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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Coordinated Proceeding  
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER  
CASES

Included Actions:

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

Los Angeles County Waterworks District No. 40  
v. Diamond Farming Co., Kern County Superior  
Court, Case No. S-1500-CV-234348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster v.  
Palmdale Water District, Riverside County  
Superior Court, Consolidated Actions, Case Nos.  
RIC 353840, RIC 344436, RIC 344668

AND RELATED CROSS-ACTIONS

**Judicial Council Coordination No. 4408**

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar – Dept. 12

**OPPOSITION TO WOOD CLASS' MOTION  
FOR AWARD OF ATTORNEYS' FEES,  
COSTS AND INCENTIVE AWARD;  
JOINDER IN LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40'S  
OPPOSITION TO WOOD CLASS' MOTION  
FOR AWARD OF ATTORNEYS' FEES,  
COSTS AND INCENTIVE AWARD**

**DATE: April 1, 2016  
TIME: 1:30 p.m.  
DEPT: TBA**

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**STATUTES**

Code of Civil Procedure § 1021.5

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## I. INTRODUCTION

The following opposition to the motion for attorneys' fees filed by the Wood Class is presented on behalf of Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District and North Edwards Water District (collectively "the Small Districts"). These Small Districts also join in the opposition filed by Los Angeles County Waterworks District No. 40 ("Main Opposition"). This opposition adds supplemental information and argument specific to the Small Districts.

After receiving \$736,930 to compensate its fees from certain large public water suppliers, the Wood Class now seeks more than 8 times as much money, \$8,470,642, against small, rural water producers which, in some cases, have only 215 connections, three employees, and 0.069% of the native safe yield. This would place a cost of more than \$926.26 per household on the Small Districts. In fact, the requested fees are more than *all the annual operating budgets of all of the Small Districts combined*.

The Small Districts are already impacted by the reduction in revenue caused by mandatory water rationing. The requested fees award could imperil the existence of the Small Districts, threatening the provision of water service to low-income desert communities. The fee award would have the perverse effect of punishing the Small Districts that spent significant expense to protect the basin while giving a free pass to other public water providers that "hid in the weeds," yet received an allotment under the judgment. In light of these policy considerations, the fact that the Wood Class attorneys have already collected significant fees, and the fact that other public entities have not been asked to pay fees, the court should use its equitable discretion to deny the fees motion against the Small Districts.

However, if this court is inclined to award fees against the Small Districts, the hourly rate should be no greater than \$292.80, the hourly rate paid by the Small Districts. The court should then apply a negative modifier taking into account: (1) the Wood Class weak assertion of public interest; (2) the significant work performed by the Wood Class pursuing parties other than the Small Districts; (3) the fact that there is no contingency risk because the Wood Class counsel has already been well compensated; and (4) the fact the Public Water Suppliers took the laboring oar for most work in the case. Finally, the fees

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1 should be apportioned to account for the fact that the Small Districts collectively received the use of only  
2 2.76% of the native safe yield.

## 3 II. FACTUAL SUMMARY

4 There are five water districts that make up the Small Districts. They are all public water suppliers  
5 with an elected board composed of volunteers from the local community. Each of these districts are  
6 located away from the urban center of the valley, and are wholly or partially dependent on groundwater  
7 supplies to provide water to their customers. Most of the Small Districts have fewer than five employees.  
8 The smallest district has only 215 connections with an annual operating budget of \$148,260.00. Because  
9 these districts are limited by law to charging water rates that are no greater than that needed to recoup the  
10 cost of service, they maintain financial reserves or emergency recovery funds no greater than that  
11 necessary to replace infrastructure in times of emergency.

12 North Edwards Water District ("NEWD") was given an allocation of only 49.02 acre feet in the  
13 judgment. (Lemieux Decl., Exh. A.) There are currently only 215 connections that receive water service  
14 from NEWD. (Kostopoulos Decl. ¶ 3.) All of them are households. NEWD is more fiscally challenged  
15 than any of the other Small Districts filing this Opposition. Its most recent annual budget is only  
16 \$148,260.00. (Kostopoulos Decl. ¶ 3.)

17 NEWD has spent a total of \$194,698.43 in attorneys' fees. (Kostopoulos Decl. ¶ 4.) They were  
18 billed at an average rate of \$292 per hour. (Kostopoulos Decl. ¶ 4.) NEWD does not have the financial  
19 means to pay for legal fees at a higher rate. (Kostopoulos Decl. ¶ 4.) As a result of this litigation, each  
20 customer of NEWD has already paid an average of approximately \$905.57 in defending this litigation.  
21 (Kostopoulos Decl. ¶ 4.)

22 Desert Lake Community Services District ("DLCSD") was given an allocation of 73.53 acre feet  
23 in the judgment. (Lemieux Decl., Exh. A.) There are currently 249 connections that receive water service  
24 from the DLCSD. (Love Decl. ¶ 3.) Of these, approximately 240 are households with the remainder being  
25 commercial or irrigation use. (Love Decl. ¶ 3.) DLCSD has an annual operating budget of \$252,514.  
26 DLCSD has \$190,000.00 in reserve. (Love Decl. ¶ 3.) DLCSD has only 3 employees. (Love Decl. ¶ 3.)

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1           DLCSD has spent a total of \$213,123.47 in attorneys' fees. (Love Decl. ¶ 4.) They were billed at  
2 an average rate of \$290 per hour. (Love Decl. ¶ 4.) DLCSD does not have the financial means to pay for  
3 legal fees at a higher rate. (Love Decl. ¶ 4.) As a result of this litigation, each customer of DLCSD has  
4 already paid an average of approximately \$855.92 in defending this litigation. (Love Decl. ¶ 4.) In  
5 addition, DLCSD expects it will continue to incur legal fees as it defends this matter through appeal, as  
6 well as in connection with the formation and operation of the Watermaster. (Love Decl. ¶ 4.)

7           Palm Ranch Irrigation District ("PRID") was given an allocation of 465.69 acre feet in the  
8 judgment. (Lemieux Decl., Exh. A.) There are currently 1,672 connections that receive water service  
9 from the PRID. (Tuculet Decl. ¶ 3.) Of these, approximately 1,637 are households with the remainder  
10 being commercial or irrigation use. (Tuculet Decl. ¶ 3.) PRID has an annual operating budget of \$771,729.  
11 If you add to that the cost of buying water, the budget for fiscal year 2015-2016 is \$1,254,269. (Tuculet  
12 Decl. ¶ 3.) PRID has \$1,037,145.28 in reserve. (Tuculet Decl. ¶ 3.) PRID has only 3 employees.

13           PRID has spent a total of \$426,213.69 in attorneys' fees. (Tuculet Decl. ¶ 4.) They were billed at  
14 an average rate of \$291 per hour. (Tuculet Decl. ¶ 4.) PRID did not have the financial means to pay for  
15 legal fees at a higher rate. (Tuculet Decl. ¶ 4.) As a result of this litigation, each customer of PRID has  
16 already paid \$254.91 in defending this litigation. (Tuculet Decl. ¶ 4.) In addition, PRID expects it will  
17 continue to incur legal fees as it defends this matter through appeal, as well as in connection with the  
18 formation and operation of the Watermaster. (Tuculet Decl. ¶ 4.)

19           Littlerock Creek Irrigation District ("LCID") was given an allocation of 796.58 acre feet in the  
20 judgment. (Lemieux Decl. ¶ 3.) There are currently 1,255 connections that receive water service from the  
21 LCID. (Berglund Decl. ¶ 3.) Of these, approximately 1,026 are households with the remainder being  
22 commercial or irrigation use. (Berglund Decl. ¶ 3.) LCID has an annual operating budget of \$1,741,003,  
23 and \$ 1,542,686 in income. (Berglund Decl. ¶ 3.) LCID has \$2,218,988.42 in reserve for fiscal year  
24 2014-2015. (Berglund Decl. ¶ 3.) They have only 6 employees. (Berglund Decl. ¶ 3.)

25           LCID has spent a total of \$435,459.72 in attorneys' fees. (Berglund Decl. ¶ 4.) They were billed  
26 at billing rates from between \$170 through \$400 per hour, the average being \$291. (Berglund Decl. ¶ 4.)

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1 LCID did not have the financial means to pay for legal fees at a higher rate. (Berglund Decl. ¶ 4.) As a  
2 result of this litigation, each customer of LCID has already paid approximately \$346.98 in defending this  
3 litigation. (Berglund Decl. ¶ 4.) In addition, LCID expects it will continue to incur legal fees as it defends  
4 this matter through appeal, as well as in connection with the formation and operation of the Watermaster.  
5 (Berglund Decl. ¶ 4.)

6 Quartz Hill Water District (“QHWD”) was given an allocation of 564.73 acre feet in the judgment.  
7 (Lemieux Decl., Exh. A.) There are currently 5,754 connections that receive water service from the  
8 QHWD. (Reed Decl. ¶ 3.) Of these, approximately 5,615 are households with the remainder being  
9 commercial or irrigation use. QHWD has an annual operating budget of \$4,284,759. (Reed Decl. ¶ 3.)  
10 QHWD has \$1,009,469 in Emergency Recovery. (Reed Decl. ¶ 3.)

11 QHWD has spent a total of \$1,829,939 in attorneys’ fees. (Reed Decl. ¶ 4.) They were billed at  
12 billing rate of \$300 per hour. (Reed Decl. ¶ 4.) QHWD does not have the financial means to pay for legal  
13 fees at a higher rate. (Reed Decl. ¶ 4.) As a result of this litigation, each customer of QHWD has already  
14 paid approximately \$325.90 in defending this litigation. (Reed Decl. ¶ 4.) In addition, QHWD expects it  
15 will continue to incur legal fees as it defends this matter through appeal, as well as in connection with the  
16 formation and operation of the Watermaster. (Reed Decl. ¶ 4.)

17 The Small Districts are almost exclusively funded through the collection of volumetric water rates.  
18 In response to the drought, the State has mandated water consumption within the Small Districts be  
19 reduced by 25%. (Req. for Jud. Notice, Carson Decl., Exh. A.) This has resulted in an almost 25%  
20 reduction of revenue. Some of the Small Districts have attempted to reduce costs by laying off employees.  
21 In some cases, basic maintenance at the smallest district has been performed by volunteers or the General  
22 Manager doing maintenance work in the field. (Tuculet Decl. ¶ 6; Love Decl. ¶¶ 5,6.) Many of the Small  
23 Districts have begun to draw down on their financial reserve in order to cover their basic expenses. There  
24 is simply no money available to pay the Wood Class’s exorbitant fee request.

25 The Wood Class, through a prior written agreement, waived its attorneys’ fees claims against  
26 Palmdale Water District, Rosamond Community Services District, and Phelan-Pinon Hills Community  
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Services District in exchange for \$736,930.43. (Lemieux Decl., Exh. B.) The Wood Class has not filed suit or requested attorneys' fees against other small public water suppliers, such as Boron Community Services District and West Valley Water District. Likewise, it has not filed suit or requested attorneys' fees against large public agencies, such as the State of California, the City of Los Angeles, and the Antelope Valley East Kern Water District. The Wood Class filed a complaint against all landowners in this case, but has not requested those landowners to pay attorneys' fees. In this way, the Wood Class has singled out the Small Districts and two other entities as the target for its exorbitant fee request.

### III. ARGUMENT

#### A. THE COURT SHOULD NOT AWARD ANY ATTORNEYS' FEES AGAINST THE SMALL DISTRICTS

The Private Attorney General statute was designed to reward extraordinary effort when a plaintiff shoulders the burden of legal costs in order to vindicate rights of the public generally. (*Conservatorship of Whitley* (2010) 50 Cal.4<sup>th</sup> 1206, 1214-15; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Market, Inc.* (2005) 127 Cal.App.4<sup>th</sup> 387, 398-402; *Baxter v. Salutary Sportsclubs, Inc.* (2004) 122 Cal.App.4<sup>th</sup> 941, 944-946.)

"[T]he necessity and financial burden requirement 'really examines two issues: whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys.' [Citations.] The 'necessity' of private enforcement . . . 'looks to the adequacy of public enforcement and seeks economic equalization of representation in cases where private enforcement is necessary.' [Citations.] . . . the award of attorney fees is *not appropriate* when the public rights in question were *adequately vindicated by governmental action*. . . ." (*Whitley, supra*, 50 Cal.4<sup>th</sup> at 1214-15 [emphasis added].)

Because all of the parties were claiming an interest in a common pool of water, this court has recognized that all parties in this case were effectively asserting relief against all other parties in this case, whether such relief was expressly requested in the complaint or not. (Unless certain claims were expressly waived as with the members of the Small District group.) Where, as here, all parties are asserting a property right as against all other parties, all parties are both plaintiffs and cross-defendants, and no party should be singled out for attorneys' fees unless it is shown that they acted frivolously, unreasonably or

1 without foundation. (See *Independent Fed'n of Flight Attendants v. Zipes* (1989) 491 U.S. 754, 764-765  
2 [Title VII case].) Stated another way, the Wood Class sought and obtained a water right in exactly the  
3 same manner as all other parties to the settlement. Therefore, if the Wood Class is entitled to attorneys'  
4 fees, this would be equally true as to all other parties to the case, including the Small Districts.<sup>1</sup> There is  
5 simply no logical basis to order that some of the parties to this case are awarded attorneys' fees to be paid  
6 by some, but not all, of the remaining parties. All parties had analogous claims and all settling parties  
7 received a similar result. No parties should be entitled to fees or, alternatively, all parties should be entitled  
8 to them.

9 Furthermore, a fee award is only properly assessed against a defendant who had the power to  
10 provide the relief requested. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1181-83.) A  
11 defendant may not be ordered to pay attorneys' fees where the defendant was unable to provide the type  
12 of relief requested in the complaint. (*Id.*) Where the party targeted by an attorneys' fees motion was in an  
13 analogous position to the plaintiffs and had no power to grant relief to the plaintiffs, attorneys' fees are  
14 not appropriate. (See *Connerly, supra*, 37 Cal.4th at 1181-83.) Obviously, the Small Districts had no  
15 ability to defend, settle or compromise any other party's water rights to this case. The case law is clear  
16 that the Small Districts should not be ordered to pay attorneys' fees for the litigation of matters over which  
17 they had no control in determining the outcome. (*In re Adoption of Joshua S.* (2008) 42 Cal.4th 945,  
18 958.)

19 Finally, in setting the reasonable amount of fees to be awarded, trial courts also have the power to  
20 consider the financial circumstances of the party against whom fees are sought. (See *Garcia v. Santana*  
21 (2009) 174 Cal.App.4th 464, 476; see *Drumm v. Morningstar, Inc.* (N.D. Cal. 2010) 695 F.Supp. 2d 1014,  
22 1026.) The Small Districts are very small rural water districts with limited budgets. The requested  
23

24  
25 <sup>1</sup> CCP § 1021.5 limits the attorneys' fees claim of a public entity plaintiff to seek recovery only from  
26 public entity defendants. (*People ex rel. Brown v. Tehama County Bd. of Sup'rs* (2007) 149 Cal. App. 4th  
422, 450-451, as modified, Apr. 11, 2007 .)

1 attorneys' fees are greater than the total budget of all of the Small Districts combined. The smallest district  
2 has an annual operating budget of only \$148,260 per year. Most of the Small Districts have less than six  
3 employees or less. These are very small operations.

4 The financial position of the Small Districts has been further imperiled by the drought. Each of  
5 the Small Districts is under a state mandate to reduce water consumption by 25%. (RJN, Carson Decl.  
6 Exh. A.) Volumetric fees are the Small Districts' primary source of revenue. As a result, the Small  
7 Districts have faced an approximate 25% reduction in revenues in the past year. In the case of Palm  
8 Ranch, this resulted in the district being forced to lay-off one of only five employees. As a result of this  
9 layoff, the general manager was forced to personally perform maintenance work in the field. (Tuculet  
10 Decl., ¶ 6.)

11 Despite their meager resources, the Small Districts actively contributed to the litigation because  
12 they were charged with a mandate to preserve water resources. Each household of the Small Districts has  
13 been forced to already pay an average of between \$254.91 and \$905 per household for attorneys' services.  
14 (Reed Decl. ¶ 4, Love Decl. ¶ 4, Kostopoulos Decl. ¶ 4, Tuculet Decl. ¶ 4, Berglund Decl. ¶ 4.) This  
15 motion would add an additional \$926.26 per household to the fees already paid.

16 It is unclear why some public entities were included in the Wood Class motion for fees, while  
17 others were not. For example, Boron Community Services District is a community services district, a  
18 form of public entity that it shares with Desert Lake Community Services District. Both Boron and Desert  
19 Lake are located near each other in the extreme northeast portion of the basin. They both settled with the  
20 Wood Class and obtained less than 1% of the native safe yield. There is simply no logical reason why  
21 Desert Lake Community Services District should be obligated to pay attorneys' fees while Boron  
22 Community Services District somehow avoids them. Because the Wood Class has singled out the Small  
23 Districts for its request for attorneys' fees while ignoring other districts, this motion has the perverse  
24 consequence of punishing the Small Districts for paying for work needed to reach a settlement, while other  
25 small water purveyors who "hid in the weeds" are rewarded with a water right under the settlement and  
26 the payment of no fees.

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1 The Wood Class counsel will not leave this case empty handed. They have already been well-  
2 compensated for their work in this case by the larger water purveyors. They have already voluntarily  
3 chosen to waive attorney fees against some of the other small public water suppliers. This court should  
4 treat all small public water purveyors the same and order that none of these small purveyors pay attorneys'  
5 fees in order to preserve the continued supply of water service to rural communities.

6 **B. IF THE COURT IS INCLINED TO GRANT ATTORNEYS' FEES AGAINST THE**  
7 **SMALL DISTRICTS, THE SMALL DISTRICTS SHOULD NOT BE REQUIRED**  
8 **TO PAY ATTORNEYS' FEES AT AN INFLATED RATE**

9 The court has discretion to set the rate of attorneys' fees. (*Long Beach City Employees Assn. v.*  
10 *Long Beach* (1981) 120 Cal.App.3d 950, 961.) The best evidence of market rates for attorney services  
11 are the rates actually paid by parties to the case itself because they reflect the rates of other Water Law  
12 attorneys of similar experience in the geographic area in a groundwater adjudication. (See *Children's*  
13 *Hosp. & Med. Center v. Bontá* (2002) 97 Cal.App.4th 740, 777.) "A fee request that appears unreasonably  
14 inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether."  
15 (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990, quoting *Serrano v. Unruh* (1982) 32 Cal.3d  
16 621, 635, accord *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1137.)

17 The Small Districts paid attorneys' fees at an average rate of \$290 to \$300 per hour. (Tuculet Decl.  
18 ¶ 4; Berglund Decl. ¶ 4; Kostopoulos Decl. ¶ 4; Love Decl. ¶ 4; Reed Decl. ¶ 3.) The Wood Class has  
19 requested the court approve a rate of more than twice this amount at \$720 per hour, (not including the 2½  
20 multiplier), plus costs and incentives. (Wood Class Motion for Award of Attorney's Fees, 6:24.) The  
21 Small Districts should not be ordered to pay for attorney services at higher than market rates. If the court  
22 is inclined to award attorneys' fees against the Small Districts, they should be awarded at no more than  
23 \$292.80 per hour, which represents a fair market rate. If the Wood Class counsel was paid for legal and  
24 paralegal services at the same rate as the Small Districts' average legal counsel rate (and lowest counsel  
25 rate for the Wood Class' paralegal), the total requested fees would be "only" \$1,444,475.64.

1           **C.     IF THE COURT IS INCLINED TO GRANT ATTORNEYS' FEES AGAINST THE**  
2           **SMALL DISTRICTS, THE COURT SHOULD APPLY A "NEGATIVE**  
3           **MULTIPLIER" TO REDUCE OR ELIMINATE ANY LEGAL FEES TO BE PAID**  
4           **BY THE SMALL DISTRICTS**

5           To reach its request of \$8,470,642.00 in attorneys' fees, the Wood Class starts with an inflated rate  
6 of \$720 per hour and then asks the court to multiply the fees by two and one-half times based on a  
7 multiplier to the "lodestar." In fact, a proper application of the "Lodestar" formula should result in a  
8 reduction of attorneys' fees, not an increase to them.

9           The "lodestar" method allows for fees to be adjusted via a multiplier based on numerous factors.  
10          (*Ketchum v. Moses* (2001) 24 Cal.4th 1122.) In effect, the court determines whether the litigation  
11 involved a contingent risk or required extraordinary legal skill justifying augmentation of the lodestar to  
12 approximate the fair market rate for such services. (*Id.*) However, this multiplier to the "lodestar" works  
13 both ways.<sup>2</sup> (*Graciano v. Robinson Ford Sales* (2006) 144 Cal.App.4th 140, 160-161; *Lealao v. Beneficial*  
14 *California, Inc.* (2000) 82 Cal.App.4th 19, 50; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819,  
15 840; *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 753.) That is, where, as here, the  
16 Wood Class was one of several parties performing duplicative work on issues common to all parties and  
17 where the rights obtained by all parties were virtually identical, a "negative multiplier" may apply. (*Id.*)

18          The court should consider the extent to which the lawsuit resulted in the protection of public rights  
19 over private interests. (*Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 941, 967;  
20 *Arnold v. California Exposition and State Fair* (2004) 125 Cal.App.4th 498, 510-512.) The Wood Class's  
21 complaint represented a challenge to the public's right to use water on behalf of private parties. This  
22 challenge was overcome by the public entities who secured the public's right to use groundwater through  
23 settlement. Therefore, the Wood Class claim of public interest really amounts to an assertion that the  
24 Public Water Suppliers needed someone to represent private interests in order to have someone to prevail

25           <sup>2</sup> In applying a negative multiplier, the court can consider all the same factors it would consider for an upward  
26 multiplier, including but not limited to whether fees are excessive or duplicative, whether fees were expended on  
causes of action the party claiming fees did not win, the amount at stake, the result obtained, and whether the fees  
are within the range of fees freely negotiated in the legal marketplace in comparable litigation.



1 against on behalf of the public. If this actually amounts to a valid claim of public interest, it is a very  
2 weak claim that justifies a negative multiplier.

3 The lack of contingency risk supports a negative modifier. The Wood Class settled with certain  
4 large public water suppliers and received generous compensation in the amount of \$736,930.43. (Lemieux  
5 Decl., Exh. B.) This payment guaranteed that Wood class counsel would receive compensation for their  
6 work but it also removed the “contingency risk justification” for a positive modifier. From the point of  
7 the settlement forward, the Wood class could proceed confident in the fact that it had been well  
8 compensated.

9 Next, the court should consider how much work performed by the Wood Class was actually  
10 performed to prosecute the case against the Small Districts as opposed to the other parties. The court has  
11 acknowledged all claimants in this case were essentially asserting a water right against all other parties.  
12 This meant the Wood Class was asserting a claim not only against the named Public Water Suppliers, but  
13 also against the unnamed Public Water Suppliers as well as all of the other landowners. A significant  
14 portion of the Wood Class attorneys’ time was spent either litigating or negotiating matters against these  
15 other parties. Therefore, even though the Small Pumpers did not file the pleadings necessary to obtain an  
16 attorneys’ fees award against these other parties, the court should, nevertheless, apply a negative multiplier  
17 to reduce the requested attorneys’ fees to reflect the time spent pursuing other parties.

18 Phelan-Pinon Hills Community Services District (“Phelan”) was one of the large public water  
19 suppliers that paid fees in exchange for a waiver. But this agreement was not a true settlement between  
20 the Wood Class and Phelan. The Wood Class subsequently settled with the Small Districts and most of  
21 the other parties, but ultimately did not settle the case with Phelan. The Wood Class then proceeded to  
22 litigate against Phelan for more than a year with the aid of the Small Districts. There is simply no rational  
23 basis for the Small Districts to be ordered to pay attorneys’ fees while their interests were aligned with the  
24 Wood Class.

25 The Wood Class made tactical decisions regarding who it would name in its complaint and who it  
26 would exclude. It chose to avoid naming certain large institutional parties that could have more easily

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borne the cost of its attorneys' fees, such as Bolthouse Properties and Tejon Ranch Corp. It also avoided naming large public entities that could have borne a portion of these costs, such as the State of California, the City of Los Angeles, or the Antelope Valley East Kern Water Agency (perhaps because pursuing attorneys' fees under the private attorney general theory would face additional challenges if they were pursued against the actual Attorney General). It avoided naming certain small public districts, such as Boron Community Services District and West Valley Water District. As a result, the Wood Class is now asking this court to order parties that only have 2.76% of the native safe yield to bear 100% of their remaining attorneys' fees.

Finally, the court should consider the fact the Wood Class did not have to shoulder the laboring oar for most of the work performed in this case. The Public Water Suppliers spent their own fees seeking and obtaining the physical solution, demonstrating the existence of overdraft in the basin, negotiating a settlement with the landowner parties, and litigating against the non-settling defendants. For much of this work, the Wood Class simply "rode on the coattails" of the work performed by the Public Water Suppliers.

Given the Wood Class's shaky claims of public interest and the Class' weak claim of work performed pursuing the parties, the fact that it has already received \$736,930.43, and the fact that the Public Water Suppliers took the laboring oar for most work, this court has discretion to apply a negative modifier that reduces the fees request to zero. (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 635 [*Serrano IV*]; *San Diego Police Officers Assn. v. San Diego Police Department* (1999) 76 Cal.App.4th 19, 24; *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 973-976; *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 834, 840-45.) If the court is inclined to nevertheless grant fees, it would be appropriate to apply a significant negative multiplier. The Small Districts suggest a 75% negative multiplier would still result in a generous award to the Plaintiffs given the facts described above.

If the court were to award fees based on the average rate paid by the Small Districts after a negative multiplier, the total amount would be \$361,118.91. The Small Districts request that the total remaining liability for attorneys' fees not be greater than this amount.

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1           **D.     IF THE COURT IS INCLINED TO GRANT ATTORNEYS' FEES AGAINST THE**  
2           **SMALL DISTRICTS, THE COURT SHOULD APPORTION THE ATTORNEYS'**  
3           **FEES AWARD BASED ON THE RELATIVE SIZE OF THE ENTITIES**

4           Under California law, liability for payment of a prevailing party's attorney fees may be  
5           apportioned among the opposing parties, including real parties in interest. (*Mejia v. City of Los Angeles*  
6           (2007) 156 Cal.App.4th 151, 161.) For example, in *Washburn v. City of Berkeley*, plaintiffs named all  
7           signatories of the ballot argument as real parties in interest in their petition for writ of mandate, and  
8           plaintiffs sought fees from only 2 people. The court determined that the preliminary aspects of the  
9           litigation were attributable to all the real parties in interest, whereas the rest of the litigation was solely  
10          attributable to one person. While the plaintiff characterized the court's calculations as a reduction of the  
11          fee award, in effect the court's procedure was consistent with its discretion to allocate a fee award to the  
12          parties responsible. (*Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 592-593.) It is imperative  
13          this court exercise its authority to apportion fees so that the Small Districts are not unreasonably charged  
14          with the cost of legal service spent prosecuting other claims.

15          The Wood Class records do not provide the information needed to support an allocation of fees.  
16          In the absence of this information, the Small Districts urge the court to use each party's percentage of the  
17          native safe yield obtained through the settlement as a proxy for that party's "size" in the case, after  
18          applying a negative multiplier. The Small Districts' percentage share of the native safe yield is as follows:

19           • Quartz Hill Water District	0.798%
20           • Littlerock Creek Irrigation District	1.127%
21           • Palm Ranch Irrigation District	0.659%
22           • North Edwards Water District	0.069%
23           • Desert Lake Community Services District	0.104%

24          As the court can see by this measure, the Small Districts collectively account for approximately  
25          2.76% of the native safe yield. In the interest of fairness, the court should order the Small Districts not pay  
26          more than 2.76% of any attorneys' fees award. The Wood Class claimed 4538.8 hours of attorney time. If  
27          a reasonable rate of \$292.80 were applied to this alleged attorney time, this would come to \$1,328,960.64.  
28          The Wood Class claims there are 679.5 paralegal hours outstanding. Even if you take the lowest attorney  
29          rate paid by Small Districts (\$170) and applied it as the Wood Class' paralegal rate, you would get:

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1 \$115,515. Thus, the total of attorney and paralegal time at a reasonable hourly rate is \$1,444,475.64. A  
2 75% negative modifier should be applied to arrive at \$361,118.91. If the court apportioned this by each  
3 party's share of the native safe yield, it would order no more than the following amounts for the Small  
4 Districts:

5	• North Edwards Water District	\$249.17
6	• Desert Lake Community Services District	\$375.56
7	• Palm Ranch Irrigation District	\$2379.77
8	• Littlerock Creek Irrigation District	\$4069.81
9	• Quartz Hill Water District	\$2881.73

#### 10 IV. CONCLUSION

11 Imperiled for the loss of revenue caused by the drought, this request for more than \$8 million  
12 dollars represents an existential threat to the Small Districts. The Wood Class has already received  
13 payment of \$736,930.43. In order to avoid threatening water systems providing water to poor desert  
14 communities, this court should exclude the Small Districts from any attorneys' fees award.

15 In the event that the court is inclined to order the payment of fees by the Small District, the Small  
16 Districts respectfully request the court award them at a reasonable rate and apply a negative multiplier.  
17 The Small Districts further request the attorneys' fees be apportioned so that the share be limited to the  
18 following:

19	• North Edwards Water District	\$249.17
20	• Desert Lake Community Services District	\$375.56
21	• Palm Ranch Irrigation District	\$2379.77
22	• Littlerock Creek Irrigation District	\$4069.81
23	• Quartz Hill Water District	\$2881.73

24 DATED: March 15, 2016

25 LEMIEUX & O'NEILL

26 By: 

27 CHRISTINE CARSON

28 Attorneys for Littlerock Creek Irrigation District, Palm  
Ranch Irrigation District, Quartz Hill Water District, North  
Edwards Water District, Desert Lake Community Services  
District

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1 STATE OF CALIFORNIA, )  
2 ) ss.  
3 COUNTY OF VENTURA )

4 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a  
5 party to the within action. My business address is 4165 E. Thousand Oaks Blvd., Suite 350, Westlake  
6 Village, California 91362.

7 On **March 14, 2016**, I posted the following document(s) to the website <http://www.scefilng.org>, a  
8 dedicated link to the Antelope Valley Groundwater Cases, and upon which the parties have agreed this  
9 posting constitutes service.

10 **OPPOSITION TO WOOD CLASS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS  
11 AND INCENTIVE AWARD; JOINDER IN LOS ANGELES COUNTY WATERWORKS  
12 DISTRICT NO. 40'S OPPOSITION TO WOOD CLASS' MOTION FOR AWARD OF  
13 ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD**

14 By electronically serving through <http://www.scefilng.org>, and addressed to all parties appearing  
15 on the <http://www.scefilng.org> electronic service list, the file transmission was reported as complete and  
16 a copy of the <http://www.scefilng.org> Filing/Service Receipt will be maintained with a copy of the  
17 document in our office.

18 I am readily familiar with the business practice for collection and processing of pleadings and  
19 discovery for electronic service with <http://www.scefilng.org>, and that the pleadings and discovery shall  
20 be electronically served this same day in the ordinary course of business.

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

23 Executed on March 14, 2016, in Westlake Village, California.

24  
25  
26  
27  
28  
  
Kathi Miers