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9/13/2016

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12 Attorneys for Plaintiff Richard Wood and the Class

11  
12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

14 Coordination Proceeding  
15 Special Title (Rule 1550(b))

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

16 **ANTELOPE VALLEY GROUNDWATER  
17 CASES**

Lead Case No. BC 325201

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

Case No.: BC 391869

**NOTICE OF APPEAL**

21 Plaintiff,

22 v.

23 **LOS ANGELES COUNTY**  
24 **WATERWORKS DISTRICT NO. 40; et**  
25 **al.**

26 Defendants.

1 TO THE CLERK OF THE COURT, ALL PARTIES TO THIS PROCEEDING,  
2 AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Plaintiff Richard A. Wood, on his behalf  
4 and on behalf of all other members of the "Small Pumper Class," acting by and  
5 through the undersigned Class Counsel, hereby appeals from the following  
6 orders:

- 7 1. The "Order Clarifying Order After Hearing On April 1, 2016," which was  
8 entered on June 28, 2016 (a copy of this order is attached as "**Exhibit**  
9 **A**");
- 10 2. The "Order to Amend Judgment *Nunc Pro Tunc*," which was entered on  
11 June 28, 2016 (a copy of this order is attached as "**Exhibit B**");
- 12 3. The "Order After Hearings On July 28, 2016," which was served  
13 electronically on August 18, 2016 (a copy of this order is attached as  
14 "**Exhibit C**"). It is unclear whether this Order has been filed with the  
15 Los Angeles Superior Court, and if so, the date on which it was entered  
16 by the Court.

17  
18 DATED: September 12, 2016

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

19  
20  
21 By: 

22 MICHAEL D. MCLACHLAN  
23 Attorneys for Plaintiff Richard Wood and the  
24 Class  
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## **Exhibit A**

**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))

) **Judicial Council Coordination No. 4408**

) [Assigned to the Honorable Jack Komar]

ANTELOPE VALLEY GROUNDWATER  
CASES

) CASE No. BC 391869

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

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

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.

07/05/2016



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

3 The Order does not apply to Boron Community Services District or West Valley Water District.  
4 Further, California Water Service Company is not a public entity and, thus, reference in the Order to  
5 payment over a ten year period in accord with the law is not applicable to this defendant.  
6

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

8 Los Angeles County Waterworks District No. 40: 74.76%

9 California Water Service Company: 3.78%

10 Littlerock Creek Irrigation District: 8.77%

11 Quartz Hill Water District: 6.21%

12 Palm Ranch Irrigation District: 5.13%

13 North Edward Water District: 0.54%

14 Desert Lake Community Services District 0.81%

15 Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Quartz Hill  
16 Water District, Palm Ranch Irrigation District, North Edward Water District and Desert Lake Community  
17 Services District shall be entitled to pay this judgment in 10 equal payments over a period of 10 years.  
18

19  
20 DATED: 6-28-16

  
HONORABLE JACK KOMAR  
Judge of the Superior Court

## **Exhibit B**

**FILED**  
Superior Court of California  
County of Los Angeles

JUN 28 2016

Sherri R. Carter, Executive Officer/Clerk  
By [Signature] Deputy  
E. Lopez

LAW OFFICES OF  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER  
CASES

Judicial Council Coordination Proceeding No.  
4408

JCCP 4408

Included Actions:

CLASS ACTION

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

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

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;

~~PROPOSED~~ ORDER TO AMEND  
JUDGMENT NUNC PRO TUNC

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

DATE: May 25, 2016  
TIME: 9:00 a.m.  
DEPT.: Room 222 (LASC)

Rebecca Lee Willis v. Los Angeles County  
Waterworks District No. 40, et al., Superior Court  
of California, County of Los Angeles, Case No.  
BC364553

Richard Wood v. Los Angeles County  
Waterworks District No. 40, et al., Superior Court  
of California, County of Los Angeles, Case No.  
BC391869

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0910759460

~~PROPOSED~~ ORDER


Los Angeles County Waterworks District No. 40's motion to amend the judgment *nunc pro tunc* ("Motion") came on regularly for hearing on May 25, 2016 at 9:00 a.m., in Department 222 of the above-entitled court, the Honorable Jack Komar, presiding.

Moving party appeared by Jeffrey V. Dunn of Best Best & Krieger LLP. Appearances for other parties are shown in the Court's Minute Order for this hearing. A court reporter was present.

Having considered the papers filed in support of and in opposition to the Motion and the arguments of counsel, the Court HEREBY GRANTS THE MOTION.

IT IS FURTHER ORDERED that the caption page of the judgment entered on December 28, 2015 be replaced with the caption page attached as Exhibit "A" hereto and that this order be entered *nunc pro tunc* as of December 28, 2015.

DATED: JUNE 28, 2016

  
HON. JACK KOMAR  
JUDGE OF THE SUPERIOR COURT

## **Exhibit C**

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).<sup>1</sup>

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 <sup>1</sup> 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.<sup>2</sup>  
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 <sup>2</sup> 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.<sup>3</sup>

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  
<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>  
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  
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27 <sup>4</sup> 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 <sup>5</sup> 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.

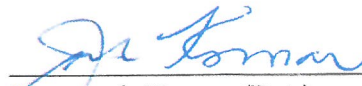
3 CONCLUSION

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



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

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On September 12, 2016, I caused service in the manner indicated below of the foregoing document(s) described as **NOTICE OF APPEAL**

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

3  
**NOTICE OF APPEAL**