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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY 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-1500CV-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

AND RELATED ACTIONS

**Judicial Council Coordination Proceeding
No. 4408
(Assigned to the Hon. Jack Komar)**

Santa Clara Case No. 1-05-CV-049053

LASC Lead Case: No. BC325201

**RESPONSE AND OBJECTION OF CROSS-
DEFENDANT WEST VALLEY COUNTY
WATER DISTRICT TO WOOD
PLAINTIFFS' MOTION FOR
"CLARIFICATION" OF ORDER ON ITS
MOTION FOR AWARD OF ATTORNEY
FEES, COSTS AND INCENTIVE AWARD**

Hearing Date: May 25, 2016
Time: 9:00 a.m.
Dept: Room 222

Cross-Defendant West Valley County Water District ("West Valley") hereby responds and
objects to Plaintiff Richard Wood's ("Wood Plaintiffs") Motion for Clarification of Order on
Motion for Award of Attorney Fees, Costs and Incentive Award ("Motion").

INTRODUCTION

On April 25, 2016, the court issued its “Order after Hearing on April 1, 2016” (“Order”), which included a ruling on Wood Plaintiffs’ Motion for Attorneys’ Fees (“Fee Motion”).

On May 3, 2016, the Wood Plaintiffs filed the Motion seeking “clarification” of the Order, including a proposed “amendment or further order clarifying the identity of the Parties subject to the award of fees and costs...” [Motion, pg. 3:6-7] Wood Plaintiffs further stated that the Order refers to “the ‘public water producers’ as a group, which is unclear as to whether it includes West Valley Water District and Boron Community Services District.” [Motion, pg. 3:23-25]

There are no factual or legal bases for the Order to be amended to now impose financial and legal liability on West Valley for the attorneys’ fees awarded in the Order to the Plaintiff Wood.

ARGUMENT

1. THE WOOD PLAINTIFFS’ MOTION FOR FEES NEVER SOUGHT FEES AGAINST WEST VALLEY

On January 27, 2016, the Wood Plaintiffs filed the Fee Motion for an award of attorneys’ fees and costs against only seven entities, **each of which had filed claims for prescriptive rights**, namely: California Water Service Company, Desert Lake Community Services District, Littlerock Creek Irrigation District, Los Angeles Waterworks District No. 40, North Edwards Water District, Palm Ranch Irrigation District, and Quartz Hill Water District. The seven entities named in the Fee Motion were referred throughout as the “Settling Defendants.” [Fee Motion, pg. 3:6-10]

The City of Palmdale was also identified in the Fee Motion, but the Wood Plaintiffs expressly stated that, “Per the terms of the 2015 Settlement, the City of Palmdale is not subject to attorneys’ fees or costs because it dropped its prescription claims in 2008.” [Fee Motion, pg. 3, FN1.]

The Fee Motion also stated that the allocation of the claimed fees “as to the seven defendants in question” could be awarded “jointly and severally,” or “the Court could allocate them” amongst the seven. [Fee Motion, pg. 15:20-21]

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1 Wood Plaintiffs' counsel, Michael D. McLachlan, submitted a Declaration in support of his
2 Fee Motion specifically referencing the percentages and formulas for allocating the award of
3 attorneys' fees and costs amongst the "remaining seven, for purposes of this motion." [See,
4 Declaration of Michael D. McLachlan in Support of Motion for Award of Attorneys' Fees, pgs, 19-
5 20, Paras. 59-62]

6 West Valley was never identified as a party against whom fees were being sought in the Fee
7 Motion: the Wood Plaintiffs never sought an award of attorneys' fees or costs against West Valley.

8 During the hearing on April 1, 2016, counsel for the Wood Plaintiffs specifically stated
9 during oral argument that the Fee Motion was not seeking any award against West Valley
10 County Water District or Boron Community Services District, both of whom were brought into
11 the action late [West Valley was not even brought into the action until approximately August 2014,
12 long after the Settling Defendants had resolved the prescription issue against the Wood Plaintiffs],
13 and because neither of them filed Cross-Complaints.

14 Attorney MacLaughlan also reaffirmed that the Fee Motion was only against those Settling
15 Defendants who filed Cross-Complaints asserting claims for prescriptive rights.

16 Since no attorney fee award claim was made against West Valley, it did not file opposition
17 papers to the fee award since it was not a party to the issue. To now have counsel attempt to
18 broaden the Wood Plaintiffs' claim to include West Valley, where he expressly disclaimed the issue
19 previously and where there are no facts to support such an argument, would be violative of West
20 Valley's due process rights to now have any portion of the attorneys' fees and costs awarded which
21 were awarded against the seven Settling Defendants re-allocated to now impose liability on West
22 Valley.

23
24 **2. WEST VALLEY NEVER FILED A CROSS-COMPLAINT FOR A**
25 **PRESCRIPTIVE RIGHT, AND THEREFORE PLAINTIFF WOOD**
26 **CAN NOT BE A PREVAILING PARTY AGAINST WEST VALLEY**

27 The Wood Plaintiffs sought an award of attorneys' fees only against the Settling
28 Defendants, pursuant to CCP §1021.5, because each had filed a Cross-Complaint asserting a
prescriptive right claim.

1 CCP §1021.5 provides that an award of attorneys' fees may only be awarded "to a
2 successful party [or prevailing party] against one or more opposing parties...." (See, *Connerly v.*
3 *State Personnel Bd.* (2006) 37 Cal.4th 1169 – only an opposing party can be found liable for
4 attorney fees under private attorney general statute.)

5 The Wood Plaintiffs' Fee Motion against the Settling Defendants was premised on the issue
6 that each of the seven Settling Defendants filed Cross-Complaints asserting "prescriptive claims
7 against the class," and then later in early 2015 released their prescriptive claims as part of their
8 settlement with the Wood Plaintiffs. [Fee Motion, pg. 5:7-10.] This was expressly reaffirmed in
9 the Wood Plaintiffs' Reply Brief filed on March 25, 2016. [Reply Brief, p. 2:2-19.]

10 The Wood Plaintiffs never filed an action against West Valley,¹ and West Valley never filed
11 a Cross-Complaint against the Wood Plaintiffs asserting a prescriptive claim.

12 In the Statement of Decision issued by the court on December 23, 2015 the court
13 specifically defined the "Public Water Suppliers" as those public water suppliers who had filed
14 cross-complaints, and immediately noted thereafter that "West Valley County Water District and
15 Boron Community Services District are also public water supplier but not cross-complainants."
16 [Statement of Decision, pg. 1:6-17]

17 Therefore, with the Wood Plaintiffs and the Settling Parties having resolved the issue of the
18 prescriptive rights claims amongst themselves, and because the Wood Plaintiffs never sued West
19 Valley, and because West Valley never asserted a prescriptive rights claim against the Wood
20 Plaintiffs, West Valley and the Wood Plaintiffs were never opposing parties in the litigation, and
21 there is no basis for determining now that the Wood Plaintiffs are a prevailing party against West
22 Valley for purposes of awarding fees under CCP §1021.5, or that West Valley has any liability for
23 any attorneys' fees or costs claimed by the Wood Plaintiffs.

24 ///

25 _____
26 ¹ In August 2014, Cross-Defendant West Valley was brought into the action based on the Cross-
27 Complaints filed by Antelope Valley East-Kern Water Agency, Palmdale Water District, Quartz
28 Hill Water District, Rosamond Community Services District, and Waterworks District No. 40 of
Los Angeles County. West Valley did not file a cross-complaint, and was never named as a
defendant or cross-defendant by Plaintiff Wood.

1 No portion of the attorneys' fees and costs awarded to the Wood Plaintiffs in the Order can
2 now be re-allocated to West Valley pursuant to CCP §1021.5.

3
4 **CONCLUSION**

5 To the extent there is any ambiguity in the Order (which there really is none since the Order
6 mirrors the Fee Motion against the seven Settling Defendants), the Order must specifically provide
7 that the attorneys' fees and costs awarded to the Wood Plaintiffs pursuant to the Fee Motion are
8 only owed by the seven entities actually named in the Fee Motion, namely: California Water
9 Service Company, Desert Lake Community Services District, Littlerock Creek Irrigation District,
10 Los Angeles Waterworks District No. 40, North Edwards Water District, Palm Ranch Irrigation
11 District, and Quartz Hill Water District.

12 There were not any pleaded issues between the Wood Plaintiffs and West Valley, and the
13 Wood Plaintiffs are not a prevailing party against West Valley, as defined by CCP §1021.5.

14 Date: May 12, 2016

GRAHAM • VAAGE LLP

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16
17 By: 

ARNOLD K. GRAHAM

ALEXEI BRENOT

Attorneys for Cross-Defendant
West Valley County Water District

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 500 North Brand Boulevard, Suite 1030, Glendale, California 91203-1923.

On May 12, 2016, I served the foregoing document described as: **RESPONSE AND OBJECTION OF CROSS-DEFENDANT WEST VALLEY COUNTY WATER DISTRICT TO WOOD PLAINTIFFS' MOTION FOR "CLARIFICATION" OF ORDER ON ITS MOTION FOR AWARD OF ATTORNEY FEES, COSTS AND INCENTIVE AWARD**, on the interested parties as follows:

 X **BY ELECTRONIC FILING:** by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

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

Executed on May 12, 2016, at Glendale, California.



FRANCINE STINNETT