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Attorneys for Cross-Defendants,  
County Sanitation Districts of Los Angeles  
County Nos. 14 and 20

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER  
CASES**

ASSIGNED FOR ALL PURPOSES TO:  
The Honorable Jack Komar

Included Actions:

**JOINT RESPONSE OF  
OVERLIERS TO PUBLIC WATER  
SUPPLIERS OPPOSITION TO  
WOOD CLASS MOTION AND  
SUPPLEMENTAL MOTION FOR  
AWARD OF COSTS AND  
ATTORNEY FEES**

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.

DATE: July 28, 2016  
TIME: 10:00 A.M.  
PLACE: 111 N. Hill Street  
Los Angeles, CA  
DEPT.: 222

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1 Cross-Defendants, State of California and State of California 50<sup>th</sup> District Agricultural  
2 Association (collectively, State of California), the City of Los Angeles, by and through its  
3 Department of Airports, Los Angeles World Airports (LAWA), the County Sanitation Districts  
4 of Los Angeles County Nos. 14 and 20 (LA County Sanitation), the Antelope Valley - East Kern  
5 Water Agency, and the Antelope Valley Ground Water Agreement Association (AGWA)  
6 (collectively, “Overliers”) submit this response to the Public Water Suppliers’ (PWS’)   
7 Oppositions of Los Angeles County Waterworks District No. 40 (District 40) and the Small  
8 Pumper Purveyors to the Wood Class’ Motion and Supplemental Motion for award of costs and  
9 attorney’s fees.

## 10 I.

### 11 INTRODUCTION

12 In its Opposition to the Wood Class Motion for award of costs and attorney’s fees,  
13 District 40 argues, in part, that, “Equity dictates that the Public Water Suppliers not be assessed  
14 attorney fees attributed to the other landowners. . . . the Court should also take into account each  
15 party’s pro rata share of the groundwater allocations . . . and it would be inequitable for the Court  
16 to place the burden of attorney’s fees solely on the Public Water Suppliers” (District 40’s Opp.,  
17 13:16-22). Echoing that complaint, the Small Pumper Purveyors note that the Wood Class “has  
18 not filed suit or requested attorneys’ fees against large public agencies, such as the State of  
19 California, the City of Los Angeles, and the Antelope Valley East Kern Water District [sic,  
20 Agency]” (SPP Opp., 5:5-7).

21 It is unclear whether the aforesaid Public Water Suppliers arguments are intended solely  
22 to suggest that the costs and attorney’s fees awarded against them should be reduced, or to  
23 suggest further that “other landowners” should be assessed or apportioned a part of the Wood  
24 Class’ supplemental costs and attorney’s fees based upon other landowner’s “pro rata share of  
25 the groundwater allocations.” If the latter is the intent of the Public Water Suppliers, their  
26 argument is entirely without merit and should be rejected, for the following reasons:<sup>1</sup>

27 <sup>1</sup> To the extent that the PWS seek contribution from the Overliers for any fees awarded to the Wood Class, the  
28 Overliers request the opportunity for additional briefing after the PWS provide the court with the basis for this request.

- 1 • The Public Water Suppliers contractually agreed and covenanted that they “shall pay all  
2 reasonable Small Pumper Class attorneys’ fees and costs through the date of the final Judgment,”  
3 and further that no part thereof is to be paid by the stipulating Overliers; and,
- 4 • The Overliers are not “opposing parties” in the Wood Class Action (CCP section 1021.5).

5  
6 For these and the other reasons stated herein, all costs and attorney’s fees awarded to the  
7 Wood Class should be assessed or apportioned solely as against the Public Water Suppliers; no  
8 part thereof should be assessed against or apportioned to these Overliers, or any other stipulating  
9 party (based on Stipulation Para. 11, line 18).<sup>2</sup>

## 10 II.

### 11 **THE PUBLIC WATER SUPPLIERS ARE CONTRACTUALLY BOUND TO PAY** 12 **ALL WOOD CLASS’ COSTS AND ATTORNEY’S FEES**

13 The Court approved Judgment and Physical Solution is, in part, the result of the  
14 STIPULATION FOR ENTRY OF JUDGMENT AND PHYSICAL SOLUTION executed by all  
15 the parties identified in Exhibits 3 and 4 of the Judgment, *including each of the Public Water*  
16 *Suppliers*, and certain other parties. In the first finding and order of the Judgment, the Court held  
17 that “[t]he Second Amended Stipulation For Entry of Judgment and Physical Solution among the  
18 stated stipulating parties is accepted and approved by the Court.” (Judgment, page 1, paragraph  
19 1.)

20 In pertinent part, the Stipulation, at page 4, provides:

- 21 11. The Public Water Suppliers and no other Parties to this Stipulation shall pay all  
22 reasonable Small Pumper Class attorneys’ fees and costs through the date of the  
23 final Judgment in the Action, in an amount either pursuant to an agreement  
24 reached between the Public Water Suppliers and the Small Pumper Class or as  
25 determined by the Court. The Public Water Suppliers reserve the right to seek  
26 contribution for reasonable Small Pumper Class attorneys’ fees and costs through  
the date of the final Judgment in the Action from each other and Non-Stipulating  
Parties. Any motion or petition to the Court by the Small Pumper Class for the  
payment of attorneys’ fees in the Action shall be asserted by the Small Pumper  
Class solely as against the Public Water Suppliers (excluding Palmdale Water

27 <sup>2</sup> The Overliers do not take a position on the Wood Class Motion and Supplemental Motion for costs and attorney’s  
28 fees because it is not addressed to the Overliers, and the Wood Class does not seek an award against the Overliers,  
or any of them.

District, Rosamond Community Services District, City of Lancaster, Phelan Pinon Hills Community Services District, Boron Community Services District, and West Valley County Water District) and not against any other Party.

12. In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown established in the Judgment, a drought water management program ("Drought Program") shall be implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

(See Exhibit A attached hereto.)

Therefore, the Public Water Suppliers, and each of them, have contractually agreed that none of the stipulating parties (including these Overliers) shall be responsible for any of the Wood Class costs and attorney's fees and, instead, the Public Water Suppliers "shall pay all reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the Action." This Court has "accepted and approved" the Stipulation as part of the Judgment. (Judgment, page 1, paragraph 1.)

As noted in paragraph 12 of the Stipulation, the Public Water Suppliers received separate and additional consideration for that undertaking. Consequently, the Public Water Suppliers cannot now assert or claim that any part of the Wood Class costs and attorney's fees should be assessed against or "apportioned" to any stipulating party that is not a Public Water Supplier.

### **III. THE OVERLIERS ARE NOT "OPPOSING PARTIES" IN THE WOOD CLASS ACTION**

Under Code of Civil Procedure section 1021.5, the court may only award attorney fees to a successful party against one or more "opposing parties." In *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151 ("*Mejia*"), the Court of Appeal explained that the term "opposing party," as used in this statute, is a person "by or against whom a suit is brought" (156 Cal.App.4th at 160). The Wood Class' complaint against the Public Water Suppliers is the only litigation in these consolidated and coordinated proceedings to which the Wood Class is a party. While the Wood Class did file a complaint against landowner parties, that complaint was never served on the Overliers, no steps were taken by the Wood Class to pursue a claim against the Overliers, and

1 that complaint was finally dismissed. Accordingly, the Overliers (and other similarly situated  
2 stipulating parties) are not named as parties in the Wood Class complaint, are not parties to that  
3 litigation, and none of them has been put on notice of any claim against them by the Wood Class.  
4 Consequently, as to the Wood Class Motion for costs and fees, the Overliers are not “opposing  
5 parties.” For this additional reason, the stipulating Overliers cannot be held liable for any Wood  
6 Class costs or attorney’s fees.

7 The Public Water Suppliers’ cited case decisions are inapposite. District 40 cites  
8 *Sundance v. Municipal Court for the Los Angeles Judicial District of Los Angeles County* (1987)  
9 192 Cal.App.3d 268, 272 and *Friends of the Trails et al. v. Blasius et al.* (2008) 78 Cal.App.4th  
10 810, 837-838. In both of those cases, fees and costs were either assessed or apportioned only  
11 against defendants specifically named in those actions; fees and costs were not assessed against  
12 persons not named as defendants in those actions.

13 **IV.**  
14 **NOTWITHSTANDING CONSOLIDATION OF VARIOUS ACTIONS,**  
15 **OVERLIERS ARE NOT SUBJECT TO IMPOSITION OF COSTS AND**  
16 **FEES IN ACTIONS TO WHICH THEY ARE NOT PARTIES**

17 Parties to consolidated cases do not become a single party for the purposes of a cost  
18 award in one of the consolidated cases (*Weck v. Los Angeles County Flood Control Dist.* (1948)  
19 89 Cal.App.2d 278, 282-283 [treating prevailing consolidated co-defendants separately for  
20 purposes of awarding costs on appeal]). In *Golf West of Kentucky, Inc. v. Life Investors, Inc.*

21 (“*Golf West*”), the Court of Appeal explained that:

22 . . . to impose joint and several liability on litigants who elect to consolidate their actions  
23 is to penalize parties for promoting judicial economy. There is no reason in logic or law  
24 to place litigants in a position of having to choose between prosecuting their actions  
individually, or consolidating their claims and potentially being held jointly and severally  
liable for costs, which may amount to a substantial sum.

25 (89 Cal.App.2d, at 318-319, underscoring added.)

26 If provided for by contract or statute, attorney fees are costs that can be awarded to a  
27 prevailing party (Code Civ. Proc. § 1033.5(a)(10)). Therefore, the Court of Appeal’s decisions in  
28

1 *Weck* and *Golf West*, clearly apply to attorney fee awards in consolidated cases. Accordingly,  
2 under *Weck* and *Golf West*, the Wood Class may not seek fees and costs from the Overliers who  
3 were not parties to the Wood Class Action -- nor does the Wood Class' Motion seek such. As  
4 recognized in the Court's Consolidation Order, the Overliers became parties to these  
5 consolidated actions only because the Public Water Suppliers filed a complaint against some of  
6 them; they cannot be held responsible for costs and fees incurred in the separate action which  
7 was solely between the Wood Class and the Public Water Supplier.

8 Additionally, the Court's February 19, 2010 Consolidation Order effectively bars the  
9 relief requested by Public Water Suppliers, stating, "Costs and fees could only be assessed for or  
10 against parties who were involved in particular actions" (Consolidation Order, filed February 24,  
11 2010, page 3, lines 13-14; Exhibit B hereto.)

12 V.


13 CONCLUSION

14 The Public Water Suppliers are contractually bound to pay all Wood Class' costs and  
15 attorney's fees awarded by the Court. This contractual obligation was an essential part of the  
16 agreement between the parties which culminated in their stipulating to the proposed Judgment  
17 and Physical Solution, which the Court ultimately approved. Moreover, the Overliers are not  
18 "opposing parties" in the Wood Class Action (Code Civ. Proc. section 1021.5). For these and the  
19 other reasons stated above, the Overliers respectfully submit that the Court should reject any  
20 suggestion by the Public Water Suppliers that Wood Class costs and attorney's fees should be  
21 assessed against or apportioned to stipulating parties other than the Public Water Suppliers.

22  
23  
24 Dated: July 25, 2016

Respectfully submitted,

25 ELLISON, SCHNEIDER & HARRIS, LLP

26  
27 By:   
28 Christopher M. Sanders

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DISTRICTS OF LOS ANGELES COUNTY  
NOS. 14 AND 20

Dated: 7/25/2016

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Dated: 7/25/2016

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1 **PROOF OF SERVICE**

2 I declare that:

3 I am employed in the County of Sacramento, State of California. I am over the age of eighteen  
4 years and am not a party to the within action. My business address is ELLISON, SCHNEIDER  
5 & HARRIS, L.L.P.: 2600 Capitol Avenue, Suite 400; Sacramento, California, 95816. On July  
6 25, 2016, I caused the foregoing document described as:

7 **JOINT RESPONSE OF OVERLIERS TO PUBLIC WATER SUPPLIERS OPPOSITION**  
8 **TO WOOD CLASS MOTION AND SUPPLEMENTAL MOTION FOR AWARD OF**  
9 **COSTS AND ATTORNEY FEES**

10 to be electronically served, via OneLegal, on interested parties in this action. The proof of  
11 electronic service through OneLegal is maintained in this office. My electronic notification  
12 address is ps@eslawfirm.com.

13 I declare under penalty of perjury that the foregoing is true and correct and that this declaration  
14 was executed on July 25, 2016, at Sacramento, California.

15   
16 Patty Slomski