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SECTION 6103

Attorneys for Cross-Defendants County Sanitation Districts Nos. 14 and 20 of Los Angeles
County

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 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

Judicial Council Coordination No. 4408

CLASS ACTION

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

ASSIGNED FOR ALL PURPOSES TO:
Judge: Honorable Jack Komar

OPPOSITION TO LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S BRIEF
RE EQUITABLE APPORTIONMENT OF
WILLIS CLASS FEE AWARD

Date: March 22, 2011
Time: 10:00 a.m.
Dept: 1
Judge: Hon. Jack Komar

COUNTY SANITATION DISTRICTS NOS. 14 AND 20 OF LOS ANGELES COUNTY

("Districts") hereby submit this opposition to Los Angeles County Waterworks District No. 40's
Brief regarding Equitable Apportionment of Willis Class Fee Award.

INTRODUCTION

Waterworks has requested this Court to apportion fees associated with the Willis class action among parties who are not “opposing parties” in the Willis class action. In its attempt to persuade this Court, Waterworks has both misinterpreted and misquoted the authority upon which it relies.

The County Sanitation Districts of Los Angeles County are independent special districts that serve, among other things, the wastewater treatment and reclamation needs of Los Angeles County and operate wastewater treatment facilities in the Antelope Valley and on behalf of their rate paying customers. They were named as defendants in 2006 , and although they subsequently filed a cross complaint to protect their rights to retain control over the disposition of their recycled water and to ensure protection of their rights to pump groundwater for use on their overlying property, the Districts did not file a cross complaint against the Willis Class. The Districts were also not named as a defendant by the Willis Class.

II

THE DISTRICTS ARE NOT OPPOSING PARTIES IN THE WILLIS CLASS ACTION

Waterworks asserts that those not named as defendants in the Willis Class Action are “opposing parties” within the meaning of CCP section 1021.5 and therefore responsible for a portion of the Willis Class attorney’s fees. In support of its assertion, Waterworks relies upon *Mejia v. City of Los Angeles* (2007) 156 Cal.App. 4th 151 (“*Mejia*”), but the *Mejia* case does not support the argument. The Districts are not “opposing parties” within the meaning of CCP section 1021.5.

In *Mejia*, the real party in interest, from which the plaintiff sought attorney’s fees, was defined by the Court as an “opposing party” within the meaning of CCP section 1021.5 because it “was and continues to be a party to this litigation.” (*Id.* At 160.) In the Willis Class Action, however, the Districts have never been a party to the litigation. Pursuant to CCP 1021.5, the court may award attorneys’ fees to a successful party against one or more “opposing parties.” The court in *Mejia* held that the meaning of the term “party” as used in this statute is a person “by or against whom a suit is brought.” (*Mejia* at 160.) The Willis Class in its Second Amended

1 Class Action Complaint for Damages and Equitable Relief did not bring suit against the
2 Sanitation Districts and the Sanitation Districts have never been put on notice of any claim by the
3 Willis Class against the Sanitation Districts.¹ Therefore, the Sanitation Districts are not an
4 opposing party for purposes of attorneys' fees. Waterworks also argues that the Sanitation
5 Districts can be considered an opposing party if it can be considered a real party in interest. The
6 *Mejia* court noted that ordinarily a "party" is a plaintiff or defendant, but held a real party in
7 interest in a mandamus proceeding can be regarded as a party to the litigation. (*Mejia* at 160.)
8 The court noted, however, that in all of the cases in which a real party in interest was liable for
9 1021.5 fees, the real parties in interest either has a direct interest in the litigation, the furtherance
10 of which was generally responsible for the policy or practice that gave rise to the litigation, or
11 were codefendants with a direct interest intertwined with that of the principal defendant. (*Mejia*
12 at 160.). Those cases were California Environmental Quality Act cases in which the public
13 agency was sued after approving a project. The real party in interest was the entity seeking
14 approval of the project and thus had a direct interest in the litigation. Here, the argument against
15 inclusion as a real party in interest fails for two reasons. First, this is not a mandamus
16 proceeding in which the Willis class has challenged a particular decision of the public water
17 suppliers. Second, no other party was acting in furtherance of the interests of the Sanitation
18 Districts. For these reason, the Sanitation Districts cannot be considered a real party in interest
19 and thus subject to fees under 1021.5.

20 Waterworks also relies upon *Connerly v. State Personnel Board* (2006) 37 Cal.4th 1169.
21 To wit, "...the California Supreme Court found that a **party's active participation alone** can
22 convert an amicus curiae into a real party in interest that is liable for attorneys fees under CCP
23 section 1021.5. (*Id* at pp. 1181-1182.) (Emphasis added.)" (Waterworks Brief at 3, lines 6-8.)
24 This is simply inaccurate. In fact, "... **no court has held that active participation alone,**
25 **without a direct interest in litigation, can be grounds for awarding section 1021.5 fees.**" (*Id.* at
26 1181) [Emphasis added.]

27 ¹ The Willis Class named only the Public Water Suppliers and related entities as defendants that have asserted
28 claims to prescriptive rights. This has also been confirmed by a recent filing of the Willis Class on March 15, 2011,
in response to this same request for apportionment.

1 The Districts do not dispute that active participation is a factor under CCP section 1021.5
2 as to whether an entity is considered an opposing party. However, it is not the sole factor that can
3 be relied upon and even if it were, the Districts have had minimal, if any, active participation in
4 the Willis Class Action. For these reasons, the Districts have no liability to the Willis Class
5 pursuant to CCP section 1021.5.

6 III

7 THE DISTRICTS ARE NOT BOUND BY THE WILLIS CLASS ACTION 8 SETTLEMENT AGREEMENT

9 In its Order Approving Willis Settlement dated March 1, 2011, this Court found that “the
10 settlement does not prejudice the legal rights of any non-settling parties, and such parties retain
11 any and all rights they currently have to contest any of the issues as to which the Settling Parties
12 agreed among themselves.” Simply put, the non-settling parties are not bound by any of the
13 terms and conditions set forth in the settlement agreement. As non-settling parties, the Districts
14 are therefore not in any way obligated to pay any portion of attorney’s fees.

15 IV

16 WATERWORKS HAS NOT FOLLOWED THE PROPER PROCEDURE FOR 17 REQUESTING APPORTIONMENT

18 Waterworks’ Apportionment Brief is not an opposition to Willis’ Motion for an Award of
19 Attorney’s fees. Waterworks filed its opposition separately. What the Court has in Waterworks’
20 Apportionment Brief is a document that raises separate and distinct issues from those raised in
21 the Willis Motion and an attempt by Waterworks to bypass the procedural requirements of a
22 noticed motion. While the Sanitation Districts do not believe that apportionment is available to
23 require a contribution from the Sanitation Districts under section 1021.5, in order for
24 Waterworks to raise entirely different issues, Waterworks must follow the motion requirements
25 set forth in the Code of Civil Procedure, which it has not. Failing to do so has denied the
26 Districts due process of law.

V

CONCLUSION

The Districts respectfully request that this Court deny Waterworks' request of apportionment of any or all attorney's fees associated with the Willis Class Action.

Dated: March 16, 2011

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: //S//
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