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Attorneys for Plaintiff Richard Wood and the Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

_____

RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; et al.

Defendants.

Judicial Council Coordination Proceeding No. 4408
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

PLAINTIFF RICHARD WOOD'S BRIEF RE; PAYMENT OVER YEARS AND ORDER CLARIFYING FEE RULING; DECLARATION OF MICHAEL D. MCLACHLAN

MEMORANDUM OF POINTS AND AUTHORITIES

As noted in Plaintiff's reply brief filed in support of the supplemental motion for attorneys' fees, and as further discussed at the hearing on July 28, 2016, an issue has developed regarding the Order Clarifying Order After Hearing on April 1, 2016. (Exhibit 1.) Specifically, that Order, which was entered on June 28 and served on all parties on July 15, 2016, states that each of the non-settling defendants (other than California Water Service) "shall be entitled to pay this judgment in 10 equal payments over a period of 10 years." (McLachlan Decl., Ex. 1.) No party has appealed this order as of yet. Because it is inconsistent with law, the Court should correct it on its own motion.

In the original fee ruling of April 25, 2016, provided that "any public water producer may opt to pay such fees or costs over a ten year period in accord with the law." (McLachlan Decl., Ex. 2, p. 15.) While the Court did not express state it, that language is consistent with Government Code section 984, which permits a public agency to make an election to pay a judgment "over a period of time to be determined by the Court, not to exceed 10 years . . ." (Gov. Code § 984(d).) Although the issue was never subject to a motion, after the hearing on the Motion for Clarification, the Lemieux firm clients submitted to the Court an alternative Order Clarifying Order After Hearing on April 1, 2016 which modified the Court's earlier language on periodic payments by replacing the "may opt to pay" language with "shall be entitled to pay." In short, these defendants were able shift the Court's ruling from Government Code section 984 to Section 970.6, without having met any of the necessary requirements.

There are only three ways in which a judgment against a public entity can be ordered payable periodically: (1) under C.C.P section 667.7 – which applies to health care providers, thus is inapplicable here – (2) Government Code section 970.6; or (3) Government Code section 984(d). (Gov. Code § 984(c).) The election under Government Code section 984(d) is not applicable to any of the

Lemieux firm clients because the amounts allocated to each of them are well-below the minimum monetary threshold, and because that section requires payment of 50 percent of the net judgment immediately, which the Court did not order.

Hence, the only possible basis for the ten year payment plan for the Lemieux firm defendants is Section 970.6, which provides:

> (a) The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:
> (1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.
> (2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.
> (b) Each installment payment shall be of an equal amount, consisting of a portion of the principal of the judgment and the unpaid interest on the judgment to the date of the payment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

(Gov. Code § 970.6 (emphasis added.)

The Court's original fee order of April 25, 2016 does not state that the amounts awarded must include interest. There also is nothing in the record to support a finding that any "governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments." Further, there has been no motion or notice of hearing on such request, no competent evidence of hardship, nor any finding by the Court of unreasonable hardship. (Gov. Code § 970.6(a)(2).) And, in the case of Los Angeles County Waterworks District No. 40, that defendant made no discussion of financial hardship whatsoever or even a request for periodic payments.

Because the the Order Clarifying Order After Hearing on April 1, 2016 has not yet been appealed (Mclachlan Decl., ¶ 3), the Court retains jurisdiction to modify it. (*Varian Med. Sys, Inc. v. Delfino* (2005) 35 Cal.4th 180, 191.) The Court has jurisdiction to correct this mistake by amending this order. (*In re Marriage of Barthhold* (2008) 158 Cal.App.4th 1301, 1308, *citing Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1109 (court has inherent authority to correct its earlier rulings).) There is no reason to leave this loose end to be corrected on appeal. As the Supreme Court in *Le Francois* observed, "[j]udicial inefficiencies may also result from the need for an appeal that would not have been required if correction could have been made by a trial court willing to do so." (*Id.* at 1100.)

DATED: August 1, 2016

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.08.01 17:37:51 -07'00'

By:_____
MICHAEL D. MCLACHLAN
Attorneys for Plaintiff and the Class

DECLARATION OF MICHAEL D. MCLACHLAN

I, Michael D. McLachlan, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

2. I am co-counsel of record of record for Plaintiff Richard Wood and the Class, and have been since 2008. I am duly licensed to practice law in California.

3. Attached as **Exhibit 1** is a true and correct copy of the Court's "Order Clarifying Order After Hearing on April 1, 2016." No party has yet appealed this order.

4. Attached as **Exhibit 2** is a true and correct copy of the Court's April 25, 2016 order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of August, 2016, at Hermosa Beach, California.

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.08.01 17:38:06 -07'00'

_____

Michael D. McLachlan

Exhibit 1

109

FILED
Superior Court of California
County of Los Angeles
JUN 28 2016
Sherri R. Carter, Executive Officer/Clerk
By E. Lopez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordinated Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

RICHARD A. WOOD, on behalf of himself and all others similarly situated

Plaintiffs,

vs.

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; ALTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; MOJAVE PUBLIC UTILITY DISTRICT; and DOES 1 through 1,000;

Defendants.

Judicial Council Coordination No. 4408

[Assigned to the Honorable Jack Komar]

CASE No. BC 391869

~~(Proposed)~~ ORDER CLARIFYING ORDER AFTER HEARING ON APRIL 1, 2016

07/05/2016

~~(Proposed)~~ ORDER CLARIFYING ORDER AFTER HEARING ON APRIL 1, 2016

The Court's Order of April 1, 2016 (the "Order"), addressing in part, Richard Wood's Motion for Award of Attorneys' Fees, Costs and Incentive Award, is clarified as follows:

The Order does not apply to Boron Community Services District or West Valley Water District. Further, California Water Service Company is not a public entity and, thus, reference in the Order to payment over a ten year period in accord with the law is not applicable to this defendant.

The allocation of attorneys' fees and costs are allocated among the defendants as follows:

Los Angeles County Waterworks District No. 40:	74.76%
California Water Service Company:	3.78%
Littlerock Creek Irrigation District:	8.77%
Quartz Hill Water District:	6.21%
Palm Ranch Irrigation District:	5.13%
North Edward Water District:	0.54%
Desert Lake Community Services District	0.81%

Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Quartz Hill Water District, Palm Ranch Irrigation District, North Edward Water District and Desert Lake Community Services District shall be entitled to pay this judgment in 10 equal payments over a period of 10 years.

DATED: 6-28-16

HONORABLE JACK KOMAR
Judge of the Superior Court

07/05/2016

~~(Proposed)~~ ORDER CLARIFYING ORDER AFTER HEARING ON APRIL 1, 2016

Exhibit 2

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 Angeles, Case No. BC 391 869

Judicial Council Coordination Proceeding No. 4408 JCCP 4408

Lead Case No. BC 325 201

ORDER AFTER HEARING ON APRIL 1, 2016

(1) "Second Supplemental" Motion by Willis Plaintiffs for Attorneys' Fees, Costs and Incentive Award;
(2) Motion by Wood Plaintiffs for Award of Attorneys' Fees, Costs and Incentive Awards;
(3) Motion for an Order Setting the Parameters for Class Counsel's Future Release and Motion for Order Regarding Payment of Outstanding Fees of the Class Administrator

Judge: Honorable Jack Komar, Ret.

06/27/2016

"Second Supplemental" Motion by Willis Plaintiffs for Attorneys' Fees, Costs and Incentive Award
Motion by Wood Plaintiffs for Award of Attorneys' Fees, Costs and Incentive Awards

Counsel for the Richard Wood and Rebecca Willis Classes have filed motions requesting attorneys' fees and costs. The motions were heard in Department One of the Santa Clara County Superior Court on April 1, 2016 at 1:30 p.m. pursuant to notice regularly given. Counsel appeared in person and telephonically, as reflected in the minutes of the court. By agreement of the parties, the matters were heard in Santa Clara County.

The moving, opposition, and reply papers for each motion were read and considered by the court and the parties orally argued the matters. The motions were ordered submitted. The court makes the following orders:

OBJECTIONS TO EVIDENCE.

The written objections to evidence filed by counsel for the Public Water Suppliers (PWS) are sustained. The filings were untimely, contained hearsay, dealt with settlement discussions which are privileged, and in many instances, arguments and evidence submitted was irrelevant and would not be of value in deciding the issues before the court. The court notes, however, that many of the materials submitted were of the courts records of the proceedings in various phases of trial and filings at case management hearings and to that extent are proper subjects for consideration by the court in its own consideration of the issues before the court based on the court's own records, whether or not cited by the parties..

The basic thrust, apparently, of the late materials filed by the parties seem to relate to the public's interest in the proceedings. The court is aware of the general public's interest in the proceedings within the adjudication area. That is a different public benefit and interest than is required in Code of Civil Procedure Section 1021.5, as discussed below.

THE MOTIONS

Counsel for both the Wood Class and the Willis Class seek attorneys' fees under theories of prevailing party and pursuant to Code of Civil Procedure Section 1021.5 as a private attorney general. The circumstances for each are different.

06/27/2016

CASE HISTORY GENERALLY

This series of coordinated and consolidated cases initially arose in 1999 with actions brought by private real property owners seeking declaratory relief and to quiet title to their water rights. The actions were brought against appropriators who were producing water from the aquifer.

By 2005, other actions were initiated, first by the Public Water Supplier (PWS) who were producing water for municipalities and others, essentially seeking to establish prescriptive rights to water as well as declaratory relief, contending that the adjudication area was in overdraft. The PWS also prayed for a physical solution to limit all pumping from the aquifer and to bring it into balance and preserve the aquifer. In 2005 all pending related actions were ordered coordinated in these proceedings.

The Antelope Valley Adjudication area is comprised of over 1000 square miles and has a population in excess of 70,000 persons who depend on the aquifer and imported water for their needs. Several public water suppliers have for decades produced water from the aquifer for use both inside and outside of the adjudication area. The federal government as the largest land owner within the adjudication area (Edwards Air Force Base) produces water for military and related purposes within the adjudication area. The so-called "Land Owner "parties are agricultural, industrial, and individuals who also have pumped groundwater underlying their real property, often for decades.

The federal government is an important and necessary party to the adjudication because of its federal reserve rights in the adjudication area for military defense and research and because of its obligations to protect the environment and to further the public safety and good. The federal government was initially served at the direction of the court. The U.S. Attorney General thereafter raised issues of jurisdiction based on the comprehensive adjudication requirements of the Federal McCarran Act.

To satisfy the McCarran Act objections, and to ensure that all persons and other parties would be subject to the court's judgment, with the encouragement of the court, two class actions were created, coordinated, and later consolidated with all pending actions for purposes

of trial, to ensure that the coordinated actions would be a comprehensive adjudication for purposes of retaining jurisdiction over the federal government and so that any physical solution could be enforced against all persons claiming water rights. With the creation of the class actions, the court had jurisdiction over all persons who claimed either patent or latent water rights..

WILLIS NON-PUMPER CLASS

The Willis Class is composed of every land owner in the adjudication area (excepting only those who chose to opt out or who were otherwise parties to the adjudication) who did not and had not previously produced water from the adjudication area.In its class action complaint, the class sought declaratory relief and other related causes of action against the Public Water Suppliers' claims of prescription but did not sue or seek relief against any of the land owner parties who had been sued by the PWS.

In 2011, the Willis Class entered into a settlement with the PWS, stipulating and acknowledging that each class member was entitled to a non-allocated, correlative right as a dormant overlying owner. The settlement resulted in the PWS relinquishing any prescriptive claims against the class of non-pumpers in return for the class agreement to limit its correlative water rights to 85% of the federally adjusted safe yield, essentially ceding 15% of its dormant correlative water rights to the aquifer to the PWS. The PWS agreed to not seek future prescriptive water rights against the Class. At the time, it was unknown what the evidence would establish as the actual quantity of the Federal Reserve right. The settlement also occurred prior to the court rendering its partial statement of decision in Phase Three but after the court heard the evidence which established that the aquifer was in overdraft.

The Willis stipulated settlement and the judgment thereon did not grant any specific allocation or right to pump any specific amount of water, if any, from the aquifer (nor could it, since the agreement was limited to the claims the parties to the class action had against each other). It was not intended to allocate the specific right to pump water from the class members' land because the status of the aquifer was unknown at the time and the vested rights of all landowners who had not been sued by the class was also unknown and not bound by the

stipulation. Moreover, the nature of any physical solution, if needed, was unknown. The physical solution, it was understood, could require a reduction in actual pumping and forbid new pumping from the aquifer (as it ultimately did).

The court approved the stipulation and entered judgment thereon in 2011, and following a motion for the same, awarded fees and costs to Willis Class counsel under Code of Civil Procedure Section 1021.5. It was expressly agreed in the stipulation that the class would not seek further fees and costs except in very narrow circumstances as described below.

WOOD CLASS OF SMALL PUMPERS

The Wood Class was comprised of property owners who pumped less than 25 acre feet of water per year. The class sought, *inter alia*, declaratory relief against only the PWS (a later suit filed on behalf of the class against the land owner parties who were water producers and users, allegedly for tactical purposes, was never served and ultimately abandoned).

In 2015, the Wood Class entered into a stipulation for judgment with several of the smaller public water suppliers and received agreed upon fees and costs from those settling public water producers (with the exception of the City of Lancaster). The settling parties included the Phelan-Piñon Hills Community Services District, Palmdale Water District, Rosamond Community Services District and the City of Lancaster.

Thereafter, the Wood Class entered into a stipulation and agreement for judgment with the remaining PWS against whom it had brought suit. The stipulation and judgment was conditioned on all of the PWS and the Landowner parties entering into a settlement which would be known as the "Global Settlement," and which by its terms would incorporate the Wood Class stipulation and proposed judgment, so that there would be a single judgment encompassing all coordinated and consolidated actions, including the Willis Class, the Wood Class, the PWS, and the Landowner parties, and the federal and state governments.

The court thereafter approved the Wood Class settlement and made its approval expressly contingent on its approval of the "Global Settlement."

"GLOBAL SETTLEMENT"

In 2015, virtually all other parties who were participating in the litigation entered into the global settlement, proposing to the court a physical solution to the overdraft problem to which all settling parties agreed to be bound, reducing all pumping by all active pumpers, including the Wood Class, allocating to each a specified reduced water right, and regulating any new requests to produce water from the aquifer in accordance with the objective requirements of restoration of the aquifer.

Following an evidentiary hearing, the court adopted the physical solution as its own and approved the "global settlement" and the Wood Class settlement.

GLOBAL SETTLEMENT FEES AND COSTS PROVISIONS

The "global" stipulation for settlement provides that "the PWS and no other parties . . . shall pay all reasonable Small Pumper Class attorneys' fees and costs . . .through the date of the final judgment in an amount agreed to by the PWS and the Small Pumper Class, or as determined by the court." PWS reserved the right to seek contribution for reasonable class fees and costs from each other and from non-stipulating parties. See Paragraph 11 and 12 of the stipulation judgment.

The scope and meaning of the fee provision in the so-called global settlement is disputed. The Wood Class contends that it means that the PWS is bound to pay the fees and costs of Wood Class counsel, either by agreement ***as to amount***, or if there is no agreement as to amount, then the amount shall be determined by the court. The PWS, on the other hand, assert that if the parties cannot agree, then the entire question of whether PWS should pay any fees and costs is to be determined by the court based on the law applied to the facts in the case.

In examining the language in paragraphs 11 and 12 of the stipulation, no other evidence of intent being offered by either partry, , it would appear that the PWS agreed to pay such fees and costs as the court decided was reasonable if the parties could not agree as to the "amount." In the absence of extrinsic evidence of the discussions and negotiations of the parties related to this issue, the court is limited to the contract language alone. The court examines the entire contract under the provisons of the Civil code, and in particular Section 1641.

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Paragraph 12 specifically provides, "that 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."

While perhaps Paragraph 11 is ambiguous on the question, Paragraph 112 weighs in favor of the interpretation of the Wood Class.

Apart from whether the Wood Class interpretation is correct, the court concludes that the Wood Class counsel is entitled to fees and costs pursuant to CCP 1021.5 as well as a partially prevailing party.

While the PWS contend that the facts in this case do not provide a basis for an award of fees and costs under CCP 1021.5 and that neither the Wood Class nor the Willis Class is a prevailing party, at least as to the Wood Class fees and costs, the court concludes that the PWS are obligated for reasonable fees and costs based upon the language in the stipulation and as well based upon 1021.5 of the CCP and the prevailing party doctrine as discussed below

Whatever other decision on fees and costs, it is understood that the Palmdale Water District, Rosamond Community Services District, City of Lancaster, and Phelan-Piñon Hills Community Services District who had settled with the Wood Class earlier and paid (or released in the case of Lancaster) a negotiated amount of attorneys' fees and costs to the class counsel, are excluded from the fee request.

FEE AND COST CLAIMS BY ATTORNEYS FOR THE WOOD CLASS

Counsel for the Wood Class claim a lodestar total of 5,815.1 hours attorney hours and 842.6 paralegal hours and acknowledge that the earlier settlements with four of the water producers resulted in payment for 1276.3 hours- total fees of $719,829 (with an estimated hourly rate in excess of $500.00 hourly) and that costs in the sum of $17,038.00 were paid.

The current request is for the remaining lodestar hours of 4538.8 and 679.5 paralegal hours at an hourly rate of $720.for attorneys. The dollar request is for $3,267,936 based on the

06/27/2016

Lodestar and $80,224.00 for paralegals' work at hourly rates of $110.00 and $125.00. Counsel request a multiplier of 2.5 claiming that the novelty and complexity of the case, the outcome, the 8 year duration of counsel's participation, the risks of loss and uncertainty, the quality and efficiency of counsel's involvement, the inability to take on other work, and the personal and financial toll the work has taken on counsel, justify the multiplier.

PWS object to the request by counsel for the Wood Class on the grounds summarized as follows:

1. The Wood Class is not a prevailing party;

2. Attorneys' fees are not reasonable at $720.00 hourly;

3. There is double billing by two lawyers for the same appearances, travel, and attendance at attorney conference and mediation sessions;;

4. There is block billing;

5. Some work billed by attorneys should have been done by clerical staff and paralegals;

6. There should not be any multiplier;

7. CCP 1021.5 is not applicable because there is no public benefit;

8 Several hours are billed for work not done or appearance not made.

9. There should not be a monetary incentive fee to class Representative Richard Wood though there is no objection to Mr. Wood receiving an increased water allocation of 2 additional acre feet a year as reflected in the judgment.

DECISION

Code of Civil procedure Section 1021.5 described as a codification of the "Private Attorney General" doctrine, authorizes an award of fees to a successful party who brings an action to enforce an important public right affecting the public interest if a significant benefit has been conferred on the general public or a large class of persons. The notion of a public right assumes there is an interference with, withholding or denial of a public right by governmental or other conduct.

06/27/2016

Counsel for the Wood class postulates the theory that the PWS by asserting a prescriptive right to take water from small overlying land owners, among others, has committed a wrong which justifies the application of CCP 1021.5.

However, a claim of a prescriptive right is authorized by law and cannot be a wrong, whether by government or private interests. The claim of prescription results from nothing more than an assertion that the statute of limitations bars opposition to a claim of wrongful taking as with adverse possession. The use of prescription as a sword instead of a defense does not convert it into a wrong.

The Antelope Valley Coordinated and Consolidated cases are unique in that the basic objective of all included actions was to determine individual and public water rights, whether of public or private entities. The actions, include those brought by those public entities who produce and provide water to the general public, by overlying real property owners as farmers, large and small, who produce water for agricultural purposes, by industries who depend on water for their production and existence, and by individuals and households whose very existence depends on pumping small quantities of water from a well on one's own property. The State of California as a land owner and water user, as a co-guardian of the environment, and the federal government as guardian of the security of the nation and the environment, became involved as parties and actively participated in an effort to ensure that if the court found the basin was in overdraft and needed protection, its participation would help to effect a good outcome, as well as protect their own interests.

In the Phase Three trial, the evidence and the court's findings established that the aquifer was suffering from insufficient ground water recharge associated with over- pumping throughout the basin for decades, that the aquifer was damaged by the overdraft, and that continued pumping would likely result in further detriment to the aquifer and the potential loss of water rights by all overlying land owners, whether agricultural, industrial, or even small land owners who pumped their own water for household and domestic uses. The essence of all actions by all parties seeking declaratory relief mandated that there be a physical solution so that both the aquifer and all interested parties were protected.

The Public Water producers, all of whom may be characterized to some extent or other as appropriators, each sought to establish a priority prescriptive right to produce water from the aquifer from all other parties, including the Wood Class members. But the PWS also sought a physical solution that would preserve and restore the aquifer so that all parties, and the public interest, would benefit. The Wood Class declaratory relief action against the PWS appeared to be essentially defensive to prescriptive claims.

Absent the use of class actions, it would have been impractical to litigate the issues with 70,000 individual parties. Without an adjudication binding on the federal government and approximately 65,000 non-pumpers of the Willis Class subject to the judgment, the ability to effectuively manage a physical solution would have been impossible. Based somewhat perhaps on the problem in this case, the legislature has recently enacted legislation that would simplify the court's jurisdiction in this type of situation. But that solution is at least 15 years too late for the Antelope Valley.

At the time, the court could not have adjudicated the cases without lawyers voluntarily representing of the two classes of parties which became known by the names of the representatives of the classes: the Willis Class and the Wood Class.

While it is contended in opposition to the fee request that there was no public benefit under CCP 1021.5, the court concludes that the opposite is true. First, the global settlement could not have been binding on all persons within the adjudication area without the Willis Class and the Wood Class of small pumpers. Secondly, it was necessary to have all persons bound in order to bind the federal government as the largest land owner in the adjudication area. Thirdly, the Willis Class 2011 stipulation and Wood Classe 2015 stipulation permitted the court to approve an enforceable physical solution that will stop ongoing degradation of the aquifer. The creation of the Willis Class preserved correlative rights of approximately 65,000 parties to the rights of overlying owners against present and future claims of prescription by the PWS. The Wood Class preserved the rights of small pumpers (approximately 4000 parties) to a specific but reduced and limited amount of water each year, protected the class from

further claims of prescription, limited increase pumping in the future, and permitted the court to approve reduced allocations of water to all parties in the aquifer.

The court also notes that while the public water producers each were intent on preserving its right to produce water for the public good, considerable time and expense was expended to establish the need to preserve the aquifer and attempt to restore it to health and ensure its long term physical integrity. To the extent that the adjudication provided a means to correct a wrong, all parties producing water without limitation or external controls were contributing to the degradation of the Antelope Valley aquifer, including the PWS, the Wood Class, the federal and state governmental entities, as well as the land owner parties who were pumping and the non-pumpers who insisted they had an unfettered right to pump. The settlements and the adjudication over a period of fifteen years have thus provided great public benefit.

The Wood Class counsel of necessity actively represented the class interests in the case from its inception up to and including the approval of the "global settlement" and the entry of judgment. The continued representation was necessary even after the settlement because the class settlement with the PWS was conditioned on the approval of the global settlement and a physical solution, incorporating the Wood Class proposed judgment into the Global Settlement Judgment.

All of the above justify the conclusion and determination that the provisions of CCP 1021.5 are met and justify a finding that the public was benefitted by class counsel's representation. In addition to the public generally, the Class of around 4000 small pumpers also received a benefit by the cap on any prescriptive claims against their water rights in the future. The class is also a partially prevailing party as set forth below.

PREVAILING PARTY STATUS

The action brought here by the Wood Class was specifically intended to counter the claims of prescription brought by the Public Water Producers against all parties in the adjudication area. That claim was settled as part of the settlement between the class and the

PWS, preserving but limiting the pumping rights of the Wood Class members but also and preventing any further claims of prescription. The court finds that the Wood Class is a partial prevailing party and that the class is entitled to reasonable fees and costs.

However, the PWS and the Landowner parties are also partial prevailing parties in the adjudication with regard to those parties against whom they sought relief. While the PWS relinquished claims, in part, to prescription rights, it also gained prescription rights against some of the parties and achieved through perseverance and the expenditures of considerable public funds, a physical solution by agreement or trial findings of what may be described as virtually all parties to the actions, including a few non-stipulating parties and defaulting parties.. Based on that fact, the PWS may be said to have partially prevailed in the case but not as to the principal claims of the Wood Class.

HOURLY RATE FOR COUNSEL AND PARALEGAL

The court is familiar with the compensation rates of counsel practicing in California, and in particular, in urban areas. While the opposition to the claim suggests that the court should evaluate the fee rates by looking to rural areas and lawyers' fees in the rural Antelope Valley, the court is satisfied that the venue of the action is the proper locale to evaluate attorney's fees.

While the rates requested are not far out of line with current large firm attorney fee rates for experienced lawyers in the Los Angeles area, it is not disputed that neither counsel had much experience with ground water litigation and that the rates requested should be reduced to reflect that fact. The counsel did have expertise in class action law and practice but not water law and have had to consult with other lawyers having that expertise as well as conduct legal research. Counsel became involved in the case in middle 2008, and while they seek a high level of fees for the entire 8 years, the court concludes that rates fell in 2008 and gradually rose from that reduced level over the period of the last eight years.

In 2008, as the entire country entered into what has been called "the Great Recession," law firms were dissolving, some were declaring bankruptcy, lawyers were being laid off or

fired, salaries reduced, clients were looking for firms offering lower fees, and many lawyers were leaving the profession. Based on the observations of the court, averaging the hourly rate acknowledging these factors, along with rising fees more recently, the court will approve a fee rate for each counsel of $500.00 hourly. When counsel volunteer for cases such as this there also must be an element of *pro bono publico* involved, especially when the obligor who will pay the fees is a public entity supported by tax dollars. As officers of the court, lawyers are not (or should not be) mere mercenaries.

The payment to paralegals is an obligation of the lawyers who engage them and their hourly rates are reasonable - nor have counsel disputed them except to argue that the paralegals should have done more of the work and the lawyers less.

OBJECTIONS TO DETAILED BILLINGS OF THE WOOD CLASS LAWYERS

As summarized above, the PWS argue that the attorneys engaged in block billing, double teamed unnecessarily, engaged in settlement negotiations with land owner parties, billed for work they did not perform, unnecessarily performed legal research on issues they should have been familiar with, performed work that was clerical and administrative in nature, and engaged in work after the Wood Class Settlement that was not necessary.

Credible evidence by way of sworn declarations established a presumption that work billed for was necessary. Work and time spent to assist in the global settlement involving other than the Wood Class Claims was necessary to ensure that the Wood Class settlement could be approved (it was contingent on the Global Settlement). The limited billing for two attorneys' time appears appropriate given the nature of the case. The court notes that rarely were other counsel without assistance from other associate lawyers. Most of the so-called block billing broke out the work done by items, reflecting time spent on each. The court is satisfied that work billed for was performed and was necessary. Retrospectively attempting to evaluate whether work was truly necessary or could have been done differently is an impossible task absent clear and incontrovertible evidence (of which there is none here). The court has presided over this case since 2005 and has observed the work of Wood Class counsel from the inception

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of the class and is satisfied that the hours claimed were reasonably spent on the case for those 8 years.

TOTAL FEES

The court declines to apply a multiplier to the fee award and finds that fees should be based upon a rate of $500.00 hourly.

As a prevailing party and only a partial contributor to the public benefit under CCP 1021.5. the court makes the following fee award:

Michael McLachlan: 4184.9 hours @ $500 per hour for a total fee award of $ 2,092,450. attorneys fees;

Daniel O'Leary: 353.9 hours @$500 per hour for a total fee award of $176,950.;

Total Paralegal fees of $80,224.

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COSTS

It is generally agreed that costs are not available under CCP 1021.5. However, costs are available to a prevailing party under the provisions of CCP 1033 et seq. Moreover, the stipulation for judgment provides that the issue of the amount of fees and costs is left to the discretion of the court or the agreement of the parties. See the Stipulation for Entry of Judgment and Physical Solution, Paragraphs 11 and 12.

Counsel for the Wood Class is directed to file a Memorandum of Costs under the provisions of the Code of Civil procedure. The court will hear any motions to tax costs or other challenges to the cost bill in accord with the Code of Civil Procedure and the Rules of Court..

The allocation of fees between the public water producers should be apportioned according to percentages of water received as a result of the global settlement and the

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judgment. The fee and cost award shall be several against all public water producers save the parties who have previously settled and paid fees and costs. Moreover, any pubic water producer may opt to pay such fees or costs over a ten year period in accord with the law.

RICHARD WOOD INCENTIVE

As an incentive award, Mr. Wood is granted 2 additional acre feet a year for a yearly total under the judgment of 5 acre feet a year, consistent with the terms of the stipulation of the parties.

WILLIS CLASS FEE REQUEST

Counsel for the Willis Class now seeks additional fees and costs from the PWS (and the Land Owner parties) based on its post 2011 settlement participation.

The Willis Class as non-water producers settled the class action and the PWS Claims with the only parties who made a claim against the class (the PWS who sought prescriptive rights and other relief) in 2011. The settlement preserved the non-pumper class rights to a correlative share of 85% (which is apparently less the 15% amount attributed to the PWS claim of prescription) of the federally adjusted safe yield of the aquifer along with their agreement to be bound by a court created physical solution. The Willis Class participation through the time of the stipulated settlement in 2011 was beneficial to the public interest and Counsel for the class received attorney's fees and costs in excess of $1,000,000 for such representation and public benefit.

Counsel for the WILLIS CLASS failed to establish post 2011 stipulation/judgment benefit to the public under CCP 1021.5 or to its class members by their involvement in the proceedings after that date. Moreover, it was not a prevailing party in any proceedings post the 2011 judgment.

Contrary to the claims of counsel,

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1. None of the work of counsel for the class materially benefitted or positively affected any part of the Global Settlement and Judgment- the rights of the Willis class were the rights of all non-pumpers and were never threatened after the stipulation in 2011.

2. The class correlative rights were as to 85% of the federally adjusted safe yield which meant that they were immune from prescription by the only party who had such a claim-i.e., the PWS, which immunity the class obtained in the 2011 settlement by relinquishing 15% of its otherwise correlative rights basin-wide to the PWS.

3. The class had stipulated to be bound by whatever physical solution as nonpumpers the court might establish to resolve aquifer overdraft.

4. The overlying owners were not an adverse party to the claims of the Willis Class and in fact there were no claims by the class as non-pumpers to an allocation of specific water production. The findings of the court in trial Phases 3 and 4 established that there was no surplus from which any new pumping could occur without causing further detriment to the aquifer, so that it was necessary that the court curtail and reduce existing pumping by all water producers, public and private, until the aquifer was in balance. As a matter of law the court could not take water rights from a water producing entity whose use was reasonable and beneficial and give those rights to a previously non pumping party. And, the Willis Class never requested an allocable quantity of water to be pumped.

5. The Willis Class was unsuccessful in every request and application to the court. As the court stated frequently to all parties, on the record, if the parties who were water producers failed to come up with a solution, the court would be required to impose such on an involuntary basis- but that could not affect the stipulated relationship between the PWS and the Willis Class;

6. Willis Class participation was neither mandatory nor appropriate beyond ensuring that its stipulation and judgment would be incorporated into the final judgment. However, no party ever objected or made any attempt to modify the stipulation and judgment or to prevent its enforcement and the PWS uniformly always requested

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incorporation of the Willis Class judgment into the Global settlement and judgment without modification.

7. There was no need for the class to be present for the court to make reasonable and beneficial use findings as to the water producers and users, including overlying owners, who pumped and produced water, noting that no claims were made against the class' correlative rights. There were no new claims or causes of action which would require the defense by class counsel.

8. All the benefits to the public and the class occurred in spite of the misplaced opposition of the class counsel to the physical solution which the class counsel now claims to have been at least a partial cause.

9. Class did not prevail and has already been paid for fees for all work prior to the 2011 stipulation and judgment.

10. The only parties against whom the court could award fees and or costs to the Willis Class are the PWS but there being no adversity in fact or law between the class and the PWS, such remedy is unavailable. Moreover, by the terms of the stipulation, the class agreed not to seek further fees and or costs from the PWS except under three very specific circumstances as specified in Paragraph VIIID of the stipulation for settlement, none of which are applicable here:

a) If counsel was ordered to participate in the proceedings;

b) If counsel engaged in reasonable efforts to defend against new claims or causes of action made against the class;

c) Enforcement of a public right under CCP 1021.5.

The court did not require an appearance by the class in any phase of the trial after the stipulation in 2011.

The court makes the further following findings:

1. The class was not a prevailing party on any major issue;
2. The Court denied pre-participation enforcement fees when motion for such was made given the absence of good cause;

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3. There was no legal adversity between the Willis Class and the PWS after the judgment was entered in 2011, having totally settled the declaratory relief claims of the class and eliminating any further claims of prescription against the class members by the PWS. Nor was there legal adversity between Willis Class and the Landowners or any other parties in the case since there were no claims by the landowners, or others, against the ownership interest of the class members.

4. All substantive objections made by the class during the Phase 6 proceedings were overruled as being without merit or foreclosed by the stipulation and judgment;

5. No competent evidence established that the proposed physical solution endangered any rights of Willis Class members nor was there any competent or credible evidence that any member of the class was prevented from exercising any rights under the stipulations or harmed by the physical solution;

   There was no basis for an incentive award for the new class representative based on the presentation of any evidence offered by members of the class.

The court therefore denies the right to fees and costs as claimed by counsel for the Willis Class.

The court also denies any incentive to the current class representative. While he did testify during the physical solution prove up, his testimony was unnecessary to any issue the court was required to decide. His primary purpose seems to have been to oppose the physical solution based on a hypothetical use of his owned real property.

WOOD CLASS REQUEST FOR ORDER SETTING PARAMETERS FOR TERMINATION OF APPOINTMENT AS CLASS COUNSEL AND REQUEST FOR ORDER ON ADMINISTRATOR FEE PAYMENT.

As reflected in the minutes of the court, the judgment is not final, there is no request to withdraw at this time, and the court denies the request without prejudice. The request for payment of administrator fees was taken off calendar without prejudice.

SO ORDERED.

Dated: April 25, 2016

Hon. Jack Komar (Ret.)
Judge of the Superior Court

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 44 Hermosa Avenue, Hermosa Beach, California 90254. My electronic notification address is kevin@mclachlan-law.com.

On August 1, 2016, at 5:40 p.m., I caused service in the manner indicated below of the foregoing document(s) described as **PLAINTIFF RICHARD WOOD'S BRIEF RE; PAYMENT OVER YEARS AND ORDER CLARIFYING FEE RULING; DECLARATION OF MICHAEL D. MCLACHLAN** to be served on all parties in this matter as follows:

( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California.

(X) (BY ELECTRONIC SERVICE) Per court order requiring service and filing by electronic means, this document was served by electronic service to the by posting to Odyssey eFile, including electronic filing with the Santa Clara Superior Court.

( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____/s/ Ana Horga_____
Ana Horga