five entities (i.e., \$142,712.36). Moreover, as discussed
13 below, District 40’s factual and legal positions are without merit, and the Court should award the
14 unpaid fees that Petitioners have requested against it as well.

15 **II. FACTS**

16 The basic facts underlying this application are set out in the July 12, 2011 petition.
17 District 40’s opposition grossly misrepresents many of the relevant facts, albeit without a
18 scintilla of evidentiary support, and it is necessary for Petitioners to correct those matters here.

19 1. Contrary to District 40’s assertion, Petitioners do not seek an “additional quarter
20 million dollar fee award.” [District 40 Opp at p. 1] As District 40 is well aware, the fee petition
21 was for the substantially lesser amount of \$209,624.50. Moreover, it is noteworthy that
22 Petitioners have not sought any reimbursement for approximately \$5,000 in filing fees, copy
23 costs, legal research charges, and other expenses they have incurred this year, including travel
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27 ¹ Petitioners have also settled their claim against those entities arising from this Court’s
28 original fee award and will withdraw their petition for a writ of mandate as it pertains to them.

1 costs for multiple trips to Los Angeles by three separate counsel for hearings and a mediation.
2 *Moreover, Petitioners will not seek payment for the not insubstantial fees and costs they have*
3 *incurred and will incur in connection with this motion.*

4 2. Contrary to District 40's assertion at p. 3, Petitioners prepared the Motion for
5 Final Approval of the Stipulation of Settlement as well as the two Notices of Settlement sent to
6 the Class. Kalfayan Decl. at 5. See Docket Entries 3899 – 3900 and 4232 - 4237. Further,
7 Petitioners prepared the reply briefs in response to the oppositions filed to the Motion for Final
8 Approval. Docket Entries 4285 and 4286. Indeed, despite the fact that Defendants were parties
9 to the settlement, they did none of the work necessary to obtain its approval besides the
10 ministerial task of sending the Settlement Notice that Petitioners had drafted.

12 3. Contrary to District 40's assertion at p. 3, Petitioners have not submitted "block
13 billed" time entries in their supplemental petition. See Exhibits 4, 5, and 6, to Petitioners July 12,
14 2011 Notice of Lodgment. To the contrary, Petitioners' time entries are specific and detailed.

15 4. Contrary to District 40's assertion at p. 4, Petitioners did not submit "duplicative
16 time entries." Rather, as is appropriate, various persons handled the numerous calls that counsel
17 received from Class Members who had questions about the Settlement terms and hearing, as well
18 as other necessary matters.

19 5. Contrary to District 40's assertion at p. 5, Mr. James did not "do most of the work
20 on the matters relevant here." Rather, as has been the case throughout, he consulted and advised
21 KKBS counsel, but the latter took the laboring oar on all relevant matters. Kalfayan Decl at 9.
22 As District 40 correctly notes, his expertise is in water law, not class action procedures.

23 Finally, District 40 simply ignores the fact that the Stipulation of Settlement – to which
24 District 40 agreed – expressly permitted Class Counsel to seek fees for all efforts through the
25 entry of judgment. We have not and will not seek fees for subsequent efforts (except as
26 specifically allowed by the Stipulation), including the not insubstantial work in bringing this
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1 motion.

2 In short, District 40 has seriously misrepresented many of the basic facts relevant to the
3 Supplemental Fee Petition. *Moreover, it has failed to support its distorted version of the facts*
4 *with any evidence – not even a Declaration from counsel.* By contrast, Petitioners have
5 substantiated their factual position with appropriate evidence.

6 **III. ARGUMENT**

7 **A. District 40's Opposition Is Based Entirely On Erroneous and Wholly** 8 **Unsubstantiated Factual Contentions and Should Be Disregarded.**

9 As discussed above, District 40's Opposition makes numerous factual assertions – e.g.,
10 that counsel for District 40 prepared the Motion for Final Approval of the Settlement and the
11 Class Notice – that, are demonstrably incorrect and that District 40 and its counsel know to be
12 incorrect. It is, therefore, not surprising that District 40 totally failed to support its opposition
13 with any evidence – not even a Declaration from counsel. For that reason alone, District 40's
14 opposition should be disregarded.

15 **B. Class Counsel's Supplemental Fee Request Is Appropriate Under** 16 **The Private Attorney General Statute and Governing Case Law.**

17 Most of the time for which counsel seek compensation in the Supplemental Fee Petition
18 relates to the substance of this litigation – specifically, bringing the Motion for Final Approval of
19 the Settlement, responding to the objections to that Motion, and communicating with Class
20 Members regarding the settlement. A substantial amount of the time at issue also relates to
21 counsel's efforts in bringing their initial fee petition and responding to the five opposing briefs
22 that Defendants filed (as well as related matters). California law is clear and unequivocal that
23 counsel seeking fees under the Private Attorney General statute are entitled to be compensated
24 for the fees they incur litigating their entitlement to a fee award. *See Graham v.*
25 *DaimlerChrysler* (2005) 34 Cal. 4th 553, 581; *Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d
26 621. As the Court explained in *Serrano IV*, a defendant "cannot litigate [a fee motion]
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1 tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in
2 response.” *Id.* at 638.

3 The purpose of the Private Attorney General Statute is to fully and fairly compensate
4 counsel for the time and effort they devoted to a matter such as this, which vindicates an
5 important right of a large group of persons. This Court found that Section 1021.5 warranted an
6 award of fees here. In order to fully compensate counsel, they should be paid for the substantial
7 efforts they expended from January through May 13, 2011 in bringing this matter to a close,
8 including the efforts they were forced to expend to get paid for their over four years of work on
9 this matter.
10

11 **C. Petitioners Are Entitled to the Full Supplemental Award They Requested.**

12 Petitioners are entitled to the full amount they seek. Petitioners’ efforts in bringing this
13 matter to a close were reasonable and appropriate, particularly given the determined opposition
14 that Defendants mounted to the original fee request. We do not seek a multiple of our normal
15 billing rates, even though the time expended remained at risk. Payment of our lodestar, which
16 was reasonable and has been fully documented, is appropriate.
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18 District 40’s reliance on *Adoption of Joshua S v. Sharon S* (2008) 42 Cal. 4th 945, is
19 entirely misplaced. There the Court held simply that purely private litigation that results in an
20 important legal precedent does not merit an award of fees under Section 1021.5. Moreover, the
21 parties were purely private litigants, not the type of entities against whom private attorney
22 general awards are generally rendered.

23 By contrast to *Joshua, supra*, this action resulted in the enforcement of an important right
24 affecting a large group of persons in that the case protected the property and water rights of some
25 65,000 landowners in the Basin. It cannot reasonably be controverted that landowners’ ability to
26 make use of the groundwater under their properties is a critical interest, particularly in an arid
27 environment like the Basin. Moreover, the California Constitution declares the public interest in
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1 the proper use of the State's water resources. Further, absent the involvement of the Class, a
2 comprehensive adjudication of the Basin would not have been possible because, without the
3 participation of these 65,000 landowners, the Court would not have had jurisdiction over all of
4 the parties necessary for a comprehensive adjudication. Thus, Willis and her counsel have not
5 only protected the rights of the 65,000 Class members, their involvement has facilitated a
6 resolution of this large Basin's problems.

7
8 The California Courts have consistently concluded that cases less significant than this one
9 resulted in the enforcement of an important right affecting the public interest and have therefore
10 awarded fees under Section 1021.5. *See, e.g., Graham*, 34 Cal 4th at 156 ("It is well settled that
11 attorney fees under section 1021.5 may be awarded for consumer class actions benefitting a large
12 number of people"); *Friends of the Trails v. Blasius*, 78 Cal. App. 4th 810 (2000)(fees awarded in
13 case enforcing common law right to easement for public trail); *Beasley v. Wells Fargo Bank*,
14 235 Cal. App. 3d 1407 (1991)(action challenging credit card overcharges was a "consumer
15 protection action" and satisfied requirements for fee award). If the preservation of an easement
16 for a trail is enough to warrant a fee award, certainly such an award is warranted here.

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18 District 40's reliance on the *Joshua* decision is simply misplaced given the far different
19 circumstances of this case.

20 **D. The Court Should Award Fees Here Under § 1021.5.**

21 As discussed above, and as this Court previously found, the criteria justifying a fee award
22 under Section 1021.5 are met here. And, although the statute is worded in discretionary terms ("a
23 court *may* award attorneys' fees"), the case law is clear that, where the statutory criteria are met,
24 fees *should* be awarded absent special circumstances that mandate a different result. *See*
25 *Serrano, supra*, 32 Cal. 3d at 621 (fees should be awarded except where "special circumstances
26 would render such an award unjust"); *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1297
27 n.3 (1989)(no discretion to deny a fee award if criteria are met).

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E. District 40 Should Be Ordered to Pay the Requested Fees Forthwith.

District 40 and the five other entities referenced above have still not paid Petitioners any portion of the Court's May 13, 2011 fee award. This Court should expressly direct them to pay any supplemental award within 20 days of the Court's entry of its Order.

IV. CONCLUSION

For the above reasons, Petitioners respectfully request that the Court award the requested fees and direct Defendants to pay those fees forthwith.

Dated: August 23, 2011

KRAUSE, KALFAYAN, BENINK &
SLAVENS, LLP

/s/ Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class