

8/18/2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER HEARINGS ON
JULY 28, 2016**

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

Judge: Honorable Jack Komar, Ret.

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

1 SUPPLEMENTAL MOTION BY WOOD CLASS FOR ATTORNEYS FEES AND COSTS
2 AND MOTION TO STRIKE COST BILL OR TAX COSTS BY THE PUBLIC WATER
3 SUPPLIERS ("PWS")

4 ORDER

5 The Motion to strike the cost bill, or alternatively to tax costs, by the Pubic Water producers and
6 the supplemental motion for fees and costs by the Wood Class were heard on July 28, 2016, at
7 10:00 a.m. pursuant to motions regularly noticed and served. Counsel appearing and on
8 CourtCall are noted in the minutes of the court. Following oral argument, the matters were
9 ordered submitted. The Court orders as follows hereinafter.

10 PRELIMINARY

11 The motion filed by the Wood Class relates to fees and costs incurred after the final judgment
12 was entered on December 28, 2015. The fees and costs were incurred by counsel in connection
13 with the following matters:

- 14 1. The attorneys' fees and costs motion which was heard on April 1, 2016, which resulted
15 in an award of fees and unspecified costs;
- 16 2. The Ritter motion to set aside a default;
- 17 3. The Robar prove up;
- 18 4. The Lane motion;
- 19 5. The Tapia motion;
- 20 6. Miscellaneous matters related to the above and Water Master issues.

21 The prejudgment motion for fees and costs was heard on April 1, 2016 and a fee and cost order
22 was signed by the court on April 25, 2016, finding that the Wood Class counsel was entitled to
23 fees and costs based upon the three factors summarized below. The said Order is incorporated
24 herein as though set forth in full:

- 25 1) The "global" stipulation and Judgment between the parties which authorized the court
26 to determine reasonable fees and costs if the parties could not agree to the same. It limited the fee
27 and cost award to the specific named Public Water Suppliers;
- 28 2) CCP 1021.5 "Private Attorney General" public benefit principles;

1 3) Prevailing party status under the terms of CCP 1032(b) and 1032 (a)(4).¹

2 While the Wood Class recovery in the judgment was non-monetary, it nevertheless
3 provided economic benefit to the class of around 4,000 persons which was protected from further
4 claims of prescriptive water rights and the members of the class member were assured of the
5 right to pump annual amounts of water from their real property. The public was protected as well
6 by limiting water production in the aquifer as a whole.

7 The right to fees and costs provided for in the “global” stipulation and confirmed in the
8 judgment limited fees and costs to be paid only by the named Public Water Providers. The PWS
9 were to “pay all reasonable Small Pumper Class attorneys’ fees and costs . . . through the date of
10 the final judgment.”

11 The original motion by the Wood Class which requested attorneys’ fees was based on
12 Code of Civil Procedure Section 1021.5 and on the stipulation and judgment which addressed a
13 procedure for both fees and costs. The Order of April 25, 2016 determined the amount and
14 entitlement to fees for class counsel and reserved the amount of costs until a more specific
15 clarifying memorandum was filed. The court directed the use of the Judicial Council Form
16 because counsel’s declaration was not clear to the court.

17 The class filed the Judicial Council Memorandum of Costs Form and the Public Water
18 Suppliers responded with a Motion to Strike as being untimely or to Tax costs.

19 Following briefing by the parties, the supplemental fee and cost motion, as well as the
20 motion to strike or tax costs, were heard on July 28, 2016. Because the motions overlap, they are
21 considered together in this single order.

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27 ¹ The CCP 1032(a)(4) provides that “when any party recovers other than monetary relief, and in situations other than as specified
28 . . . (net monetary recovery and dismissals) . . . the prevailing party shall be as determined by the court . . . and the court, in its
discretion, may allow costs, or not.” CCP 1032 (a)(4). CCP 1032 (b) provides that a prevailing party is entitled to costs as of
right.

1 THE MOTION TO STRIKE THE COST BILL IS DENIED

2 The Motion to strike/tax contends that the memorandum of costs was untimely because it
3 was filed more than 15 days after the judgment was entered on December 28, 2015. Thus the
4 time sequence is important.

5 The Judgment was signed on December 23, 2015 and entered on December 28, 2016.²
6 On January 8, 2016, approximately 11 calendar days after the judgment was entered, the court
7 held a status and case management conference to schedule hearings on fee and cost awards and
8 other post judgment matters. At that time, the moving and opposing parties here implicitly
9 agreed that Wood Class counsel could file its motion for fees and costs on January 21, 2016 (24
10 calendar days after the judgment was entered) and the matter was to be set for hearing thereafter.
11 By agreement of the parties, the filing date was extended to January 28, 2016 (31 calendar days
12 after entry of judgment). On that date, the class filed its request for fees and costs, including a
13 declaration setting forth costs expended to that date with attachments.

14 The parties agreed when filings were to occur and no timeliness objections were made.
15 The court deems such later objections to have been waived in that there was agreement to the
16 filings. An agreement to the scheduled filing dates without objection may be deemed to waive
17 what might otherwise be a late filing. It is not a waiver of the right to move to tax or to contest
18 the amount or reasonableness of the costs and fees claimed.

19 Oppositions to the substance of the fee and cost requests were filed in timely manner and
20 the court heard argument thereon on April 1, 2016 and issued an order dated April 25, 2016. The
21 order found entitlement to both fees and costs but ordered the Wood Class to file a memorandum
22 of costs under the provisions of the Code of Civil procedure and the Rules of Court because the
23 declaration which claimed costs which were not clear to the court. The motion to strike the cost
24 bill as untimely is denied.

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28 ² As entered, the caption failed to include the Wood Class by name but did include the Judicial Council Coordination number
which of necessity included the Wood Class as the matters were both coordinated and consolidated. The oversight was corrected
nunc pro tunc.

1 THE MOTION TO TAX IS GRANTED IN PART.

2 While the Public Water Suppliers contend that certain post judgment costs in the amount
3 of \$3,569.96 are improperly claimed because paid after the judgment, the evidence presented is
4 that such costs were incurred prior to judgment and paid thereafter. These costs are properly
5 charged in any event because the specific post judgment costs claimed were proper- see below.

6 ITEMS TAXED

7 The global stipulation and judgment provides that the court may award reasonable costs
8 only. While the term reasonable is not otherwise defined, the court finds that the parties had
9 reference to Code of Civil Procedure Section 1033.5 (Costs- Items allowable and Not Allowable)
10 because costs were to be reasonable. No extrinsic evidence is presented to the contrary. There is
11 a difference in expenses that a lawyer may charge his or her client by agreement and those costs
12 which are collectable on a cost bill as of right. There is also a difference in costs that are
13 assessable as a prevailing party versus those costs which are chargeable pursuant to an
14 agreement.

15 The various items in the memorandum of costs which are not allowable with reference to
16 CCP §1033.5 are as follows and the costs bill is taxed as to the total amounts indicated:

- 17 1. Expert witness fees not ordered by the court: \$1,625;
18 2. Photo copy costs (other than exhibits) \$4,667.64;
19 3. Postage and mailing charges: \$1,717.98;
20 4. Trial Transcripts not ordered by the Court: \$2,073.33;
21 5. Category 13 (other) Parking: \$2,011.31; Air Fare: \$5,579.97; West Law/Lexis: \$9,532.15;
22 Attorney Service: \$1,518.81; Taxicab: \$609.65; Embassy Suites Hotel: \$623.56; Rental Car:
23 \$144.80; Federal Express: \$2,112.37; Consultant Fees re Class List: \$1,335; Mileage: \$472.42;
24 Veritext Call: \$90.³

25 It is also noted that the cost bill includes total claimed costs of \$90,226.86 thorough the
26 judgment date but counsel for the class acknowledges the class has received costs in the sum of
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³ Listed items 1 through 4 are "not allowed" by CCP 1033.5 and listed item 5 (category 13) has no explanation that would justify inclusion as allowable costs for the specified items.

1 \$17,038.00 by way of an earlier settlement with several of the parties. The court previously
2 approved the settlement but did not evaluate the specific propriety of any of the costs items
3 which were not presented as other than a lump sum portion of the whole. Accordingly,
4 subtracting the amount of costs received by way of settlement, the total claimed costs here are
5 \$73,188.86. Subtracting the costs taxed of \$24,031.84. The Class is entitled to pre-judgment
6 costs of \$49,157.02.

7 SUPPLEMENTAL REQUEST FOR POST JUDGMENT COSTS AND FEES

8 Class counsel is entitled to costs and fees for post-entry of judgment fees and costs
9 expended. The basis for recovery of the fees and costs incurred in opposing the motions by the
10 Robar, Tapia, Lane and Ritter, motions that could impact the final judgment and its validity, and
11 the issues relating to the Water Master, justify the fees and costs sought on the same basis as the
12 class effort to secure attorneys fees and costs for pre-judgment work. The Class is entitled to
13 both in reasonable amounts.

14 The actions taken by counsel for the Wood Class post judgment to preserve the judgment
15 were incurred, properly, as part of its obligations as a stipulating party and contributed to
16 preserve the rights of all parties in the judgment. Fees and costs incurred therein are found to be
17 compensable on the same basis as the findings made by the Court in the award of fees and costs
18 in the first instance, in particular under CCP §1021.5.

19 The Wood Class seeks attorneys' fees for 269.75 hours of work post entry of judgment
20 and 34.9 hours paralegal times. The fees sought are for work done in furtherance of establishing
21 the post judgment fee award as well as efforts to protect the judgment. While the court
22 appreciates the skill and adroit work of additional counsel engaged by class counsel for
23 assistance on the fee award request, the court finds in this case that such was unnecessary and
24 finds that placing the arguments of counsel in the form of an expert witness declaration was
25 unnecessary, added nothing to the law which the court is required to follow in fee awards, and it
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1 would be unreasonable to assess the Public Water Producers additional attorneys' fees in this
2 case.⁴

3 The court finds the other hours claimed are reasonable. Accordingly, Class Counsel is
4 entitled to attorneys' fees for 260.6 hours and 34.9 hours of paralegal time (paralegal time at the
5 actual rate paid by counsel). The court has previously fixed attorneys' fee at the sum of \$500.⁵
6 hourly based upon the value of the services over an 8 year period of fluctuating fee rates and the
7 nature and complexity of the legal representation. Counsel again asks for a higher rate for the
8 post judgment matters because the economy has changed and lawyers are charging higher rates
9 commensurate with the improved economy.

10 The court evaluates the nature of the legal services rendered in these post judgment
11 matters, all of which are essentially routine, and require a much lower level of skill and
12 knowledge than in the proceedings up to judgment and concludes that \$500 hourly is a
13 reasonable reimbursement rate. Fees are awarded in the sum of \$130,300 and paralegal costs in
14 the actual sum of \$4362.50.

15 POST JUDGMENT COSTS ARE APPROVED

16 The post judgment cost requests are \$1,838.37. Such costs were reasonably incurred and are
17 approved.

18 OTHER

19 The court has previously determined that the fee and cost award is several and not joint. The
20 percentage of each obligation is as previously ordered. The court also has provided that the
21 public entity parties against whom fees and costs are awarded may opt in accordance with the
22 law to make payments over a ten year period with interest in accordance with the law. See
23 Government Code Section §970.6. The court grants the same option accorded to such parties
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27 ⁴ To the extent Mr. Pearl's fees are as an expert witness, they are stricken and taxed as not being at the direction of the court. To
the extent they are as attorneys' fees, they are not reasonably chargeable to the PWS.

28 ⁵ The court notes Class Counsel's argument that the court approved a settlement with some parties which gave counsel fees of
\$550 hourly. Those were fees negotiated by the parties themselves and did not represent the court's judgment as to what fees
should have been awarded.

1 with regard to the costs awarded as well as the fees and costs in the supplemental fee and cost
2 order. All such obligations are several and not joint.

3 CONCLUSION

4 Good cause appearing, the Motion to strike is denied. The motion to tax is granted in part as
5 specified and fees are awarded as above.

6 SO ORDERED.

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8 Dated: _____

August 15, 2016

Jack Komar

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