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COUNTY WATERWORKS DISTRICT NO. 40

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

**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;

RICHARD WOOD, on behalf of himself and  
all other similarly situated v. A.V. Materials,  
Inc., et al., Superior Court of California,  
County of Los Angeles, Case No. BC509546.

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

Judicial Council Coordination Proceeding  
No. 4408

**CLASS ACTION**

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

**DECLARATION OF JEFFREY V. DUNN  
IN SUPPORT OF LOS ANGELES  
COUNTY WATERWORKS DISTRICT NO.  
40'S OPPOSITION TO (1) MOTION FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT BY WOOD CLASS  
SETTLING DEFENDANTS; (2) MOTION  
OF WOOD CLASS SETTLING  
DEFENDANTS TO BE RELIEVED OF ALL  
COURT ORDERS FOR PAYMENT OF  
COURT-APPOINTED EXPERT FEES AND  
COSTS; AND (3) MOTION OF WOOD  
CLASS FOR APPROVAL OF AWARD OF  
ATTORNEY FEES AND COSTS**

*[Filed concurrently with Oppositions]*

**DECLARATION OF JEFFREY V. DUNN**

I, Jeffrey V. Dunn, declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached as Exhibit "A" are true and correct excerpts of transcript for the October 25, 2013 hearing before the Honorable Judge Jack Komar in the Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408.

4. Attached as Exhibit "B" is a true and correct copy of order, dated December 11, 2012, issued by the Honorable Judge Jack Komar in the Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408, and posted on the court's website.

5. Attached as Exhibit "C" is a true and correct copy of the Wood Class' Motion for an Order Authorizing the Court-Appointed Expert Witness Work, dated January 18, 2012, that was posted on the court's website on January 18, 2012.

6. Attached as Exhibit "D" is a true and correct copy of the Stipulation and Amended Order re Motion for an Order Authorizing Court-Appointed Expert Work signed by the Honorable Judge Jack Komar and posted on the court's website on September 6, 2013.

7. Attached as Exhibit "E" is a true and correct copy of the minute order, dated December 11, 2013, issued by the Honorable Jack Komar for the Antelope Valley Groundwater Cases, Judicial Council Coordination Proceedings No. 4408, and posted on the court's website.

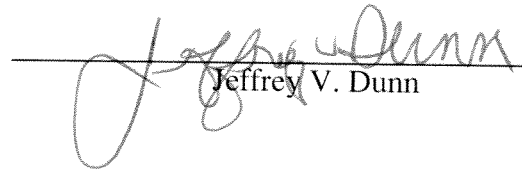
8. Attached as Exhibit "F" is a true and correct copy of the Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and the Class for Attorneys' Fees, Reimbursement of Expenses and Class Representative Incentive Award signed by the Honorable Judge Jack Komar and posted on the court's website on May 6, 2011.

9. Attached as Exhibit "G" is a true and correct copy of a matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia for the years

1 2003 through 2014 with hourly rates for attorneys of varying levels of experience. This matrix is  
2 known as the "Laffey Matrix" and is publicly available at  
3 [http://www.justice.gov/usao/dc/divisions/Laffey\\_Matrix%202014.pdf](http://www.justice.gov/usao/dc/divisions/Laffey_Matrix%202014.pdf).

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

6 Executed this 23rd day of December, 2013, at Irvine, California.

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Jeffrey V. Dunn

**EXHIBIT A**

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2  
3 COUNTY OF LOS ANGELES

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5  
6 IN RE: )

7 ANTELOPE VALLEY GROUNDWATER )  
8 CASES. )

) JUDICIAL COUNCIL  
) COORDINATION NO. 4408

9 ) SANTA CLARA COUNTY CASE  
10 ) NO. 1-05-CV-049053  
11 ) (For Court Use Only)  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JACK KOMAR

JUDGE OF THE SUPERIOR COURT

OCTOBER 25, 2013

STEPHANIE ESTES, CSR #12452  
OFFICIAL REPORTER

## APPEARANCES:

MICHAEL MC LACHLAN

THOMAS BUNN

STEVEN ORR

WESLEY MILIBAND

DOUGLAS EVERTZ

WARREN WELLEN

WILLIAM SLOAN

JEFFREY DUNN

NOAH GOLDEN-KRASNER

WILLIAM BRUNICK

SHELDON BLUM

KEITH LEMIEUX

## TELEPHONIC APPEARANCES:

HERUM CRABTREE

MARILYN LEVIN

R. LEE LEININGER

JOHN TOOTLE

WALTER RUSINEK

BRADLEY WEEKS

ROBERT KUHS

BOB JOYCE

SCOTT KUNEY

JOSEPH HUGHES

RYAN DRAKE

LELAND MC ELHANEY

1 JANET GOLDSMITH  
2 ANDREW RAMOS  
3 JOHN UKKESTAD  
4 MICHAEL DAVIS  
5 BRUCE NELSON  
6 WENDY WANG  
7 THEODORE CHESTER JR.  
8 RICHARD ZIMMER  
9 RICHARD WOOD  
10 NEAL MAGUIRE  
11 BRADLEY HERREMA  
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1 McCarran Amendment, that's essential to keep the United  
2 States in the case. So, I think that if -- if the Court  
3 has or Mr. Leininger has remaining concerns we need to  
4 discuss those and address those. But absent that -- I can  
5 go on.

6 Mr. -- Mr. Leininger did talk about the notice to  
7 the class and how it should reflect that the reasonable  
8 and beneficial use in the water rights would be determined  
9 later. I believe that the existing notice form does that.  
10 It says here: The settling defendants are agreeing not to  
11 challenge the class' assertion of the right of class  
12 members to pump up to three acres feet of water per year  
13 for domestic purposes without having to pay a fee for  
14 doing so. Other parties remain free to challenge that  
15 water right, which will be determined in the future. And  
16 then there's another question, this is in the frequently  
17 asked questions format: Does this settlement give me a  
18 water right? And the answer is, I'm quoting here: No,  
19 this settlement does not provide you with Court determined  
20 water rights. The Court has not yet determined the water  
21 rights of any party. But those determinations are  
22 expected to be made in the future phases of the  
23 proceeding.

24 I believe that covers it, Your Honor. The class  
25 members are being adequately advised that they're not  
26 getting a water right out of this and that the Court will  
27 be making that determination in the future.

28 THE COURT: I'm just trying to locate that notice.



1 THE COURT: Well, before we do that, I want to  
2 know if -- if that's a sufficient period of time for you  
3 to -- to get evidence together to support the settlement?

4 MR. MC LACHLAN: I'm not sure exactly what Your  
5 Honor's alluding to.

6 THE COURT: Well, I'm concerned with technical  
7 evidence.

8 MR. MC LACHLAN: Well, we anticipate, I believe,  
9 that the Court appointed expert -- well, technical  
10 evidence -- I'm having -- I'm struggling with what you  
11 mean by technical evidence.

12 THE COURT: Well, you're -- you're asking the  
13 Court to approve a number, an allocation number, of -- of  
14 three acre feet a year per person as being reasonable,  
15 aren't you?

16 MR. MC LACHLAN: No, we're not.

17 THE COURT: You're not?

18 MR. MC LACHLAN: All we're asking -- all we're  
19 saying is that these four settling parties in the future  
20 can't contest that; that's the issue of the class' water  
21 rights not being determined. And so -- and the Court  
22 appointed expert's report won't even address that question  
23 because that's not phase four.

24 THE COURT: What do you intend to present at that  
25 hearing?

26 MR. MC LACHLAN: I intend to present the  
27 settlement agreement. And we intend to file a joint  
28 motion for approval of the attorney's fees with the back

## **EXHIBIT B**

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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  
  
(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)  
  
Case No.: BC 391869  
  
~~[amended, proposed]~~ ORDER RE:  
MOTION FOR AN ORDER  
AUTHORIZING COURT-  
APPOINTED EXPERT WORK

1 On November 9, 2012, the Court heard argument on Richard Wood's Motion for  
2 an Order Authorizing the Court-Appointed Expert Witness Work (the "Motion"). After  
3 considering the pleadings filed by all parties and the argument of counsel, the Court  
4 hereby lifts the stay on the Court-Appointed expert witness work as detailed in the  
5 written estimate which is Exhibit 5 to the Motion (dated January 18, 2012). The Court-  
6 appointed expert will generate a report detailing the work conducted and the resulting  
7 analysis and data generated. Such report or reports will be posted to the court website for  
8 this matter by either Class counsel or designated liason counsel for the public water  
9 suppliers.

10  
11 Expert Communication and Liason Counsel.

12 It is anticipated that the expert will need to communicate with counsel and class  
13 members in the conduct of his work. Such communications will occur in writing where  
14 practicable and posted to the case website. Jeffrey Dunn or other attorney representative  
15 for the public water suppliers, and a designated landowner attorney, shall be copied on  
16 such communications.

17  
18 Payment

19 The bills of the court-appointed expert will be sent to Class counsel, who will file  
20 notice of such bills within ten days of receipt. Such payments will be made on a per  
21 capita basis in equal amounts on each bill from the court-appointed expert.

22 The Court orders the following parties to tender payment of checks, payable to  
23 "Cardno Entrix," to the Law Offices of Michael D. McLachlan, APC within fifteen (15)  
24 days of posting of the notice of payments being due: Rosamond Community Services  
25 District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation  
26 District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake  
27 Community Services District, California Water Service Company, Quartz Hill Water  
28

1 District, the Palmdale Water District, and Phelan Pinon Hills Community Services  
2 District.

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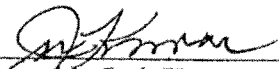
IT IS SO ORDERED.

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Dated: 12-11-2012

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Honorable Jack Komar  
Judge of the Superior Court

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1 Michael D. McLachlan (State Bar No. 181705)  
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
3 10490 Santa Monica Boulevard  
4 Los Angeles, California 90025  
5 Telephone: (310) 954-8270  
6 Facsimile: (310) 954-8271  
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)  
9 **LAW OFFICE OF DANIEL M. O'LEARY**  
10 10490 Santa Monica Boulevard  
11 Los Angeles, California 90025  
12 Telephone: (310) 481-2020  
13 Facsimile: (310) 481-0049  
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

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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

(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

Case No.: BC 391869

**RICHARD WOOD'S NOTICE OF  
MOTION AND MOTION FOR  
ORDER AUTHORIZING COURT-  
APPOINTED EXPERT WITNESS  
WORK**

Date: February 14, 2012  
Time: 9:00 a.m.  
Dept.: 316 (Room 1515)

**RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER  
AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK**

1 TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that on February 14, 2012, at 9:00 a.m., in Department  
3 316 of the Los Angeles Superior Court, located at 600 S. Commonwealth Avenue, Los  
4 Angeles, California, a hearing will be held on plaintiff Richard A. Wood's Motion for  
5 Order Authorizing Court-Appointed Expert Work.

6 The motion is based on this Notice, the attached Memorandum of Points and  
7 Authorities, the attached exhibits, Evidence Code sections 730 and 731, and such other  
8 and further evidence as the Court adduces at the hearing.

9  
10 DATED: January 18, 2012

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

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13 By:                     //s//                    

14 Michael D. McLachlan  
15 Attorneys for Plaintiff  
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Plaintiff Richard Wood has previously filed this motion requesting that the Court lift the stay and permit the court-appointed expert to commence work assessing the water use of the small pumper class. The Court heard this Motion in August of 2011, and took the matter under submission. (Minute Order of August 30, 2011.) The subject matter of this Motion has been discussed at several subsequent hearings, but no ruling was issued.

## II. ARGUMENT

On April 24, 2009, the Court granted Plaintiff's motion for a court-appointed expert, thereby designating Timothy Thompson of Entrix to perform expert services relative to the assessment of water use of the Small Pumpers' class. (Exhibit 1.) At that time, the Court stayed the order pending allocation of the expert expenses. (*Ibid.*) However, on May 6, 2009, by Stipulation of the parties, the Court ordered the stay lifted. (Exhibit 2.) Mr. Thompson has conducted limited preliminary work, and has been paid for that work, but has not commenced the substantive work regarding the quantification of the class members' water use. The Court allocated these costs *pro rata* to the ten water suppliers. (Exhibit 3, at p. 4.)

**RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER  
AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK**

1           **B. The Legal Necessity for the Court-Appointed Expert Work**

2           Upon a showing of public benefit C.C.P. section 1021.5, the class counsel in this  
3 matter will ultimately seek compensation for their time and costs in this action as against  
4 the public water purveyors. An award under Section 1021.5, however, cannot include  
5 expert witness fees.

6           In 2008, the California Supreme Court issued its opinion in *Olson v. Automobile*  
7 *Club of Southern California*, holding that expert witness fees may not be awarded under  
8 Section 1021.5, unless expressly ordered by the court. 42 Cal.4<sup>th</sup> 1142, 1150-51 (*citing*  
9 C.C.P. § 1033.5(b)(1).) This opinion expressly overruled *Beasley v. Wells Fargo Bank*,  
10 (1991) 235 Cal.App.3d 1407, which had previously held that experts witness fees were  
11 recoverable under Section 1021.5. (*Id.* at 1151.)

12           The result of the *Olsen* case is that, assuming class counsel were willing to  
13 advance substantial funds to cover expert witness fees, they could not recover those fees  
14 at the end of the case. In other words, if class counsel were to expend funds toward  
15 expert witness fees, they would be doing so on a *pro bono* basis.

16  
17           The primary reasons the Court-appointed expert is necessary is to gather evidence  
18 of the Class' water use for both settlement and litigation purposes, i.e. establishing the  
19 self-help defense, under which an overlying landowner may defeat a claim of prescription  
20 by pumping water on his property during the prescriptive period. (*City of Pasadena v.*  
21 *City of Alhambra* (1949) 33 Cal.2d 908, 931-32.) In *City of Los Angeles v. City of San*  
22 *Fernando*, the California Supreme Court held that such rights of self-help persist in an  
23 overdrafted groundwater basin. ((1975) Cal.3d 199, 293, fn.101; *Hi-Desert County*  
24 *Water District v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4<sup>th</sup> 1723, 1731.)

25           In the case at hand, the public water suppliers have alleged in their pleadings and  
26 asserted in Court that the basin at issue has been in continuous overdraft since 1946 and  
27 that the prescriptive period runs from that date to the present (the filing of the various

1 complaints). (*See, e.g.*, First Amended Cross-Complaint of Public Water Suppliers  
2 (March 13, 2007), Santa Clara Sup. Ct. E-Filed Docket No. 503.)

3 By definition, all members of the Small Pumpers Class will be overlying  
4 landowners who have pumped groundwater on their property during the prescriptive  
5 period in question. (Order Certifying Small Pumpers Class Action, S.C. Sup. Ct. E-Filed  
6 Docket No. 1865.) There is no dispute that the vast majority of the Small Pumper Class  
7 members are single family residential users who are outside the available public water  
8 supply network, and hence must rely upon their own pumping of groundwater to exist on  
9 their land.

10 The court-appointed expert work may also be used to establish that the Class  
11 members were engaged in a “reasonable beneficial use,” a threshold requirement to  
12 establishing their overlying rights and an issue that other overlying landowners have  
13 disputed as the Class. (*City of Los Angeles v. City of San Fernando*, Cal.3d at 293.)  
14

### 15 C. The Expert Work Should Commence Now

16 As the Court may recall, prior to filing the complaint in this matter, class counsel  
17 had several conversations with the Court at hearings and through written correspondence  
18 in May of 2008, concerning this fundamental problem confronting class counsel in the  
19 representation of the class. (Exhibit 4.)

20 Now that the Phase 3 trial is completed, any future phases of trial necessarily  
21 require evidence of water use by the class (prescription, allocation of water rights, and  
22 physical solution). It will likely take three or four months at least for this work to be  
23 completed.

24 While the Court has expressed optimism about the prospect of settlement, it is  
25 simply not realistic given the history of failed settlement talks in this case, nor is it fair to  
26 use the ephemeral prospect of settlement as a justification to continue to keep class  
27 counsel in the untenable position of potential malpractice on the one hand, or the

1 payment of substantial unrecoverable expert fees on the other hand. A staggering amount  
2 of settlement talks have occurred over the last four years, all of which have failed to date  
3 (but for the Willis class).

4 The water suppliers are again showing little interest of revising and re-submitting  
5 the Wood Class Settlement, leaving the prescription claims hanging over the Class'  
6 proverbial heads. Within a few days after the Wood Class Settlement was not approved,  
7 class counsel circulated a revised settlement agreement, with very limited modifications  
8 tracking the Court's comments at the June 16 hearing. In the month that has passed, the  
9 water suppliers' continue to drag their feet, apparently sensing some sort of leverage to  
10 force the Class to accept a very unfair deal they have hatched up with the farmers. The  
11 lack of a report from the court-appointed expert puts class counsel in a very difficult  
12 negotiating position with respect to proper and fair allocation of the available water for  
13 overlying use. The issue of the Class' water use thus presents a serious obstacle to  
14 settlement talks.

15 Furthermore, even if there was a settlement, the court has repeatedly made note  
16 that an evidentiary prove-up hearing would be necessary. The testimony or report of the  
17 court-appointed expert would be needed at such a hearing.

18 The proposed scope of work is attached as Exhibit 5. Mr. Thompson remains  
19 ready and able to conduct the work at issue, and should be allowed to proceed. (Exhibit  
20 6.)

1           **D. Allocation of Expert Costs**

2           The Court should allocate these expenses among the same ten Public Water  
3 Suppliers that paid the prior court-appointed expert bill, as set forth in the Court's order  
4 of May 25, 2010. (Exhibit 3, at p. 4.)  
5

6 DATED: January 18, 2012

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

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8  
9 By: \_\_\_\_\_//s//

10 Michael D. McLachlan  
11 Attorneys for Plaintiff  
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## **Exhibit 1**

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

DEPT. 1

HONORABLE Jack Komar

JUDGE

M. GODDERZ

DEPUTY CLERK

HONORABLE  
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am JCCP4408

Plaintiff	JAMES L. MARKMAN	(x)
Counsel	RALPH B. KALFAYAN	(x)
	DAVID B. ZLOTNICK	(x)
Defendant	W. KEITH LEMIEUX	(x)
Counsel	JEFFREY V. DUNN	(x)

Coordination Proceeding Special  
Title Rule (1550(b))

ANTELOPE VALLEY GROUNDWATER CAS  
\*ASSIGNED TO JUDGE JACK KOMAR  
IN SANTA CLARA COUNTY (8/31/05)

## NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF AND THE CLASS FOR APPOINTMENT OF  
EXPERT WITNESSES

CASE MANAGEMENT CONFERENCE RE ISSUE OF RIGHT TO  
JURY TRIAL

Additional counsel appearing in court on this date:

BOB H. JOYCE (x)	MICHAEL FIFE (x)
WILLIAM J. BRUNICK (x)	BRADLEY T. WEEKS (x)
SCOTT K. KUNEY (x)	MICHAEL D. McLACHLAN (x)
DANIEL M. O'LEARY (x)	TAMMY L. JONES (x)
CLIFF MELNICK (x)	THOMAS S. BUNN III (x)
DOUGLAS J. EVERTZ (x)	R. LEE LEINIGER (x)
MICHAEL L. MOORE (x)	

Additional counsel appearing via telephone  
conference call:

Rebecca Davis-Stein	Janet K. Goldsmith
Michael L. Crow	Robert G. Kuhs
Stephen M. Siptroth	Sheldon Blum
Bradley J. Herrema	Michelle L. Moore
Richard G. Zimmer	Brian Martin
Robert E. Dougherty	Theodore Chester, Jr.
Christopher M. Sanders	Susan M. Trager
Marlene A. Hammarlund	James J. Dubois

The above matters are called and the Court makes the  
following rulings;  
- Request for extension of time to Opt Out of Willis  
class is granted and extended to May 1, 2009.

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

DEPT. 1

HONORABLE Jack Komar

JUDGE M. GODDERZ

DEPUTY CLERK

HONORABLE  
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am JCCP4408

Coordination Proceeding Special  
Title Rule (1550(b))

Plaintiff	JAMES L. MARKMAN	(x)
Counsel	RALPH B. KALFAYAN	(x)
	DAVID B. ZLOTNICK	(x)
Defendant	W. KEITH LEMIEUX	(x)
Counsel	JEFFREY V. DUNN	(x)

ANTELOPE VALLEY GROUNDWATER CAS  
\*ASSIGNED TO JUDGE JACK KOMAR  
IN SANTA CLARA COUNTY (8/31/05)

## NATURE OF PROCEEDINGS:

Motion of Plaintiff Wood for Appointment of Expert is granted and stayed until certain issues have been adjudicated.

Motion of Plaintiff Willis for Appointment of Expert Witnesses is taken off calendar to be re-scheduled at a later date, if necessary.

Motion for Preliminary Injunction is taken off calendar by the Moving party this date.

As to the Case Management Conference,  
Court and counsel confer Re issue of right to jury trial, class notice and scheduling.

The Court schedules a Settlement Conference for May 13, 2009 at 9:00 a.m., in Los Angeles Superior Court (LASC) Department One. The Woods parties are to report at 9:00 a.m. The Willis parties are to report at 1:30 p.m.

Any objections to the Settlement Conference are to be filed within 2 days of the Court notice from Santa Clara Superior Court Department 17.

Additionally, the Trial Setting Conference is scheduled for August 17, 2009 at 9:00 a.m., in LASC Department One.

Notice of these proceedings is deemed waived.



## **Exhibit 2**

1 Michael D. McLachlan (State Bar No. 181705)  
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
3 523 West Sixth Street, Suite 215  
4 Los Angeles, California 90014  
5 Telephone: (213) 630-2884  
6 Facsimile: (213) 630-2886  
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)  
9 **LAW OFFICE OF DANIEL M. O'LEARY**  
10 523 West Sixth Street, Suite 215  
11 Los Angeles, California 90014  
12 Telephone: (213) 630-2880  
13 Facsimile: (213) 630-2886  
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding  
19 Special Title (Rule 1550(b))

20 **ANTELOPE VALLEY GROUNDWATER**  
21 **CASES**

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

25 Plaintiff,

26 v.

27 **LOS ANGELES COUNTY**  
28 **WATERWORKS DISTRICT NO. 40; et al.**

Defendants.

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

FILED 08 2009

John A. Clarke, Executive Officer/Clerk  
By Jalon Taylor, Deputy

Judicial Council Coordination  
Proceeding No. 4408

(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

Case No.: BC 391869

**STIPULATION AND ~~Proposed~~**  
**ORDER RE: SMALL PUMPER**  
**CLASS NOTICE ISSUES**

After meeting and conferring, stipulating parties agree that substantial problems likely exist with the portion of the Small Pumper Class (the "Class") mailing list covering parcels inside the public water supplier service areas. The parties believe that many of the parcels on this portion of the proposed Class list do not in fact meet the Class

**STIPULATION AND ORDER RE: SMALL PUMPER CLASS NOTICE ISSUES**

1 definition.

2 The stipulating parties further acknowledge that it is important that the Class is  
3 formed in such a manner as to include, as best as is practicable, properties that conform to  
4 the Class definition.

5 Based on the foregoing, the parties stipulate as follows:

- 6 1. With regard to putative Class members inside the public water supplier service  
7 areas, the parties will: (a) obtain shareholder lists from the mutual water  
8 companies that are party to this suit, within 15 days of this order, and will  
9 remove any such names from the database; (b) meet and confer on additional  
10 names that should not be on the list, including review of water supplier records  
11 and further expert analysis as needed;
- 12 2. That as to the remaining parcels identified as located inside the public water  
13 supplier service areas, a second notice shall be submitted to the Court for  
14 approval, within 5 court days of the execution of this Order, which will be an  
15 "opt-in" notice, meaning that only those property owners who affirmatively  
16 respond with written response form or via the Class website will be included in  
17 the Class;
- 18 3. That the questionnaire to be included in the notice will be expanded to request  
19 further data to be used by the parties, Entrix, and the water supplier experts to  
20 assess the actual pumping of the Class members using statistically significant  
21 sampling sizes;
- 22 4. That as to the putative Class members outside the service areas, the Class  
23 notice will remain an "opt-out" notice, and those Class members will receive  
24 the existing Class notice, to be modified with additional water usage questions;
- 25 5. That as to the putative Class members outside the service areas, the Court-  
26 appointed expert will conduct a statistically significant assessment as to the  
27 percentage of the Class members actually satisfy the Class definition, and if  
28 this analysis reveals an improperly high number of improper Class members,

1 further efforts will be taken to identify and remove improper Class members  
2 from the Class.

3 6. That the Court-appointed expert, and existing experts of the public water  
4 suppliers, shall use the data generated by the Class notice response forms,  
5 supplemented as needed by further field-work, to formulate reliable estimates  
6 of the water usage of the Class.

7 7. The stay as to the Court appointed expert, Timothy Thompson, will be lifted  
8 and his firm will conduct such work as necessary and consistent with this  
9 order, and to the extent practicable, data gathering and field work will be  
10 conducted by cost-effective means, potentially including use of less expensive  
11 independent contractors.

12 DATED: May 5, 2009

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

14 By: \_\_\_\_\_ //s//

15 Michael D. McLachlan  
16 Attorneys for Plaintiff

17 DATED: May 5, 2009

BEST, BEST & KRIEGER LLP

19 By: \_\_\_\_\_ //s//

20 Jeffrey V. Dunn  
21 Attorneys for Defendants Los Angeles County  
22 Waterworks District No. 40 and Rosamond  
23 Community Services District

24 IT IS SO ORDERED.

25 DATED:

26 5-6-09

27 By: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA

JACK KOMAR

## **Exhibit 3**

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

JUN 01 2010

John A. Glavin, Executive Officer

By Paul Sanchez

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Included Consolidated Actions:

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

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of  
Riverside, consolidated actions, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los  
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los

Judicial Council Coordination  
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER CASE  
MANAGEMENT CONFERENCE  
ON MAY 6, 2010**

Hearing Date(s): May 6, 2010  
Time: 9:00 a.m.  
Location: Department 1, LASC

Judge: Honorable Jack Komar

3 The matter came on as a regularly scheduled telephonic Case Management Conference  
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by  
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk  
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes  
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**  
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in  
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court  
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are  
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal  
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case  
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to  
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a  
19 simultaneous disclosure and exchange of expert information, including any reports prepared by  
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental  
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The  
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**  
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide  
25 percipient testimony shall file a statement listing such witness, the subject matter of their  
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30  
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and  
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,  
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer  
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third  
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined  
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is  
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a  
9 "physical solution," as prayed for by the public water provider parties. The public water  
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect  
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects  
13 to hear evidence concerning total pumping and total recharge from all sources, with a further  
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS' MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O'Neill is  
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS' MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for  
21 Allocation of Expert Witness Fees, providing that the twelve named "Public Water Suppliers"  
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by  
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the  
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but  
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of  
26 those parties are making claims against these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to  
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are



1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles  
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation  
3 District, North Edwards Water District, Desert Lake Community Services District, California  
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon  
5 Hills Community Services District.

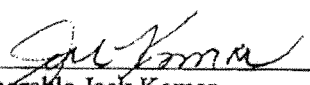
6 Further, the request of Richard Wood to authorize the court-appointed expert to  
7 commence the work outlined in the proposal from Entrix, which was attached to the moving  
8 papers, is denied without prejudice based on the decision that no evidence of individual  
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re  
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the  
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of  
14 the issues by the parties. The Court requests that the proponent of this transfer document file by  
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall  
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**  
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.

19  
20 Dated: May 25, 2010

21   
22 Honorable Jack Komar  
23 Judge of the Superior Court  
24  
25  
26  
27  
28

## **Exhibit 4**

LAW OFFICES OF MICHAEL D. McLACHLAN

A PROFESSIONAL CORPORATION

523 WEST SIXTH STREET, SUITE 215

LOS ANGELES, CA 90014

PHONE 213-630-2884 FAX 213-630-2886

E-MAIL [mike@mclachlanlaw.com](mailto:mike@mclachlanlaw.com)

May 14, 2008

VIA U.S. MAIL & E-FILE

Hon. Jack Komar  
Santa Clara County Superior Court  
Department D-17  
161 N. First Street  
San Jose, CA 95113

Re: *Antelope Valley Groundwater Litigation*  
Case No.: 1-05-CV-049053

Dear Judge Komar:

This letter pertains to the further status conference in this matter set on May 22, at 9:00 a.m. in LASC, Department 1, and more specifically, my potential representation of a class we have loosely referred to as the "small pumper" class.

I write to address what I believe is a potential hurdle to the representation of this class, with the hope that it might be resolved at hearing next week. Last week I discussed this issue with Jeffrey Dunn, who I asked to discuss the matter with his colleagues in anticipation of this letter. If the water purveyors, or other interested parties wish to comment, it is my hope that they will do so now so that this matter can be fully addressed next week.

The proposed pumping class would consist of at least 7,500 members, according to Mr. Dunn. I have heard higher estimates, but even using 7,500, this is a rather sizeable group of people (and entities) with collectively and individually large stakes in this litigation. As the Court has recognized, these people as a group have interests that are at odds with the interests of other groups of stakeholders in this litigation.

I am informed that the primary vehicle for the conduct of this adjudication will be a rather sizeable report soon to be issued by a group of engineers and water experts, many or all of whom will ultimately testify in this case on behalf of their clients. I also understand that much or all of the information in this report has been assembled by a Technical

Hon. Jack Komar  
May 14, 2008  
Page 2

Committee comprised of a number of these experts. While there are apparently some landowner interests on this Committee, this group appears to be largely dominated by the water companies, and a few large landowners (including the Federal Government). These larger stakeholders obviously have the financial means to undertake such costly and complex analysis, and by virtue of that, are in control of this process.

I have serious reservations about representing this group of pumpers relying solely on the expert analysis of this group experts retained by large stakeholders with differing interests. My concern is born in large part from my years of experience in complex groundwater litigation. While the underlying data in such cases is generally fixed, the actual expert analysis is general subject to substantial subjective components that can vary significantly based on assumptions. It is no secret that experts have, from time to time, been known to angle their subjective decisions in a direction favoring the parties they represent.

I believe the interests of the small pumpers would be best served with an independent expert, and that the appearance of fairness in this adjudication would be enhanced through the appointment of such an expert under Evidence Code section 730, which provides in relevant part:

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

(See also Witkin, Cal. Evidence 4<sup>th</sup>, Opinion Evidence § 81.)

I propose that the Court appoint an expert to represent the interests of this group. Such an expert would not be commissioned to re-invent the wheel, but would instead undertake a satisfactory analysis of the work done to date. I have contacted Stetson Engineers, a reputable and qualified firm in this field, and they are willing to serve in this role. While the numbers are very rough, they estimate generally a cost of \$100,000-150,000 for the initial workup (year 1), and then considerably smaller costs if the case were to continue for successive years. If necessary, Stetson could assemble a more detailed proposal, but for the time being, I would suggest an order that simply caps the total costs on an annual basis.

Hon. Jack Komar  
May 14, 2008  
Page 3

Under section 731, the Court may apportion the costs for such an expert to those parties it deems proper. In this case, I suggest that the costs of such an expert should be born by the public water supplier entities, as this is a matter of general public benefit.

While my office is will to venture legal time and standard costs on a contingency basis, I will not assume the burden of paying for this expert. In the event the water companies are inclined to object to this proposal, I offer a back of envelope estimate of the costs of proceeding in the alternative, i.e. having to individually name and serve these parties. Using 7,500 as the number of small pumpers, and conservative cost of \$100 to identify and serve each pumper, a court order requiring the service off all these parties would cost at least \$750,000, and quite likely much more. So I suggest that it is more economical to proceed with a class action and an expert than in the alternative.

Finally, I have interviewed Mr. Richard Wood, the proposed class representative for this class (see letter to the Court, April 22, 2008, Docket #1286). I believe Mr. Wood will serve as a more than capable representative for the vast majority if not all of members of this class (reserving of course the possibility that some small number of members of this yet-to-be-defined class may have interests not fully in line with his). He understands the obligations of that role, and is willing to serve as representative. So, if we can resolve the concerns raised above, I believe the proposed class makes sense and can proceed.

If any of the attorneys for the interested parties would like to discuss this matter with me, please feel free to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MDM', followed by a long horizontal flourish line.

Michael D. McLachlan

## **Exhibit 5**



## MEMORANDUM

**Date:** February 25, 2010

**To:** Mike McLachlan, Law Office of Michael D. McLachlan, APC  
Dan O'Leary, Law Office of Daniel M. O'Leary

**From:** Timothy J. Thompson, Vice President and Senior Consultant

**Re:** Scope of Technical Support Services for Small Pumper Class,  
Antelope Valley Groundwater Adjudication

### Task 1. Quantification of Small Pumper Class Water Usage

#### Services will include:

- A. Review responses to initial questionnaire sent to Small Pumper Class. Apply a set of evaluation criteria to identify responses that are representative and useful for the determination of actual water use of the Class, and which can be used directly or are candidates for follow-up requests for additional information or investigation. Criteria will include evaluations of completeness of response, geographic distribution of parcels, annual volume of reported use, range of property sizes, types of reported land use and other data that may be identified and determined to be relevant and useful. Utilization of the GIS database as prepared by other consultants for this case will be beneficial for this component of the Small Pumper Class water use evaluation. Methodology for selection of responses, reasoning in support of need for verification and other considerations will be provided in summary report.
- B. Conduct follow-up communications with selected Class members to verify existing data or request additional data. Additional beneficial data may include electrical usage records, well pump capacity information, water level measurement records, well repair records, flow meter records, well deepening or other improvements related to changing water levels, written logs of well operations and other data that may be identified and determined to be relevant and useful. Selected site visits may be conducted as necessary and relevant. Any information to be requested will be determined and approved in advance by counsel and/or the Court.
- C. Acquire data from other agencies to support calculation of actual pumping of Class members. Data to be collected may include electrical use records, historical land use information, groundwater water level depths as established by other technical studies, and other data that may be identified and determined to be relevant and useful. Any information to be requested will be determined and approved in advance by counsel and/or the Court. The result of these initial steps ("A" through "C") will be to identify a



statistically significant pool of responses which are representative of the Small Pumper Class actual water use.

- D. Compile and evaluate the selected responses and data to determine the range of current water use amounts, including annual volumes and historical use periods for representative members of the Class. Work products will include summary report, maps, charts, databases and other technical products.
- E. Provide professional opinion regarding typical groundwater use of Small Pumper Class during deposition and/or trial testimony.

Estimated Range of Costs

Task A: \$14,000-\$16,000

Task B: \$19,000-\$21,000

Task C: \$17,000-\$19,000

Task D: \$22,000-\$24,000

Task E: \$ 9,000-\$11,000

Total: \$81,000-\$91,000



## **Exhibit 6**

**Mike McLachlan**

---

**From:** Tim Thompson [timothy.thompson@cardno.com]  
**Sent:** Wednesday, June 29, 2011 10:56 AM  
**To:** Mike McLachlan  
**Cc:** Dan O'leary  
**Subject:** RE: Antelope Valley small pumper water use assessment

Mike,  
Yes, I am glad to conduct this work.

Thank you,  
Tim

***Timothy Thompson, P.G.***

Vice President

**Cardno ENTRIX**

201 North Calle Cesar Chavez, Suite 203, Santa Barbara, CA 93103

**Phone:** 805 962 7679 **Direct:** 805 963 0438 **Mobile:** 805 895 7153 **Fax:** 805 963 0412

**From:** Mike McLachlan [mailto:mike@mclachlanlaw.com]

**Sent:** Wednesday, June 29, 2011 10:29 AM

**To:** Tim Thompson

**Cc:** Dan O'leary

**Subject:** Antelope Valley small pumper water use assessment

Dear Mr. Thompson,

The phase three trial has been completed. We will likely soon be filing another motion to authorize your work on assessing the water use of the small pumper class members. Please confirm that you remain able and willing to conduct this work.

**Mike McLachlan**

---

Law Offices of Michael D. McLachlan, APC

10490 Santa Monica Boulevard

Los Angeles, CA 90025

Office: 310-954-8270

Fax: 310-954-8271

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 10490 Santa Monica Boulevard, Los Angeles, California.

On January 18, 2012, I caused the foregoing document(s) described as **RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK**

to be served on the parties in this action, as follows:

- ( X ) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the Antelope Valley Groundwater matter.
- ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:
- ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- ( ) (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
//s//  
Michael McLachlan

## **EXHIBIT D**

1 WAYNE K. LEMIEUX (SBN 43501)  
2 W. KEITH LEMIEUX (SBN 161850)  
3 LEMIEUX & O'NEILL  
4 4165 E. Thousand Oaks Blvd., Suite 350  
5 Westlake Village, CA 91362  
6 Telephone: (805) 495-4770  
7 Facsimile: (805) 495-2787

8 Attorneys for Defendants and/or Cross-Complainants  
9 LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT,  
10 NORTH EDWARDS WATER DISTRICT, DESERT LAKE COMMUNITY SERVICES DISTRICT,  
11 LLANO DEL RIO WATER CO., LLANO MUTUAL WATER CO., BIG ROCK MUTUAL WATER  
12 CO.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

15 Coordinated Proceeding  
16 Special Title (Rule 1550(b))

) **Judicial Council Coordination No. 4408**

17 ANTELOPE VALLEY GROUNDWATER  
18 CASES

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

19 Included Actions:

) **STIPULATION AND [PROPOSED]**  
) **AMENDED ORDER RE: MOTION FOR AN**  
) **ORDER AUTHORIZING COURT-**  
) **APPOINTED EXPERT WORK**

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

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

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

AND RELATED CROSS-ACTIONS

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Rosamond Community Services District, Los Angeles County Waterworks District No. 40,  
3 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert  
4 Lake Community Services District, California Water Service Company, Quartz Hill Water District, the  
5 Palmdale Water District, and Phelan Pinon Hills Community Services District (collectively "Stipulating  
6 Parties") stipulate to amend the December 11, 2012, the court entered the Order Re: Motion for an Order  
7 Authorizing Court Appointed Expert Work and therefore submit this stipulation and proposed order.  
8 Stipulating parties stipulate to amend the court's above-referenced order to reallocate the court-appointed  
9 expert costs by and among the Stipulating Parties as follows:

10 Los Angeles County Waterworks District 40: 53.61%

11 Palmdale Water District: 25.52%

12 Littlerock Creek Irrigation District: 1.15%

13 Phelan Pinon Hills CSD: 6.56%

14 Quartz Hill Water District: 5.40%

15 Rosamond Community Service District: 4.34%

16 Palm Ranch Irrigation District: 1.64%

17 Desert Lake Community Services Dist.: 0.23%

18 California Water Service Company: 1.33%

19 North Edwards Water District: 0.22%

20 The Stipulating Parties submit the attached [Proposed] Amended Order Re: Motion for an Order  
21 Authorizing Court-appointed Expert Work for Court approval.

22

23 //

24 //

25

26

27

28

*So ORDERED*

*J. Korman (JUDGE OF SUPERIOR COURT) (RET)*  
*9-6-13*

## **EXHIBIT E**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Coordination Proceeding  
Special Title (Rule 1550(b))

**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 325 201

*Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-1500-CV-254-348

*Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist.* Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

*Willis v. Los Angeles County Waterworks District No. 40*, Superior Court of California, County of Los Angeles, Case No. BC 364 553

*Wood v. Los Angeles County Waterworks District No. 40*, Superior Court of California, County of Los Angeles, Case No. BC 391869

*Wood v. A.V. Materials, Inc., et al.*, Superior Court of California, County of Los Angeles, Case No. BC 509546

*Wood v. County of Los Angeles*, Superior Court of California, County of Los Angeles, Case No. BS 143790 [ADD-ON PETITION IS PENDING]

Judicial Council Coordination  
Proceeding No. 4408

For Court's Use Only:  
Santa Clara County Case No.  
1-05-CV-049053  
(for E-Posting/E-Service  
Purposes Only)

Date/Time: Wednesday, December 11, 2013

9:00 am

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*Antelope Valley Groundwater Cases (JCCP 4408)*  
*Los Angeles County Superior Court, Case No. BC 325 201*  
*December 11, 2013 (9:00 am) / Hon. Jack Komar*

F:\komar\antelope Valley\2013-12-11 MO.doc



Location: Superior Court of California  
County of **SANTA CLARA**

**Department 1**

Downtown Court House  
191 N. 1<sup>st</sup> Street  
San Jose, CA 95113

Present: Hon. Jack Komar, Judge  
Melissa Crawford, Reporter

Rowena Walker, Clerk (SC)  
\_\_\_\_\_, Court Attendant (LA)  
\_\_\_\_\_, C.A. Deputy Sheriff (SC)

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MINUTE ORDER:

The outstanding discovery issues between AVEK and Quartz Hill Water District were resolved; the Discovery Conference set for today is taken off calendar.

**FINAL FAIRNESS HEARING/WOOD PLAINTIFFS PARTIAL CLASS ACTION**

**SETTLEMENT** – The settlement between the Wood Plaintiffs and the Settling Defendants, comprised of the City of Lancaster, Palmdale Water District, Phelan Piñon Hill Community Services District, and Rosamond Community Services District was preliminarily approved on October 25, 2013 and came on for Final Fairness Hearing today. There were no class members present who opposed the settlement. The matter was heard and argued. The Court approved the Wood Plaintiffs' Partial Class Action Settlement with the Settling Defendants subject to a final determination on the issue of attorneys' fees and costs and approval of the proposed judgment.

**[Proposed] Discovery Order for Phase 6 Trial, prepared by Attorney Kuhs** – matter was heard and argued, and continued to January 7, 2014 at 10am for further hearing.

The Stipulation posted online on December 11, 2013, between the Bolthouse parties and Phelan Piñon Hill Community Services District, to Extend the Date for Supplemental Expert Witness Designation for Phase 5 Trial is between the two parties and the Court will not sign the Order.

On or about September 6, 2013, Attorney Michael McLachlan submitted to the Court, for *in camera* review, invoices from Cardno/Entrix dated July 23, 2013 and August 13, 2013. No objections have been made by any party, to date, and the Court thereby approved said invoices.

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**PARTIES/ATTORNEYS OF RECORD:**

Present in person:

Michael McLachlan – Wood Plaintiffs

Thomas Bunn – Palmdale Water District

Douglas Evertz – City of Lancaster; Rosamond Community Services District

Christopher Sanders – County Sanitation District Nos. 14 & 20 of Los Angeles County

William Brunick – Antelope Valley East-Kern Water Agency (AVEK)

Steven Orr – City of Palmdale

Jeffrey Dunn – Los Angeles County Waterworks District No. 40

See attached CourtCall list for counsel appearing telephonically.

**REPORTER:**

This matter was reported by Melissa Crawford, CSR #12288. Phone number 408-882-2185. Email: mcrawford@scscourt.org.

**EVENT CALENDAR:**

The Court advises that it will be unavailable from December 12, 2013, up to and including, December 19, 2013.

January 7, 2014 Old Dept 1, Los Angeles	10am	Motion by Wood Plaintiffs for Approval of Award of Attorneys' Fees and Costs; Motion by Wood Settling Defendants for Determination of Good Faith Settlement; Motion by Wood Class Settling Defendants to be Relieved of All Court Orders for Payment of Court-Appointed Expert Fees and Costs; Approval of Proposed Discovery Order No. 6, as Prepared by Attorney Robert Kuhs
January 27, 2014 Old Dept 1, Los Angeles	9am	Motion by Antelope Valley-East Kern Water Agency for Summary Adjudication of All Causes of Action Relating to Ownership of Return Flows; Motion by AGWA for Summary Adjudication
February 10, 2014 Old Dept 1, Los Angeles	9am	Trial, Phase 5 (return flows, federal reserve rights)
April 1, 2014 Old Dept 1, Los Angeles	9am	AGWA's Motions, including, but not limited to: (1) Motion for Judgment on the Pleadings; (2) Motion in Limine for an Order Establishing the Evidentiary Standard for Notice for Proof of Prescription by the Public Water Purveyors; (3) Motion in Limine for an Order Establishing the Necessity of the Public Water Purveyors Proving the Elements of Prescription as to Each Landowner; and (4) Motion for Order Setting Matter for Jury Trial
August 4, 2014 Old Dept 1, Los Angeles	9am	Trial, Phase 6 (prescription + remaining issues)

## **EXHIBIT F**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Included Consolidated Actions:

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

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of  
Riverside, consolidated actions, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los  
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los

Judicial Council Coordination  
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARING ON  
MOTION BY PLAINTIFF  
REBECCA LEE WILLIS AND THE  
CLASS FOR ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES  
AND CLASS REPRESENTATIVE  
INCENTIVE AWARD**

Hearing Date(s): March 22, 2011  
Time: 10:00 a.m.  
Location: Central Civil West

Judge: Honorable Jack Komar

3 Plaintiff Rebecca Lee Willis and the Class have entered into a stipulation of settlement  
4 with defendants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale  
5 Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill  
6 Water District, California Water Service Company, Rosamond Community Service District,  
7 Phelan Piñon Hills Community Services District, Desert Lake Community Services District,  
8 and North Edwards Water District (collectively, the "Settling Defendants").

9 On November 18, 2010, the Court granted Plaintiff's motion for preliminary approval of  
10 class action settlement and on March 1, 2011, the Court granted final approval of the settlement.  
11 Plaintiff and the Willis Class now move for an award of attorneys' fees, reimbursement of  
12 expenses, and an incentive award for lead plaintiff Rebecca Lee Willis.

13 On March 22, 2011, at 10:00 a.m., the Court heard oral argument on the motion seeking  
14 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 as a prevailing party in its action  
15 against the Public Water Suppliers based on the settlement between the parties. The Willis  
16 Class asserts that its attorneys have collectively spent approximately 5,293.9 hours of time on  
17 the case from late 2006 through December 31, 2010 on a contingency basis and have incurred  
18 unreimbursed expenses of over \$86,000, of which over \$64,000 were out of pocket costs.

19 The Willis Class's counsel state that the attorneys' collective lodestar, including work  
20 spent by counsel and by clerks and paralegals and a consultant, is \$2,300,618. The Willis Class  
21 requests a multiplier of 1.5, for a total fee request of \$3,450,927. The Willis Class  
22 acknowledges that certain of its \$86,000 in expenses are not recoverable and seeks an award of  
23 \$65,057.68 in costs. The Willis Class also requests the Court's approval to give plaintiff  
24 Rebecca Willis an incentive payment of \$10,000, which would come out of the attorneys' fee  
25 award.

26 The various opposing parties assert a myriad of reasons why the motion should be  
27 denied in its entirety or the amount awarded significantly reduced, including that the fees are  
28 unreasonable, that the settlement does not achieve a significant benefit for the class, that the

1 class should not be considered a prevailing party since it did not prevail on all causes of action,  
2 that the class did not enforce an important public right, and that the public interest was not  
3 represented by the Willis Class but rather was represented by the public and other water  
4 producers.

5 The City of Lancaster additionally contends that the motion should be denied in its  
6 entirety as it relates to Lancaster because (1) Lancaster does not claim prescriptive rights and  
7 dismissed its claim for prescription long ago, and (2) Lancaster has not signed the settlement  
8 agreement and therefore the Willis Class cannot be considered a "prevailing party" on any  
9 claim involving Lancaster.

10 Palmdale did not file a written opposition but contended at oral argument that any  
11 determination of benefit was premature and the request for fees should be continued to a later  
12 date when the final resolution and the benefits to the class became clear.

13 At the conclusion of the oral argument on the motion, the Court ordered counsel for the  
14 Willis Class to file a declaration from Ms. Willis setting forth her participation in the case in  
15 justification of an incentive award within thirty days and ordered the matter submitted upon  
16 receipt of such declaration.

17 Therefore, the Willis incentive award declaration having been filed, and good cause  
18 appearing, the Court makes the following order.

## 20 ORDER

### 21 Entitlement to Attorneys' Fees

22  
23 The Willis Class seeks attorneys' fees pursuant to Code of Civil Procedure § 1021.5.  
24 Section 1021.5 is a codification of the private attorney general doctrine adopted by the  
25 California Supreme Court in *Serrano v. Priest* (1977) 20 Cal.3d 25 [141 Cal.Rptr. 315, 569  
26 P.2d 1303] (Serrano III). This section allows an award of attorneys' fees to "a successful party"  
27 in an action which has resulted in the enforcement of an important right affecting the public  
28 interest if: a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the

1 general public or a large class of persons, the necessity and financial burden of private  
2 enforcement make the award appropriate, and such fees should not in the interest of justice be  
3 paid out of any recovery. (Code Civ. Proc. § 1021.5; *Press v. Lucky Stores, Inc.* (1983) 34  
4 Cal.3d 311, 317-318 [193 Cal.Rptr. 900, 667 P.2d 704].)

6 The fundamental objective of the private attorney general theory is to encourage  
7 suits effecting a strong public policy by awarding substantial attorney fees to  
8 those whose successful efforts obtain benefits for a broad class of citizens.  
9 (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933  
10 [154 Cal.Rptr. 503, 593 P.2d 200].) Without a vehicle for award of attorney  
11 fees, private actions to enforce important public policies will frequently be  
12 infeasible. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142 [185 Cal.Rptr. 232, 649  
13 P.2d 874].)

12 The decision to award attorney fees rests initially with the trial court: utilizing  
13 its traditional equitable discretion, the trial court must “realistically assess the  
14 litigation and determine, from a practical perspective,” whether the statutory  
15 criteria have been met. (*Baggett v. Gates, supra*, 32 Cal.3d 128, 142; *Mandicino*  
16 *v. Maggard* (1989) 210 Cal.App.3d 1413, 1416 [258 Cal.Rptr. 917].)

16 (*Hull v. Rossi* (1993) 13 Cal. App. 4th 1763, 1766-1767.)

18 Section 1021.5 states, in relevant part:

19 Upon motion, a court may award attorneys’ fees to a successful party against  
20 one or more opposing parties in any action which has resulted in the  
21 enforcement of an important right affecting the public interest if: (a) a  
22 significant benefit, whether pecuniary or nonpecuniary, has been conferred on  
23 the general public or a large class of persons, (b) the necessity and financial  
24 burden of private enforcement, or of enforcement by one public entity against  
25 another public entity, are such as to make the award appropriate, and (c) such  
26 fees should not in the interest of justice be paid out of the recovery, if any.

25 The first step in establishing whether the Willis Class is entitled to fees pursuant to  
26 Section 1021.5 is a determination of whether the Willis Class is a “successful party.”

27 Although it is true that the Willis Class did not obtain all of the relief they requested in  
28 their pleadings, a trial court need not rule in favor of petitioners on every single issue litigated  
for petitions to be “successful” within the meaning of section 1021.5. (*Hull v. Rossi, supra*, 13

*Antelope Valley Groundwater Litigation (Consolidated Cases)*

Los Angeles County Superior Court, Lead Case No. BC 325 201

Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and The Class for Attorneys’ Fees, Reimbursement of Expenses  
and Class Representative Incentive Award

1 Cal. App. 4th at p. 1768.) By eliminating the Public Water Suppliers' prescription claims and  
2 maintaining correlative rights to portions of the Basin's native yield, the Willis Class members  
3 achieved a large part of their ultimate goal – to protect their right to use groundwater in the  
4 future and to maintain the value of their properties. Under these circumstances, they must be  
5 considered "successful parties" for purposes of Code of Civil Procedure § 1021.5.

6 However, the Willis Class is not a successful party with regard to Lancaster. Lancaster  
7 ultimately made no claim on dormant owners' water rights so that it was not acting adversely to  
8 the class. Moreover, Lancaster is not a signatory to the settlement. Consequently, the Willis  
9 Class has not prevailed in any way against Lancaster at this point in the litigation. Therefore,  
10 Lancaster is not responsible for any part of the fees to be paid to the Willis Class.

11 The next step in the Section 1021.5 analysis is a determination of whether a significant  
12 benefit, pecuniary or nonpecuniary, has been conferred on the general public or a large class of  
13 persons. There can be no dispute that the Willis Class is a large class of persons as it is made  
14 up of approximately 70,000 class members. As for the benefit conferred, although the Willis  
15 Class did not recover any monetary payment, it was successful in achieving a significant benefit  
16 by preventing the Public Water Suppliers from proceeding on their prescription claims and by  
17 maintaining certain correlative rights to the reasonable and beneficial use of water underlying  
18 their land. By virtue of the Willis Class Action (and the Woods Class Action), the Court is able  
19 to adjudicate the claims of virtually all groundwater users in the entire Antelope Valley which  
20 adheres to the benefit of every resident and property owner in the adjudication area. Without  
21 virtually all such users as part of the adjudication, the Court could not have complied with the  
22 McCarran Amendment which was necessary to maintain jurisdiction over the federal  
23 government (purportedly the largest land owner and a very large water user) which was  
24 necessary to adjudicate all correlative rights in the basin.

25 Even without the federal government involvement, without the filing of the class action,  
26 it would have been impossible to adjudicate the rights of all persons owning property and water  
27 rights within the valley. The impossibility of 70,000 individual claims by land owners to water  
28 rights being adjudicated in any other fashion needs little further discussion. The inability of the



1 judicial system to conduct such adjudication in any other way is beyond argument. The benefit  
2 to all class members is clear and the benefit to all others living or owning property in the  
3 Antelope Valley is enormous - all water rights will ultimately be established and if necessary  
4 (as alleged) the reasonable and beneficial use of the water will be preserved for all under the  
5 California Constitution.

6 The Willis Class has not received any direct pecuniary benefit. The burden on any  
7 individual class member to maintain this action would have been significantly higher than any  
8 potential benefit to that class member. Only by banding together in a class action were the  
9 members of the Willis Class able to litigate this case.

10 In sum, the Willis Class has met the requirements of Code of Civil Procedure § 1021.5  
11 and is entitled to attorneys' fees.

#### 12 13 Amount of Attorneys' Fees

14  
15 "The starting point of every fee award, once it is recognized that the court's role  
16 in equity is to provide just compensation for the attorney, must be a calculation  
17 of the attorney's services in terms of the time he has expended on the case.  
18 Anchoring the analysis to this concept is the only way of approaching the  
19 problem that can claim objectivity, a claim which is obviously vital to the  
20 prestige of the bar and the courts."

21 (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48, fn. 23, quoting *City of Detroit v.*  
22 *Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470.)

23 [T]he fee setting inquiry in California ordinarily begins with the "lodestar," i.e.,  
24 the number of hours reasonably expended multiplied by the reasonable hourly  
25 rate. "California courts have consistently held that a computation of time spent  
26 on a case and the reasonable value of that time is fundamental to a  
27 determination of an appropriate attorneys' fee award." [Citation.] The  
28 reasonable hourly rate is that prevailing in the community for similar work.  
[Citations.] The lodestar figure may then be adjusted, based on consideration of  
factors specific to the case, in order to fix the fee at the fair market value for the  
legal services provided.

1 (Plcm Group v. Drexler (2000) 22 Cal. 4th 1084, 1095.)

2 Factors to be considered in adjusting the lodestar figure include:

- 3 (1) The novelty and difficulty of the questions involved, and  
4 the skill displayed in presenting them;
- 5 (2) The extent to which the nature of the litigation precluded  
6 other employment by the attorneys;
- 7 (3) The contingent nature of the fee award, both from the point  
8 of view of eventual victory on the merits and the point of view  
9 of establishing eligibility for an award;
- 10 (4) The fact that an award against the state would ultimately  
11 fall upon the taxpayers;
- 12 (5) The fact that the attorneys in question received public and  
13 charitable funding for the purpose of bringing law suits of the  
14 character here involved;
- 15 (6) The fact that the monies awarded would inure not to the  
16 individual benefit of the attorneys involved but the  
17 organizations by which they are employed; and
- 18 (7) The fact that in the court's view the two law firms involved  
19 had approximately an equal share in the success of the  
20 litigation.

21 (See *Serrano III*, *supra*, 20 Cal.3d at p. 49.)

22 Other factors that may be considered include the benefits obtained or results achieved,  
23 the promptness of the settlement, and the amount of attorneys' fees typically negotiated in  
24 comparable litigation. (See *Lealao v. Benefit Cal.* (2000) 82 Cal.App.4th 19, 40, 47, 52.)

25 "If . . . a plaintiff has achieved only partial or limited success, the product of  
26 hours reasonably expended on the litigation as a whole times a reasonable  
27 hourly rate may be an excessive amount. This will be true even where the  
28 plaintiff's claims were interrelated, nonfrivolous, and raised in good faith.  
Congress has not authorized an award of fees whenever it was reasonable for a  
plaintiff to bring a lawsuit or whenever conscientious counsel tried the case with  
devotion and skill. Again, the most critical factor is the degree of success  
obtained.

*Antelope Valley Groundwater Litigation (Consolidated Cases)*

*Los Angeles County Superior Court, Lead Case No. BC 325 201*

*Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and The Class for Attorneys' Fees, Reimbursement of Expenses  
and Class Representative Incentive Award*

1  
2 "There is no precise rule or formula for making these determinations. The [trial]  
3 court may attempt to identify specific hours that should be eliminated, or it may  
4 simply reduce the award to account for the limited success. The court  
5 necessarily has discretion in making this equitable judgment...."

6 (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 247-248, quoting *Hensley v.*  
7 *Eckerhart* (1983) 461 U.S. 424, 436-437, 439-440.)

8  
9 The Willis Class argues that its counsel's lodestar of \$2,300,618 is reasonable given the  
10 complexity of the case. The Opposing Parties contend that the amount of time expended by  
11 Class Counsel was excessive and, in many instances, unnecessary. While it is possible to use  
12 hindsight to look back and determine that effort expended by Class Counsel on a particular  
13 issue or motion might have been unnecessary, that does not mean that Class Counsel is not  
14 entitled to fees for that work. Absent circumstances rendering the award unjust, an attorneys'  
15 fee award should ordinarily include compensation for all the hours *reasonably* spent, including  
16 those relating solely to the fee. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133.) Further, the  
17 trial court has broad authority to determine the amount of a reasonable fee. (*Id.* at p. 1095.) A  
18 trial court may make its own determination of the value of the services contrary to, or without  
19 the necessity for, expert testimony. (*Id.* at p. 1096.) Therefore, the Court can use its knowledge  
20 of the case and the efforts of Class Counsel to determine an equitable fee award.

21 Although an attorneys' fee award is generally based on the lodestar amount, in this  
22 instance there are several factors that weigh in favor of reducing the lodestar amount. First,  
23 even though the Willis Class obtained significant relief in this action, the Willis Class did not  
24 prevail on a number of causes of action and was unsuccessful in recovering any direct monetary  
25 benefit. Second, the fee award in this case will ultimately fall on taxpayers. Moreover, as  
26 pointed out by the Opposing Parties, some taxpayers are also ratepayers of various public  
27 agencies and would, in effect, have to pay their portion of the fee award twice. Additionally,  
28 although nobody can dispute that this is a complicated case, Class Counsel did not come into  
the case with much, if any, expertise in water law and properly associated other counsel with

1 such expertise. Then, additional time was spent by counsel educating themselves, thereby  
2 increasing fees somewhat beyond what appears reasonable necessary. Also, in reviewing the  
3 time spent on certain law and motion matters, it appears that an unnecessary amount of time  
4 was spent by counsel on various matters, in particular pleading matters, involving well settled  
5 legal principles. Moreover, by "block billing," counsel have made it impossible for the Court to  
6 analyze the time spent on the various functions performed by each counsel.<sup>1</sup>

7 This case included many parties who were not directly adverse to the Willis Class  
8 because they were not part of the Willis Class's action, many of whom had a common interest  
9 in defending against prescription. The Public Water Suppliers should not be required to pay  
10 attorneys' fees that were generated as a result of actions taken by non-parties to the Willis  
11 Class's action.

12 The Willis Class asserts that it is only seeking fees from the parties that have asserted  
13 claims to prescriptive rights. Los Angeles County Waterworks District No. 40 ("District 40")  
14 requests that the attorneys' fee award should be apportioned among each party that pumps from  
15 the Basin due to the involvement of those parties in this case even though those parties are not  
16 named as defendants in the Willis Class's action. If the Court were to order that other parties  
17 must also pay fees, the Court would be going beyond the scope of the requested relief.  
18 Moreover, in the Court's consolidation order, the Court states that "[c]osts and fees could only  
19 be assessed for or against parties who were involved in particular actions." (Order Transferring  
20 and Consolidating Actions for all Purposes, p. 3:13-14.) Such other parties are not parties to the  
21 settlement; the adjudication as it relates to them is ongoing and the Willis Class cannot be  
22 considered a prevailing party as to them. Accordingly, any fee award that is granted at this  
23 point may only be awarded against the parties to the settlement.

24 Regarding Class Counsel's billing rates, Class Counsel have provided evidence that  
25 their billing rates are reasonable. The lodestar was based on hourly rates of \$400 per hour for  
26 Ralph B. Kalfayan, \$450 per hour for David B. Zlotnick, and lesser amounts for associates who

27  
28 <sup>1</sup> Block Billing involves showing various functions performed lumping together time expended without indicating  
how much time is allotted to each function.

1 worked on the case. These rates are reasonable. The Court notes, however, that in at least one  
2 case (Greg James) a higher billing rate was used because this was a contingent fee case. The  
3 fact that this is a contingent fee case should not be counted twice as a factor for raising the  
4 amount of the award – in the hourly rate charged and in the multiplier awarded.

5 This Court has presided over this case since the order of coordination and is familiar  
6 with the work of counsel for all parties, the complexity of the various issues, and the time  
7 necessarily involved in effectively representing the Willis Class. The Court has carefully  
8 reviewed all of the time claimed in the lodestar computation. The principal cause of action  
9 brought on behalf of the class was the declaratory relief cause of action which concededly was  
10 defensive in substance. Importantly, the fees should reflect the necessity of bringing the action  
11 to protect the class members' water rights against the claim of prescriptive rights by the Public  
12 Water Producers. However, the lodestar should also be reduced to account for the fact that the  
13 fees requested include fees incurred as a result of the involvement of parties that are not parties  
14 to the Willis Class's case. The lodestar should also be reduced based on the following other  
15 factors: the Willis Class did not prevail on a number of causes of action and was unsuccessful in  
16 recovering any direct monetary benefit; the fee award in this case will ultimately fall on  
17 taxpayers; and Class Counsel did not come into the case with much, if any, expertise in water  
18 law and appear to have spent more time educating themselves than would otherwise be  
19 necessary.

20 Accordingly, in reviewing all the time spent by counsel and others, considering the time  
21 accorded to various of the issues by relative import and consequence, it is the decision of the  
22 Court that reasonable attorneys' fees for the class in this matter is the sum of \$1,839,494.

#### 23 Costs

24  
25  
26 The Willis Class seeks an award of \$65,057.68 in costs. District 40 argues that Code of  
27 Civil Procedure § 1021.5 only authorizes recovery of attorneys' fees, not costs. District 40 is  
28 correct. (See *Benson v. Kwikset Corp.* (2007) 152 Cal. App. 4th 1254, 1283.) Costs are

1 authorized, however, by Code of Civil Procedure §§ 1032 and 1033.5. (Code Civ. Proc.  
2 §§ 1032 and 1033.5; see also *Benson v. Kwikset Corp.*, *supra*, 152 Cal. App. 4th at p. 1283.)  
3 No party has moved to tax the costs requested by the Willis Class. Moreover, the costs  
4 requested appear to have been reasonably necessary. Accordingly, the Willis Class's request  
5 for costs is GRANTED.

6  
7 **Incentive Award**

8 The Willis Class seeks to give lead plaintiff Rebecca Lee Willis an incentive award of  
9 \$10,000 to be paid out of the attorneys' fee award. Based upon the declaration submitted by  
10 Ms. Willis, the Court finds that an incentive award is justified. This class action would not  
11 likely have been initiated but for her involvement in this case. Counsel are authorized to pay  
12 her an incentive award in the sum of \$10,000 from the attorneys' fee award.

13  
14 **CONCLUSION**

15  
16 The Willis Class's request for costs is GRANTED.

17  
18 Lead plaintiff Rebecca Lee Willis may be awarded an incentive payment in the sum of  
19 \$10,000 to be paid by counsel out of attorneys' fees awarded.

20  
21 Attorneys' fees in the sum of \$1,839,494 are awarded to counsel for the Willis Class  
22 against Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water  
23 District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water  
24 District, California Water Service Company, Rosamond Community Service District, Phelan

25 //


26 //

27 //

1 Piñon Hills Community Services District, Desert Lake Community Services District, and North  
2 Edwards Water District.

3  
4 SO ORDERED.

5  
6  
7 Dated: 5-4-2011

  
8 Hon. Jack Komar  
9 Judge of the Superior Court  
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**EXHIBIT G**



**LAFFEY MATRIX -- 2003-2014**  
**(2009-10 rates were unchanged from 2008-09 rates)**

	Years (Rate for June 1 - May 31, based on prior year's CPI-U)										
Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
20+ years	380	390	405	425	440	465	465	475	495	505	510
11-19 years	335	345	360	375	390	410	410	420	435	445	450
8-10 years	270	280	290	305	315	330	330	335	350	355	360
4-7 years	220	225	235	245	255	270	270	275	285	290	295
1-3 years	180	185	195	205	215	225	225	230	240	245	250
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140	145	145

*Explanatory Notes:*

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412 (b) (Equal Access to Justice Act). The matrix does **not** apply in cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). *See Laffey*, 572 F. Supp. at 371.
3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g.*, *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

**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 December 23, 2013, I served the within document(s):

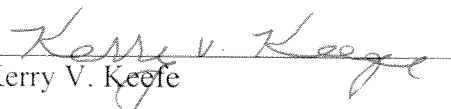
DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO (1) MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT BY THE WOOD CLASS SETTLING DEFENDANTS; (2) MOTION OF WOOD CLASS SETTLING DEFENDANTS TO BE RELIEVED OF ALL COURT ORDERS FOR PAYMENT OF COURT-APPOINTED EXPERT FEES AND COSTS; AND (3) MOTION FOR APPROVAL OF AWARD OF ATTORNEY FEES AND COSTS

- ☒ 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 December 23, 2013, at Irvine, California.

  
Kerry V. Keefe