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8/26/2016

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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

**OPPOSITION TO NOTICE OF
ELECTION UNDER
GOVERNMENT CODE SECTION
984; DECLARATION OF
MICHAEL D. MCLACHLAN**

Location: Room 222 (Mosk)
Date: September 8, 2016
Time: 10:00 a.m.

1 **I. INTRODUCTION**

2 Through this Notice of Election and hearing (“Notice of Election”), Los
3 Angeles County Waterworks District No. 40 (“District 40”) is attempting to
4 improperly obtain an order from the Court for periodic payments under
5 Government Code section 984. The Court should not issue such an order for two
6 reasons: (1) the statute only applies to tort claims action judgments, and an order
7 awarding attorneys’ fees is not within the scope of the tort claims act; and (2)
8 because Section 984 imposes a monetary threshold that is in excess of amount at
9 issue. Additionally, the Notice of Election appears to be untimely under the
10 Rules of Court.

11 But if the Court were to issue an order under Section 984, it should not be
12 for any more than three years. District 40 has made no case for anything longer,
13 and the equities strongly disfavor a lengthy payment scheme.

14 Also of note here is the requirement that the Court must make any order
15 for periodic payments at the hearing on the Notice of Election under Section 984.
16 (C.R.C. 3.1804.)

17 **II. FACTUAL BACKGROUND**

18 On January 27, 2016, Plaintiff Richard Wood (“Plaintiff”) filed a motion for
19 award of attorneys’ fees, cost and incentive award. On April 25, 2016, the Court
20 issued its Order after Hearing on April 1, 2016 in which awarded a total of
21 \$2,349,624 in attorneys’ fees, at a well-below market rate of \$500 per hour.
22 (Foley Decl., Ex. 1.) The Court served notice of entry of this order on July 15,
23 2016. (McLachlan Decl., Ex. A.) On August 12, 2016, District 40 electronically
24 served its Notice of Election under Section 984. (McLachlan Decl., Ex. B.) There
25 is no evidence that District 40 filed this Notice of Election with the Court.
26 (McLachlan Decl., ¶ 5, Ex. C.)

1 In 2011, District 40 filed a Notice of Election with regard to the Willis
2 Class, in which it stated to the Court in reference to the Section 984 monetary
3 election threshold, as follows:

4 Government Code Section 984 set the threshold for January 1, 1996 but
5 implements a 5% increase on January [sic] of each year. Thus, the
6 threshold amount for 2011 is \$1,507,222.94.

7 (McLachlan Decl., Ex. D, fn. 1.) In 2016, District 40 has a fee order that exceeds
8 the current threshold of \$1,923,640.84,¹ so it has taken the very same form
9 “Notice of Election” it used in 2011, and replaced the first footnote so that the
10 threshold in 2016 is now \$1,450,000. (Notice of Election, p.1, fn. 1.)

11 In its Order after Hearing of July 28, 2016, the Court refused to exercise its
12 discretion under Section 1033.5 (c)(4) to award a host of costs – including court
13 hearing transcripts, as well as hotel and travel expenses for numerous hearings
14 held in San Jose, at the Courts express request, trial exhibits, among others – all
15 of which were reasonable and necessary expenses of the same type awarded to
16 Willis Class counsel in 2011. (McLachlan Decl., Ex. E.) In that Order, the Court
17 taxed approximately \$20,000 in valid and appropriate costs, and then, opted to
18 reward these non-settling defendants by gratuitously awarding them an
19 additional credit of \$17,038 for costs received from other settling defendants in
20 2013. (*Id.* at pp. 5-6.) And again, in this Order, the Court applied a substantially
21 below-market hourly rate of \$500 per hour. (*Id.* at 7:12.)

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25 ¹ The computation of the current threshold under Section 984(d) is fairly
26 straightforward, and requires the multiplication of the base amount of \$725,000
27 by 1.05 for a period of twenty years. There are a number of free calculator’s on
28 the internet that will quickly preform the calculation, including:
<http://www.calculatorsoup.com/calculators/financial/compound-interest-calculator.php>

1 The Court has also attempted to give District 40, without any formal or
2 informal request whatsoever, a ten year payment plan under Government Code
3 section 970.6.2 (*Id.* at 7:20-23.)

4 **III. ARGUMENT**

5 **A. Government Code Section 984 Is Not Applicable Here** 6 **Because This Is Not a Tort Claims Action Judgment.**

7 District 40 cannot make an election under Government Code section 984
8 because the obligation to pay attorneys' fees is not a "judgment on a tort claims."
9 (Gov. Code § 984(d).) Government Code section 984 states:

10 If, after making any deductions pursuant to Section 985 of the
11 Government Code, **the judgment on a tort claims action** against a
12 public entity that is not insured is greater than five hundred
thousand dollars (\$500,000), the public entity may elect to pay the
judgment in periodic payments as provided in this subdivision.

13 Effective January 1, 1990, the five hundred thousand dollar
14 (\$500,000) threshold amount shall be five hundred fifty thousand
dollars (\$550,000). Effective January 1, 1992, that amount shall be
15 six hundred thousand dollars (\$600,000). Effective January 1, 1994,
that amount shall be six hundred fifty thousand dollars (\$650,000).
16 Effective January 1, 1996, that amount shall be seven hundred
twenty-five thousand dollars (\$725,000), and thereafter, the seven
17 hundred twenty-five thousand dollar (\$725,000) amount shall be
increased 5 percent on January 1 of each year.

18 After any amounts reimbursed pursuant to Section 985, the
19 judgment-debtor shall pay 50 percent of the remainder immediately,
20 and the other 50 percent of the remainder shall be paid over a period
of time to be determined by the court, not to exceed 10 years or the
21 length of the judgment-creditor's remaining life expectancy at the
time the judgment is entered, whichever is less.
22 (Gov. Code § 984(d) (emphasis added).)

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26 ² Given that none of the statutory requirements of Section 970.6 have been
27 met, as acknowledged by all involved during the July 28, 2016 hearing, it is
highly unlikely this component of the Court's orders has any effect. This fact has
precipitated District 40's filing of this Notice of Election under Section 984,
28 which if granted, would have a very significant impact on Class Counsel.

1 The fee order in question is not a tort claims action, and thus falls outside
2 the scope of Section 984. The California tort claims statutes are found a few
3 sections before Section 984 in the Government Code, at sections 900 *et seq.* The
4 claims act requirements are only applicable to claims for money damages, not to
5 an award of attorneys' fees. (Gov. Code § 905; *Lozada v. City and County of San*
6 *Francisco* (2006) 145 Cal.App.4th 1139, 1160.) The Court in *Lozada* held:

7 At the outset, we recognize that attorney fees authorized by [statute] are
8 not subject to the claim filing requirement. [Defendant] acknowledges that
9 **the recovery of attorney fees such as those sought here are not a**
10 **separate item of monetary relief or damages to which the**
11 **Government Claims Act applies. When authorized by statute,**
12 **award of attorney fees are defined as costs, not damages.**
13 [Citation.]

14 (*Lozada* at 1160 (emphasis added), citing C.C.P. § 1033.5(a)(10)(B) and *Elton v.*
15 *Anheuser-Busch Beverage Group, Inc.* (1996) 50 Cal.App.4th 1301, 1308; *see also*
16 *Rony v. Costa* (2012) 210 Cal.App.4th 746, 758 (statutory attorneys' fees are not
17 "damages").)³

18 District 40 may attempt to argue that the complaint contained tort claims,⁴
19 but as the Court is aware, those claims were never litigated and did not result in a

20 ³ The holding in this line of cases is consistent with the policy of the state
21 tort claims act. The California Supreme Court has stated that the policy behind
22 the tort claims act is to "facilitate investigation and possible settlement." (*City of*
23 *Stockton v. Superior Court* (2007) 42 Cal.4th 730, 741.) Since the potential claim
24 for statutory fees is entirely contingent at the outset of litigation, it does not exist
25 at that time.

26 ⁴ Such an argument would of course open up other contrary arguments and
27 issues, including the fact that the complaint also pleads two takings claims, which
28 are also exempt from the tort claims act. (Gov. Code § 905.1.) While those claims
were also not litigated, and were not the basis of the judgment in question, an
assertion that the Complaint is tort-based also necessarily means that it is equally
based in takings. And if that is the case for purposes of Section 984, then it
cannot be so just in part. If the judgment is then equally part takings in nature,
should the governing interest rates not be statutory, but higher rates as mandated

1 judgment. It is undisputed that Plaintiff and the class did not obtain a monetary
2 recovery, and that Judgment and Physical Solution is entirely equitable. Hence,
3 the only orders of a monetary nature are the various orders pertaining to
4 attorneys' fees and costs. For this reason, and because District 40 also fails to
5 meet the monetary threshold, as discussed below, it is not entitled to periodic
6 payment under Section 984.

7 **B. The Amount At Issue Is Below the Monetary Threshold.**

8 As set forth above, a public agency can invoke Government Code section
9 984(d) only if the amount of the judgment (in this case a post-judgment order),
10 exceeds the statutorily mandated threshold. Hence, even if this was a tort claims
11 judgment, which it is not, the obligation in question would have to exceed the
12 amount set forth in the statute, which is not the case here.

13 The relevant statutory language states that “[e]ffective January 1, 1996,
14 that amount shall be seven hundred twenty-five thousand dollars (\$725,000),
15 and thereafter, the seven hundred twenty-five thousand dollar (\$725,000)
16 amount shall be increased 5 percent on January 1 of each year.” In 2011, District
17 40 recognized the plain meaning of this language when it stated to this Court,
18 after the Willis fee award:

19 Government Code Section 984 set the threshold for January 1, 1996 but
20 implements a 5% increase on January [sic] of each year. Thus, the
21 threshold amount for 2011 is \$1,507,222.94.

22 (McLachlan Decl., Ex. D, fn. 1.) This is accurate and consistent with the language
23 of the statute. However, today, District 40 has a fee order that exceeds the
24 current threshold of \$1,923,640.84, so it has taken the very same form “Notice of
25 Election” it used in 2011, and replaced the first footnote so that the threshold in

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27 by applicable Constitutional principles? (*See Customer Co. v. City of Sacramento*
28 (1995) 10 Cal.4th 368, 390.)

2016 is now \$1,450,000. (Notice of Election, p.1, fn. 1.) The implication of this calculation is that the 5% annual increase is not really 5%, it is fixed amount of \$36,250 per year.

If District 40's reading of the threshold language were accurate, there would not be a 5% increase in any year after 1996. In fact, using District 40's number, the increase this year would only be 2.5%.⁵ If the legislature wished that to be the case, it could have and would have specified the sum of \$36,250 per year rather than providing for a 5% increase each year.

The other problem with District 40's argument here is that it has argued two inconsistent positions in the same action in an attempt to promote its current interests. No explanation has been given for this, so the Court should seriously consider the imposition of a judicial estoppel.

‘Judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, prevents a party from “asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. ...”’

‘[C]ourts have uniformly recognized that [the] purpose [of judicial estoppel] is ‘to protect the integrity of the judicial process.’ ‘ (New Hampshire v. Maine (2001) 532 U.S. 742, 749 [149 L. Ed. 2d 968, 121 S. Ct. 1808, 1814] (New Hampshire); accord, State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 826–827 [39 Cal. Rptr. 3d 189]; Jackson, *supra*, 60 Cal.App.4th at p. 181.) The doctrine is “‘aimed at preventing fraud on the courts.’ ... [It] “‘is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process “The policies underlying preclusion of inconsistent positions are ‘general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings.’ ” ... Judicial estoppel is “intended to protect against a litigant playing ‘fast and loose with the courts.’ ” ’ ” ... “It seems patently wrong to allow a person to abuse the judicial process by first [advocating] one position, and later, if it becomes beneficial, to assert

⁵ Using District 40's fixed increase of \$36,250 per year, and dividing that by \$1,450,000, yields a 2.5 percent increase this year. In the following year, the increase would drop to 2.4 percent, and so on.

1 the opposite.”” (M. Perez Co., Inc. v. Base Camp Condominiums Assn. No.
2 One (2003) 111 Cal.App.4th 456, 463 [3 Cal. Rptr. 3d 563].)

3 (*Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 130-31.)

4 The doctrine of judicial estoppel applies when: “(1) the same party has
5 taken two positions; (2) the positions were taken in judicial or quasi-judicial
6 administrative proceedings; (3) the party was successful in asserting the first
7 position (i.e., the tribunal adopted the position or accepted it as true); (4) the two
8 positions are totally inconsistent; and (5) the first position was not taken as a
9 result of ignorance, fraud, or mistake.” (*Levin v. Ligon* (2006) 140 Cal.App.4th
10 1456, 1469.) All of these factors are met or, as with the fifth factor, appear to be
11 met. District 40’s two positions are inconsistent and it was successful on its
12 original position. (McLachlan Decl., Ex. F.) At a minimum, it is incumbent on
13 District 40 to explain why its changed position is the result of ignorance or
14 mistake.

15 In any event, under the language of Section 984(d), the threshold amount
16 required for an election in 2016 is \$1,923,640.84 (see Section II, above). District
17 40’s several obligation under orders at issue is only \$1,756,578.90. (Notice of
18 Election, 1:18.) Hence, even if the attorneys’ fees owed were damages under the
19 tort claims act, the amount of the obligation is not large enough to trigger the
20 right to an election for periodic payments.

21 **C. The Notice of Election Appears to Be Untimely Filed.**

22 California Rule of Court 3.1802(a) provides:

23 A public entity electing to pay a judgment against it by periodic payments
24 under Government Code section 984 must serve and file a notice of
25 election stipulating to the terms of such payments, or a notice of hearing on
such terms, by the earlier of:

26 (1) 30 days after the clerk sends, or a party serves, notice of entry of
27 judgment; or

28 (2) 60 days after entry of judgment.

1 Here, the clerk electronically served notice of entry of the fee order in
2 question on July 15, 2016. (McLachlan Decl., Ex. 3.) Thereafter, District 40 had
3 thirty days to file and serve it Notice of Election. On August 12, 2016, District 40
4 served its Notice of Election electronically. (McLachlan Decl., Ex. B.) What is
5 unclear is whether District 40 ever filed the Notice of Election with the Los
6 Angeles Superior Court, and if so, on what date. The Court docket shows no
7 record of it having been filed. (McLachlan Decl., ¶ 5, Ex. C.) If it is true that
8 District 40 did not timely file the Notice of Election, this is yet another ground for
9 not entering the order for periodic payments.

10 **D. If The Court Were to Order Periodic Payments Under**
11 **Section 984, Equity Dictates That It Not Exceed A Period of**
12 **Three Years.**

13 Section 984 provides that the payment structure “shall be over a period of
14 time to be determined by the court, not to exceed 10 years or [the judgment
15 creditor’s life expectancy] . . .” (Gov. Code § 984(d).) Hence, the term of years is
16 set at the discretion of the Court. District 40 has offered no evidence of any
17 financial hardship, nor even asserted that any exists. On the other hand, there is
18 substantial evidence of the financial hardship this litigation has caused class
19 counsel. (*See* Declarations of Michael D. McLachlan (served January 1, 2014,
20 January 27, 2016, March 11, 2016, March 25, 2016, and June 27, 2016), the
21 Declarations of Daniel M. O’Leary (January 27, 2016) which are incorporated
22 herein by reference.)

23 That hardship has only been exacerbated by the Court’s refusal to base the
24 fee award on current market rates, or to apply a multiplier, as well as the Court’s
25 choice to tax tens of thousands of dollars in recoverable costs. (McLachlan Decl.,
26 ¶¶ 9-13.) This situation is certainly enough for Class Counsel to fully endorse
27 Justice Lui’s recent suggestion that Class Counsel should gain approval of the
28

1 terms of their compensation at the start of the litigation. (*Laffitte v. Robert Half*
2 *Int'l* (August 11, 2016) 2016 Cal.LEXIS 6387 *46-47.)

3 Ordering a payment plan for over two-thirds of the attorney fee award
4 grossly compounds the hardship on Class Counsel, and grossly undermines the
5 economic value of the fee award. After a two to five year appellate process, a ten
6 year payment plan puts final payments beyond 2030. Furthermore, such an
7 unnecessary order would also provide a great disincentive to any counsel from
8 take these types of public interest matters in the future. (*Perdue v. Kenny A. ex*
9 *rel. Winn* (2010) 559 U.S. 542, 550-52; *Kelly v. Wengler* (9th Cir. 2016) 822 F.3d
10 1085, 2016 U.S.App.LEXIS 9381 *39-41 (discussing difficulty in attracting
11 counsel to take on important but undesirable cases); *Graham v. DaimlerChrysler*
12 *Corp.* (2004) 34 Cal.4th 553, 580; *see also* Richard A. Pearl, *Cal. Attorney Fee*
13 *Awards*, at § 10.67 (discussing public service element in increasing lodestar).)

14 The Court should not order a payment plan, and certainly not without
15 District 40 establishing some sort of financial need for one.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court should not order the periodic
18 payments under Section 984.

19
20 DATED: August 25, 2016

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

21
22
23 By: 

24 MICHAEL D. MCLACHLAN
25 Attorneys for Plaintiff and the Class
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1 **DECLARATION OF MICHAEL D. MCLACHLAN**

2 I, Michael D. McLachlan, declare:

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

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

9 3. Attached as **Exhibit A** is a true and correct copy of the electronic
10 service notice of July 15, 2016 on the Order after Hearing on April 1, 2016.

11 4. On August 12, 2016, District 40 electronically served its Notice of
12 Election under Section 984. Attached as **Exhibit B** is a true and correct copy of
13 the electronic service notice for this document.

14 5. I have reviewed the Los Angeles Superior Court dockets on the court
15 website for both JCCP 4408 and BC321869 (the Small Pumper Class case). I find
16 no record of the Notice of Election having been filed with the Court. Attached as
17 **Exhibit C**, collectively, is a true and correct copy of the current portion of both
18 dockets.

19 6. Attached as **Exhibit D** is a true and correct copy of the Notice of
20 Election filed by District 40 in 2011.

21 7. Attached as **Exhibit E** is a true and correct copy of the Order after
22 Hearing of July 28, 2016.

23 8. Attached as **Exhibit F** is a true and correct copy of the 2011 order on
24 District 40's Notice of Election.

25 9. It is my opinion, formed in large part by the law and experience, that
26 when Class Counsel agrees to take on a case like this, and in particular when he
27 does so at the urging of the Court, that counsel fully expects and depends that the
28 Court will follow the law and exercise its discretion favorably on attorneys' fees

1 and costs when class counsel prevails. Mr. O'Leary and I certainly took on this
2 matter with the full expectation that if we prevailed, the Court would award us
3 our attorneys' fees at market rates, and use its discretion to award us our
4 litigation costs (or at least all those not expressly prohibited by law). The Court
5 has not done that.

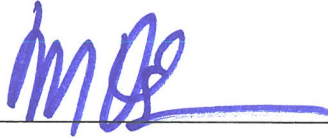
6 10. While the case clearly has been of great public benefit, the personal
7 cost to me has been incredibly severe. I have for a many years been able to get
8 regularly hourly work at rates of \$500 per hour and substantially greater. I have
9 historically done a limited amount of this work because I prefer representing the
10 little guy.

11 11. A large portion of costs (over \$40,000) I have advanced in this
12 matter are currently on my primary line of credit, which due to the contingent
13 nature of the matters I finance using that line, carries interest at 12.5% per year.
14 In addition to costs the Court refused to award, I am out a very large sum or non-
15 recoverable interest, spent financing the County of Los Angeles without
16 repayment.

17 12. No sensible lawyer would ever take on a contingent matter where he
18 will not get paid for 8 (and potentially as many as 24) years when he or she could
19 do hourly work and get paid every month. I can say without hesitation that the
20 single greatest mistake in my career to date (including several cases lost) was
21 taking on this matter. I would never again take on a public interest matter
22 without a written agreement up front as to how I would be compensated.

23 13. It is an extreme hardship, if not a complete financial impossibility
24 for me, my practice, and my family, to wait as long as twelve to fifteen years to be
25 paid for this work.

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct. Executed this 25th day of August, 2016, at
3 Hermosa Beach, California.

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7 Michael D. McLachlan
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Exhibit A

Mike McLachlan

From: efilingsmail@tylerhost.net
Sent: Friday, July 15, 2016 4:31 PM
To: Mike McLachlan
Subject: Notification of Service for Case No. 2005-1-CV-049053 (ANTELOPE VALLEY GROUNDWATER LITIGATION (JCCP 4408))

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Filing Details	
Case Number	2005-1-CV-049053
Case Style	ANTELOPE VALLEY GROUNDWATER LITIGATION (JCCP 4408)
Date/Time Submitted	7/15/2016 4:25:57 PM PDT
Filing Type	Order
Filed By	Rowena Walker
Service Contacts	<p>Other Service Contacts not associated with a party on the case:</p> <p>Michael McLachlan (mike@mclachlan-law.com)</p> <p>Jeffrey Dunn (jeffrey.dunn@bbklaw.com)</p> <p>Wendy Wang (wendy.wang@bbklaw.com)</p> <p>June Ailin (jailin@awattorneys.com)</p> <p>Douglas Evertz (devertz@murphyevertz.com)</p> <p>John Tootle (jtootle@calwater.com)</p> <p>Thomas Bunn (tombunn@lagerlof.com)</p> <p>Warren Wellen (wwellen@counsel.lacounty.gov)</p> <p>James Markman (jmarkman@rwglaw.com)</p> <p>Keith Lemieux (keith@lemieux-oneill.com)</p>

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Exhibit B

Mike McLachlan

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eSERVICE SUMMARY

Submitted By: Jeffrey Dunn Submitted On: Fri, Aug 12, 2016

eService Recipient: Michael D. McLachlan Email: mike@mclachlan-law.com

Court: Superior Court of California, Santa Clara County Case No.: JCCP No. 4408 Plaintiff: Richard Wood
Defendant: Los Angeles County Water Works District No. 40

https://platform.onelegal.com/Eservice/Index/vT_2qU23oEODaG_JoIDNDg

DOCUMENTS SUMMARY

Los Angeles County Waterworks District No. 40's Notice of Election and Hearing Proposed Order

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Exhibit C

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Case Number: JCCP4408
Case Title: ANTELOPE VALLEY GROUNDWATER CASES
Case Type: Judicial Council Coord Proceeding (General Jurisdiction)
Filing Date: 8/10/2005 12:00:00 AM

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<input type="checkbox"/>	8/19/2016 12:00:00 AM	DECLARATION OF FRANK S. DONATO IN SUPPORT OF MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES	1-40 ? Preview	40
<input type="checkbox"/>	8/19/2016	DECLARATION OF JAMES J. BANKS IN SUPPORT OF MOTION TO DISQUALIFY		

<input type="checkbox"/>	8/19/2016 12:00:00 AM	DECLARATION OF JAMES J. BANKS IN SUPPORT OF MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES	1-19 ? Preview	19
<input type="checkbox"/>	8/19/2016 12:00:00 AM	MEMORANDUM IN SUPPORT OF MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES	1-19 ? Preview	19
<input type="checkbox"/>	8/19/2016 12:00:00 AM	NOTICE OF LIMITED SCOPE REPRESENTATION	1-5 ? Preview	5
<input type="checkbox"/>	8/19/2016 12:00:00 AM	DECLARATION OF LELAND P. MCELHANEY IN SUPPORT OF MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES	1-221 ? Preview	221
<input type="checkbox"/>	8/19/2016 12:00:00 AM	NOTICE OF MOTION AND MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES	1-4 ? Preview	4
<input type="checkbox"/>	8/9/2016 12:00:00 AM	OBJECTION TO PLAINTIFF RICHARD WOOD'S BRIEF RE: PAYMENT OVER YEARS AND ORDER CLARIFYING FEE RULING	1-16 ? Preview	16
<input type="checkbox"/>	7/28/2016 12:00:00 AM	Minute Order	1-6 ? Preview	6
<input type="checkbox"/>	7/28/2016 12:00:00 AM	Minute Order	1-6 ? Preview	6
<input type="checkbox"/>	7/26/2016 12:00:00 AM	REPLY BRIEF IN SUPPORT OF SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEY FEES AND COSTS SUPPLEMENTAL DECLARATION OF MICHAEL D. MCLACHLAN	1-18 ? Preview	18
<input type="checkbox"/>	7/22/2016 12:00:00 AM	REPLY IN SUPPORT OF MOTION TO STRIKE, OR IN THE ALTERNATIVE TAX, COST; SUPPLEMENTAL DECLARATION OF JEFFREY V. DUNN	1-52 ? Preview	52
<input type="checkbox"/>	7/18/2016 12:00:00 AM	NOTICE OF FILING OF PROPOSED ORDER AFTER JUNE 30, 2016 HEARING REGARDING WATERMASTER FORMATION	1-3 ? Preview	3
<input type="checkbox"/>	7/15/2016 12:00:00 AM	DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF DISTRICT NO. 40'S OPPOSITION TO RICHARD WOOD'S SUPPLEMENTAL MOTION FOR ATTORNEY FEES AND COSTS	1-54 ? Preview	54



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Case Number: BC391869
Case Title: RICHARD A WOOD VS LOS ANGELES COUNTY WATERWORKS DISTRICT NO
Case Type: Quiet Title (General Jurisdiction)
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<input type="checkbox"/>	7/20/2016 12:00:00 AM	RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	1-26 ? Preview	26
<input type="checkbox"/>	7/15/2016	NOTICE OF FILING OF NOTICE OF	1-2 ? Preview	2

Exhibit D

BEST BEST & KRIEGER LLP

ERIC L. GARNER, Bar No. 130665

JEFFREY V. DUNN, Bar No. 131926

STEFANIE D. HEDLUND, Bar No. 239787

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Attorneys for Defendant

LOS ANGELES COUNTY WATERWORKS

DISTRICT NO. 40

OFFICE OF COUNTY COUNSEL

COUNTY OF LOS ANGELES

ANDREA ORDIN, Bar No. 38235

COUNTY COUNSEL

WARREN WELLEN, Bar No. 139152

PRINCIPAL DEPUTY COUNTY COUNSEL

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

TELEPHONE: (213) 974-8407

TELECOPIER: (213) 687-7337

Attorneys for Defendant **LOS ANGELES COUNTY**

WATERWORKS DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;

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, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
NOTICE OF ELECTION AND HEARING;
MEMORANDUM OF POINTS AND
AUTHORITIES RE ELECTION FOR
PERIODIC PAYMENTS**

Hearing:

Date: November 15, 2011

Time: 9:00 a.m.

Dept.: 316 (Room 1515)

LAW OFFICES OF
BEST BEST & KRIEGER LLP
5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614

NOTICE OF ELECTION AND HEARING

TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, and Los Angeles County Waterworks District No. 40 hereby elect to make periodic payments on the Amended Final Judgment Approving Willis Class Action Settlement pursuant to Government Code section 984 and California Rules of Court, Rule 3.1804.

PLEASE TAKE FURTHER NOTICE that on November 15, 2011, at 9:00 a.m., or on any other date and time determined by the Court, in Department 316, Room 1515 of the above titled court, located at 600 South Commonwealth Avenue, Los Angeles, a hearing will be held on Los Angeles County Waterworks District No. 40 to make periodic payments on the Amended Final Judgment Approving Willis Class Action Settlement.

This hearing request is made pursuant to Government Code section 984, California Rules of Court, Rule 3.1804, the attached Memorandum of Points and Authorities, and any other oral and documentary evidence presented at the hearing.

Dated: October 27, 2011

BEST BEST & KRIEGER LLP

By: 

ERIC L. GARNER
JERREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

MEMORANDUM OF POINTS AND AUTHORITIES

Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, and North Edwards Water District hereby elect to make periodic payments under Government Code section 984 to pay the award in the Amended Final Judgment Approving Willis Class Action Settlement.

I. INTRODUCTION

Government Code section 984 allows a public entity to pay judgments in periodic payments by election if the judgment exceeds \$1,507,222.94.¹ On September 22, 2011, this Court signed the Amended Final Judgment Approving Willis Class Action Settlement ("Willis Judgment"). The Willis Judgment requires the City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company, Rosamond Community Services District, Phelan Pinon Hills Community Services District, Desert Lake Community Services District, North Edwards Water District and Los Angeles County Waterworks District No. 40 to pay attorneys fees in the amount of \$2,075,174.18. (Willis Judgment, ¶ 21.) This amount exceeds the required threshold and qualifies for an election to make periodic payments.

II. ELECTION

Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, and Los Angeles County Waterworks District No. 40 hereby elect to make periodic payments in accordance with the applicable Government Code section and as outlined below:

- 50% (\$1,037,587.09) will be due within 15 days of a signed order;
- The remaining 50% (\$1,037,587.09) will be paid in 10 annual installments;
- Installment payments will be made on November 1st of each year, beginning in 2012; and
- The amount of each installment payment will be as follows:

¹ Government Code section 984 set the threshold at \$725,000 for January 1, 1996 but implements a 5% increase on January of each year. Thus, the threshold amount for 2011 is \$1,507,222.94.

November 1, 2012: \$103,758.71
November 1, 2013: \$103,758.71
November 1, 2014: \$103,758.71
November 1, 2015: \$103,758.71
November 1, 2016: \$103,758.71
November 1, 2017: \$103,758.71
November 1, 2018: \$103,758.71
November 1, 2019: \$103,758.71
November 1, 2020: \$103,758.71
November 1, 2021: \$103,758.70

- Interest, at the same rate as one-year United States Treasury bills as of January 1 of each year, will accrue to the unpaid balance of the judgment, and on each January 1 thereafter throughout the duration of the installment payments the interest shall be adjusted until the judgment is fully satisfied.

III. CONCLUSION

Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, and Los Angeles County Waterworks District No. 40 respectfully request the Court order periodic payments as detailed in the [PROPOSED] Order attached as Exhibit "A."

Dated: October 27, 2011

BEST BEST & KRIEGER LLP

By: 

ERIC J. GARNER
JEREMY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

26345.00000\7005444.1

PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On October 27, 2011, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 NOTICE OF ELECTION AND HEARING; MEMORANDUM OF POINTS AND AUTHORITIES RE ELECTION FOR PERIODIC PAYMENTS

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on October 27, 2011, at Irvine, California.


Kerry V. Keefe

Exhibit E

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 Public 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
27

28
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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28

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
24
25

26
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.

7
8 Dated: _____

August 15, 2016

Jack Komar

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

Exhibit F

LAW OFFICES OF
BEST BEST & KRIEGER LLP
5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614

BEST BEST & KRIEGER LLP

ERIC L. GARNER, Bar No. 130665

JEFFREY V. DUNN, Bar No. 131926

STEFANIE D. HEDLUND, Bar No. 239787

5 PARK PLAZA, SUITE 1500

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WATERWORKS DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;

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, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

**CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

NOV 21 2011

John A. Clarke, Executive Officer/Clerk

BY Raul Sanchez, Deputy

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**~~PROPOSED~~ ORDER RE ELECTION
FOR PERIODIC PAYMENTS OF THE
AMENDED FINAL JUDGMENT
APPROVING WILLIS CLASS ACTION
SETTLEMENT**

ORDER RE ELECTION FOR PERIODIC PAYMENTS

ORDER

On November 15, 2011 the Court held a hearing regarding the election by Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, and Los Angeles County Waterworks District No. 40 for periodic payments of the Amended Final Judgment Approving Willis Class Action Settlement at 9:00 a.m., or as soon as the matter could be heard in Department 316 of the Los Angeles County Superior Court. All appearances were stated on the record. Attached as Exhibit "A" is a true and correct copy of the Court's minute order.

IT IS ORDERED that the \$2,075,174.18 award in the Amended Final Judgment Approving the Willis Class Action Settlement shall be paid in periodic payments, as provided in Government Code section 984, as follows:

- 50% (\$1,037,587.09) will be due within 15 days of this order;
- The remaining 50% (\$1,037,587.09) will be paid in 10 annual installments;
- Installment payments will be made on or before November 1st of each year, beginning in 2012;
- The amount of each installment payment will be as follows:
 - November 1, 2012: \$103,758.71
 - November 1, 2013: \$103,758.71
 - November 1, 2014: \$103,758.71
 - November 1, 2015: \$103,758.71
 - November 1, 2016: \$103,758.71
 - November 1, 2017: \$103,758.71
 - November 1, 2018: \$103,758.71
 - November 1, 2019: \$103,758.71
 - November 1, 2020: \$103,758.71
 - November 1, 2021: \$103,758.70
- Interest, at the same rate as one-year United States Treasury bills as of January 1, each year. Each year shall accrue to the unpaid balance of the judgment, and on

each January 1 thereafter throughout the duration of the installment payments the interest shall be adjusted until the judgment is fully satisfied.

- Nothing in this Order shall prevent the parties from agreeing to make a payment on any other terms.
- The court shall retain jurisdiction as provided in Government Code section 984 (e) (4).

Dated: 11-15-2011


HON. JACK KOMAR

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On October 27, 2011, I served the within document(s):

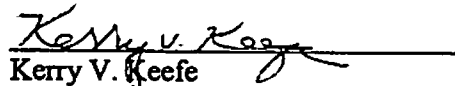
**[PROPOSED] ORDER RE ELECTION FOR PERIODIC PAYMENTS OF THE
AMENDED FINAL JUDGMENT APPROVING WILLIS CLASS ACTION
SETTLEMENT**

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on October 27, 2011, at Irvine, California.


Kerry V. Keefe

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On August 25, 2016, I caused service in the manner indicated below of the foregoing document(s) described as **OPPOSITION TO NOTICE OF ELECTION UNDER GOVERNMENT CODE SECTION 984; DECLARATION OF MICHAEL D. MCLACHLAN** to be served on all parties in this matter as follows:

- /s/ Ana Horga
-
- Ana Horga

/s/ Ana Horga
Ana Horga