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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 (Honorable Jack Komar) Lead Case No. BC 325201 Case No.: BC 391869 **NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEY FEES, COSTS AND INCENTIVE AWARD** **[filed concurrently with Declarations of Michael D. McLachlan, Daniel M. O'Leary, Richard M. Pearl, Richard A. Wood, and David B. Zlotnick]** Location: Dept. TBA Santa Clara Superior Court 191 N. First Street San Jose, California Date: March 21, 2016 Time: 1:30 p.m.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 21, 2016, at 1:30 p.m., or as soon thereafter as the matter may be heard, at 191 North First Street, San Jose, California, in a department to be determined by the Court, Richard Wood moves for approval of an award of attorney fees, costs and an incentive award.

Plaintiff brings this motion pursuant to California Code of Civil Procedure section 1021.5.

The Motion is based on this Notice, the Memorandum of Points and Authorities, the Declaration of Michael D. McLachlan, the Declaration of Daniel M. O'Leary, the Declaration of Richard M. Pearl, the Declaration of Richard A. Wood, the Declaration of David B. Zlotnick, the various documents attached thereto, the records and file herein, and on such evidence as may be presented at the hearing of the Motion.

DATED: January 27, 2016

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

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
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By:_____
MICHAEL D. MCLACHLAN
Attorneys for Plaintiff and the Class

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After nearly eight years of litigation, through five phases of trial consuming nearly 6,000 hours of attorney time, Plaintiff Richard Wood entered into a Stipulation of Settlement ("Agreement" or "Settlement") with eight Non-Settling Defendants: California Water Service Company, Desert Lake Community Services District, Littlerock Creek Irrigation District, Los Angeles Waterworks District No. 40 ("District 40"), North Edwards Water District, Palm Ranch Irrigation District, Quartz Hill Water District , and the City of Palmdale (collectively, the "Settling Defendants").[1] This Settlement has received final approval from the Court and judgment has been entered.

Class counsel now seeks approval of an award of attorney's fees at a lodestar of $3,348,160, with a multiplier of 2.5, and costs of $75,242.06. Plaintiff also seeks an incentive award in the form of a more complete water right of 5 acre-feet per year or, alternatively, a monetary payment of $25,000.

II. RELEVANT FACTS

A. History of the Small Pumper Class Action

The Court is familiar with the history of this action and the details surrounding the Small Pumper Class (the "Class"). Briefly, Plaintiff Richard Wood ("Plaintiff") filed this action on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who have been pumping less than 25 acre feet year ("afy") of groundwater from the Antelope Valley Groundwater

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[1] In 2013, the Class settled with the following Defendants: City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, and Rosamond Community Services District. Pursuant to the 2015 Stipulation for Entry of Judgment, which has been approved by the Court under the master judgment, these Settling Defendants are not subject to this fee motion. 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.

Basin ("Basin"). Plaintiff filed this action so that he and the members of the Class could continue to extract groundwater from the Basin for reasonable and beneficial use. This action was, in large measure, filed to contest claims of prescriptive rights asserted by the "Settling Defendants." The court certified Class by Order dated September 2, 2008, in which the court defined the Wood Class as:

> All private (i.e., non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present. The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company.

After three rounds of Class Notice in 2009, 2013, and 2015, as well as a litany of motions to add or drop Class members, the total Class size at judgment was just a few people shy of 4,300.

B. The Litigation

Class Counsel was first contacted about this litigation in the summer of 2007, and subsequently declined to participate for a variety of reasons. (McLachlan Decl., ¶ 44.) Class Counsel for the Willis Class, with some assistance from Mr. McLachlan, tried for eight months to located counsel for the Small Pumper Class, to no avail. (Zlotnick Decl., ¶¶ 5-9; McLachlan Decl. ¶ 45; O'Leary Decl. ¶ 8.)

Ultimately, in May of 2008, Class counsel agreed to represent Richard Wood, and shortly thereafter filed a Complaint on behalf of the Class. Class counsel litigated the matter through at least five phases of trial, and several other related evidentiary hearings, while simultaneously engaging in long-running settlement discussions. The Declaration of Michael D. McLachlan contains a

more detailed summary of the types of work that were performed over these eight years. (¶¶ 8-25.)

C. The Settlements

In 2013, the Class reached a partial settlement with four of the defendants (*see* FN 1, *ante*) on terms substantially similar to the final settlement, but containing less detail on elements of the physical solution than the 2015 Settlement. (McLachlan Decl. ¶ 23.) In 2015, the Class settled with the remaining eight defendants in the *Wood* action, identified above in Section I.

As part of the final settlement, the Settling Defendants released their prescription claims against the Class. The terms of this Settlement were memorialized, in part, in the Judgment and Physical Solution (the "Judgment") entered by the Court in December of 2015. The terms of the Settlement allows larger-producing Class members to pump up to 3 acre-feet of water per year, but does not over-allocate water to the Class because the Class' allocation is predicated on an average water use of 1.2 acre-feet per year (a number closely supported by Mr. Thompson's report). (McLachlan Decl., ¶ 27.) Hence, there is flexibility and respect for the diverse forms of historical water use within the Class. And nearly all of the Class members will be free from any cutbacks or replacement assessments, which cannot be said for any other party but for the United States. The settlement also minimizes the burdensome costs of installing and monitoring meters, and instead leaves the watermaster with a more flexible system whereby the bulk of the smaller water users in the Class can be left alone.

Of particular note is the fact that Class members have substantial protection from future reductions of their water rights, unlike nearly any other overlying party in this adjudication. The Class is not subject to Section 18.5.10 ("Change in Production Rights in Response to Change in Native Safe Yield") of the Judgment because the Class is not listed on Exhibit 3 or 4. (McLachlan Decl., ¶ 28.) There are only three parties in this position: (1) The United States; (2) the

State of California; and (3) the Small Pumper Class. Additionally, the Class has preserved its rights under Water Code section 106, which provides priority to domestic use over farming. (Judgment §§ 5.1 and 5.1.3.1.) These provisions give the Class members a very strong chance of persisting in their way of lives indefinitely into the future, and well-beyond the ability of Class counsel to protect their interests in Court. Class counsel have done everything possible protect the Class members' existing rights, but also to ensure that the Class members are in the best possible position in the future. (*Ibid.*)

D. Attorneys' Fees and Costs Incurred.

Class counsel have worked a total of 5,815.1 attorney hours and incurred 842.6 hours of paralegal time on this case. (McLachlan Decl., ¶ 29; O'Leary Decl., ¶ 3.) In conjunction with the 2013 Settlement and by stipulation of the parties, Class Counsel was paid attorneys' fees totaling $719,829 and costs in the amount of $17,038. (McLachlan Decl., at ¶ 30.) Pursuant to the 2013 settlement, Class Counsel have been compensated for 1276.3 hours of attorney time, and 163.1 hours of paralegal time, leaving a total of 4,538.8 attorney hours and 679.5 paralegal hours at issue in this motion. (*Id.* at ¶ 32.)

To date, Class counsel has incurred a total of $92,280.14 in litigation costs and expenses. (McLachlan Decl., ¶ 33; O'Leary Decl., ¶ 4.) Pursuant to the 2013 settlement, Class counsel were paid $17,038.08 for cost reimbursement by the settling defendants, leaving the total sum at issue in this motion of $75,242.06. (McLachlan Decl., at ¶ 34; O'Leary Decl., ¶ 4.)

Class counsel requests a lodestar rate of $3,348,160, based on hourly rates of $720 for the 4538.8 hours claimed by Plaintiff's two attorney and $110-125 per hour for the 679.5 paralegal hours claimed, as shown in the following chart:

TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
Michael D. McLachlan	4,184.9	$720	$3,013,128
Daniel M. O'Leary	353.9	$720	$254,808
Paralegals	314.2	$110	$34,562
Paralegals	365.3	$125	$45,662
TOTAL			**$3,348,160**

The requested hourly rates are reasonable market rates. (Pearl Decl. ¶¶ 10-15; McLachlan Decl. ¶ 42.)

E. The Attorney Fee Multiplier

Class counsel request of multiplier of 2.5. There are a wide array of facts supporting this multiplier request, including (in summary form): the novelty and complexity (McLachlan Decl., ¶¶ 8-25); the excellent outcome for the nearly 4,300 members of the class (¶¶26-28; Wood Decl., ¶ 20); the case's long duration (eight years); the risks of loss and uncertainty (McLachlan Decl., ¶¶ 44-50); the high quality and great efficiency of the work (¶¶ 36-41); the inability to take on other business (¶¶ 51-54); as well as the great personal and financial toll this case has taken on counsel (¶¶ 51-54). (McLachlan Decl., ¶ 43; *see generally*, O'Leary Decl., ¶¶ 5-9; Pearl Decl., ¶¶ 19-28.) In short, this is a highly unique, long-running case of great public importance, and one that was highly undesirable to the pool of available and qualified attorneys' who turned the case down. (Zlotnick Decl., ¶¶ 5-9; McLachlan Decl. ¶ 45; O'Leary Decl. ¶ 8.)

F. Incentive Award to Richard Wood

Richard Wood has represented the Class with the highest possible level of excellence and devotion. (McLachlan Decl., ¶¶ 63-64.) Indeed, in 15 years of class action experience, Class Counsel has never had a single client, nor even a collection of clients, put 2,200 hours and nearly $10,000 of their own money into

a lawsuit without ever uttering single complaint. (*Id.* at 63; Wood Decl., ¶¶ 3-4.) This is unheard of. From start to finish, Richard Wood held fiercely and decisively to the interest of the Class in every detail, and the result we achieve is as much a testament to his refusal to accept anything less than what he believed to be fair. (McLachlan Decl., ¶ 64.) The benefit that he has conferred on the Small Pumper Class and the Antelope Valley as a whole cannot be overstated.

Setting aside the money he spent and time commitment in fighting for the Class, Richard Wood set his own personal interests aside. Mr. Wood has historically pumped more water than the average Class member, and so had some incentive to go it on his own and prove up a larger water right than 3 acre-feet per year. (Wood Decl., 6-19.) He surrendered that right to look out for all the Class Members. (McLachlan Decl., ¶ 64.) Mr. Wood's actual water use varies between 3.5 and 5.0 acre-feet per year – or, in a dry year, about 2 acre-feet above the allocation provided to Class Members in the Judgment. (Wood Decl., ¶ 11.) This water use has been reliably established and is consistent with reasonable and beneficial uses for his property. (*Id.* at ¶¶ 12-19, Exs. 11-13.)

III. ARGUMENT

A. An Award of Fees And Costs Is Appropriate under C.C.P § 1021.5

Attorneys' fees and expenses are recoverable from the Defendants under a "private attorney general" theory pursuant to Code of Civil Procedure § 1021.5. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) Fees and reasonable litigation costs are awardable under the "private attorney general" doctrine embodied in § 1021.5 where: (1) the claims litigated by counsel have vindicated an important right affecting the public interest has been enforced; (2) a significant benefit has been conferred on the general public or a large class of persons; and (3) the necessity and financial burden of private enforcement are such that an award is

appropriate, and, in the interest of justice, the fee should not be paid out of the recovery. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1413.)

For example, in *Beasley*, the plaintiffs recovered excess fee assessments levied against thousands of bank customers. The court found that "such [consumer protection] actions have long been held to be in the public interest." (*Id.* at 1418.) Thus, the court concluded that there was an important interest at stake. (*Id.*) The significance of the benefits is determined from a "realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case." (*Woodland Hills Residents Association v. City Council* (1979) 23 Cal.3d 917, 939; *see Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d. 311, 321 n.10 (action affecting 3,000 persons conferred significant benefit).)

Each of the three criteria for the payment of "private attorney general" fees set forth in § 1021.5 is met in this case. Both the action and the Settlement have vindicated important rights to the use of water, and specifically, the surrender of prescriptive rights that threatened to take the water away from over 4,300 residents of the Antelope Valley. Beyond the Class members, this action created a massive benefit to the public at large, likely in perpetuity, i.e. persons not even born yet will benefit greatly from the stable groundwater basin for generations to come. Without the Class, it cannot be disputed that there would have been no comprehensive adjudication. (See, *e.g.*, McLachlan Decl., Ex. 9, 5:14-6:5 ("The benefit to all others living or owning property in the Antelope Valley is enormous . . .").) There can be little argument that no individual Class member would have stepped up to incur millions of dollars of attorneys' fees to litigate for the Class, as the individual stake of any Class member is comparatively small.

B. The Court Should Grant the Attorney Fee Request in Full.

1. The Legal Framework

California courts approve the use of a lodestar enhanced by a multiplier in awarding attorneys' fees under a statutory fee-shifting approach. (*Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954.) The "lodestar and multiplier" approach is also the most common approach used to award fees under the "private attorney general theory."

The baseline of the lodestar method is determined by multiplying the reasonable number of hours expended by the reasonable hourly rate. (*See, e.g.*, *Serrano*, 20 Cal.3d at 48-49.) However, the lodestar is merely the *starting point* for the calculation of reasonable attorneys' fees, and California courts have endorsed turning to factors more subjective than a mere hourly fee analysis to determine the "multiplier" to be applied to counsel's time. (*Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347.) These include the risk of non-payment, delay in counsel's receipt of their fees, the quality of counsel's work and the novelty and difficulty of the issues involved. (*Serrano,* 20 Cal.3d at 49; *Beasley*, 235 Cal.App.3d at 1419-20. *Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (consideration of additional factors such as risk and skill "required"); *Lealao v. Beneficial California Inc.* (2000) 82Cal.App.4th 19, 42-43 (discussing California's "relatively permissive attitude on the use of multipliers."); *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253 (contingent recovery of fee, "since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable").)

While there is no firm rule concerning multipliers (*Lealao,* 82 Cal.App.4th at 40) the factors generally considered in applying a multiplier include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented;

(3) the requisite legal skill necessary; (4) the preclusion of other employment due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount at controversy and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. (*See generally Serrano*, 20 Cal.3d at 49.)

Many of these factors have been expressly adopted by California courts in one form or another, and nearly all are present in this case, some to a very significant degree. This issue is discussed further below, and covered at length in the McLachlan, O'Leary, Pearl, and Zlotnick Declarations.

2. The Lodestar Amount Requested Is Reasonable

The hours incurred were all reasonable given the monumental scope of this litigation and the eight year duration of the case. Indeed the write-offs, judicious billing, and lack of nearly any double-billing, are plainly evident in the 243 pages of detailed billing records. (Pearl Decl., ¶¶ 16-18; McLachlan Decl., ¶¶ 36-41.)

The total attorney time used in the calculation was 4,538.8 hours (including 30 hours for future work), with 679.5 hours of paralegal time (excluding hours paid in the 2013 settlement). (McLachlan Decl. ¶¶ 29-32.) While the production of detailed billing records is not required for the purpose of awarding legal fees under C.C.P section 1021.5, Class Counsel nevertheless has submitted their complete, unredacted[2] fee bills should the Court wish to examine the work performed in more detail. (McLachlan Decl., Ex. 3; O'Leary Decl, Ex. 1.)

The hourly rate of $720 an hour is slightly below what could be requested in the current market rates, but is entirely reasonable. The Pearl Declaration and Exhibits contain a substantial amount of evidence regarding market rates. (at ¶¶

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[2] There is a single work-product redaction related to this motion.

10-14.) Indeed, $720 per hour is a lower rate than those of many firms in Los Angeles. (Pearl Decl., ¶ 12, Ex. C.) The 2013 fees survey for Ty Metrix/Legal Analytics found that third quartile partner rates in 2012 were $812 per hour – nearly one hundred dollars higher. (Pearl Decl., ¶ 12, Ex. D.) Average partner rates for big firms in 2013 were $880 per hour. (*Id.*, Ex. E.)

A year ago, Class Counsel was approved by the Central District of California at a rate of $690 in a class context. (McLachlan Decl., ¶ 42.) The rate of $720 per hour is an upward adjustment of just over 4% over that Court-approved rate of $690 per hour.

One of the other methods employed by Courts in assessing an appropriate hourly rate is the Laffey Fee Matrix, which is frequently used in Federal Court's across the County, as well as by California Superior Courts. (*See, e.g.*, *Fernandez v. Victoria Secret Stores, LLC* (C.D. Cal. 2008) 2008 WL 8150856 *14-15 (showing detailed application of the matrix); *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 (upholding an hourly rate established by the Laffey Matrix).) The Laffey Matrix is a publicly available and regularly updated study of average hourly billing rates.[3] The Matrix presently lists an hourly rate of $796 per hour for attorneys with 20+ 19 years of experience, and a paralegal rate of $180 per hour, both of which are well in excess of the discounted rates requested.

Furthermore, the Laffey method requires the hourly rate to be adjusted based upon the cost of living in the location where the services were performed, as against the baseline. The cost of living in Los Angeles is approximately 4.37% higher in Los Angeles than the baseline (District of Columbia) and thus the appropriate hourly rate would be in excess of $800 per hour. For these reasons, the rate of $720 is certainly reasonable.

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[3] www.LaffeyMatrix.com

3. A Multiplier of 2.5 Is Appropriate in this Case.

The contingent risk involved in this case is significant, and is often considered the most important factor in setting a multiplier. (Pearl Decl., ¶ 20.) "It is well-established that lawyers who assume a significant financial risk on behalf of their clients rightfully expect that their compensation will be significantly greater than it would be if no risk or delay was involved, *i.e.*, under the traditional arrangement where the client is obligated to pay for costs and fees incurred on a monthly basis." (*Ibid.*) Attorneys enter into such contingency fee arrangements only if they can expect to receive significantly higher effective hourly compensation in successful cases, particularly in cases that are expected to be hard fought and where the result is uncertain. "That is how the legal marketplace works, and market value fees are the standard that fee-shifting statutes are intended to provide: as the courts have recognized, such arrangements do not result in any "windfall" or undue "bonus" for the attorney; rather, they are "*earned compensation*," reflecting the need for fee awards to mirror the legal services market by compensating attorneys for the risk of non-payment, which in many cases involves thousands of hours of time spent and dollars advanced." (*Ibid.*; *see Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.)

Court-awarded fees that reflect that risk of loss make contingent representation competitive in the legal marketplace. (*Id.* at 1132-1133.) Indeed, that view was affirmed again by the California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579, and other cases. (*Building a Better Redondo Beach, Inc. v City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251.) For these reasons, a significant lodestar enhancement for contingent risk is necessary in this case to reflect the true and full market value of Plaintiff's attorneys' work.

A fee enhancement is particularly appropriate here because the of the huge amount of time and money invested in the case over an eight year period, with only a small fraction of it being compensated in year six. The several decertification motions, long-running expert witness problems, and many other hostile motions filed throughout the entire span of the case – even after settlement, e.g. the Willis conflict motion – constantly threatened to bring an end to the case. There was also constant opposition to settlement efforts, and one derailed settlement attempt in 2011. But in the face of this, and the extreme financial hardship posed by this case (McLachlan Decl., ¶¶ 57-58), Class Counsel continued to fight. This action also presents exceptional novelty, and complex issues not reflected in any published opinion in U.S. history. The interjection of a class proceeding into a non-class litigation by itself magnified the difficulty of the litigation many fold. The high level of work required significantly impacted counsel's ability to take on other good, paying work. (McLachlan Decl. ¶¶ 51-54.)

Furthermore, it is difficult to dispute that the outcome was excellent for the Class. (McLachlan Decl., ¶¶26-28; Wood Decl., ¶ 20). Under such circumstances, courts frequently apply a multiplier of at least two times the lodestar. (3 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992), § 14.03 at 14-5 fns. 20 & 21 and cases cited therein. *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1129-39 (affirming multiplier of 2.0); *see also Vizcaino v Microsoft* (9th Cir. 2000) 290 F.3d 1043, 1051-54, *cert. denied sub nom.*, *Vizcaino v. Waite*(2002) 537 U.S. 1018 (survey of decisions in common fund class action cases showing multipliers between 2 and 4 are common).

A number of relevant cases are discussed in the Pearl Declaration, at paragraphs 27 and 28. Many of these cases have very similar procedural and factual similarities (although none appear to involve litigation of this level of complexity). For example, in *Thompson v. Santa Clara County Open Space Authority* (Santa Clara County Superior Court No. 1-02-CV-804474), the

plaintiffs sued for return of improper special tax assessments County-wide that were imposed by a public agency. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority*, (2008) 44 Cal.4th 431, 439-40.) In that litigation, which also lasted for eight years, the Court awarded a multiplier of 2.85, finding many of the same enhancement factors present in this case. (Pearl Decl., Exs. G & H.) It would be difficult to argue that the establishment of a permanent right to water is not a more significant public benefit that overturning a relatively small tax assessment. (*See also* McLachlan Decl., Exs. 8 (at 21:22-28), 9 (at p. 5-6), & 11 (at 37:20-38:12).)

Based upon the law and facts of this case, a 2.5 multiplier is entirely justified.[4]

C. The Outstanding Litigation Costs Should Also Be Awarded.

To date, Class counsel has incurred a total of $92,280.14 in litigation costs and expenses. (McLachlan Decl., ¶ 33; O'Leary Decl., ¶ 4.) Pursuant to the 2013 settlement, we have been paid $17,038.08 for cost reimbursement by the settling defendants, leaving the total sum at issue in this motion of $75,242.06. (McLachlan Decl., at ¶ 34; O'Leary Decl., ¶ 4.) All of these costs are standard items incurred and charged in litigation.

D. Allocation of Fees and Costs Among the Defendants.

The attorneys' fees and costs could be awarded jointly and severally as to the seven defendants in question, or the Court could allocate them. The issue of allocation is discussed in more detail in the McLachlan Declaration, at paragraphs 59 to 62. Class Counsel does not have strong feelings about how the

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[4] As noted above in Section II.E, the facts supporting the award of a multiplier are voluminous, and discussed in more detail in the supporting declarations.

award should be imposed among the Settling Defendants, should they or the Court feel strongly about allocating the total award and incentive payment.

E. Richard Wood Should Be Granted An Incentive Award Commensurate With to the Incredible Level of Service He Has Rendered.

Plaintiff has set the all-time bar for service by a class representative – service levels that will likely stand unsurpassed for as long as the Judgment in this matter lasts. Richard Wood requests an incentive payment of an additional two acre-feet per year production right beyond the 3 acre-feet afforded him under the Judgment. This water right would put afford Mr. Wood a right equal to the water he actually uses (Wood Decl., ¶ 11.), and not put him in worse position than had he not elected to serve his fellow Small Pumpers so admirably.

Since Mr. Wood can reasonably establish this higher than average water use historically, this request is not so much in the vein of an incentive award, but rather a request that he be allowed to establish a water right above that set for the Class. (*Id*. at ¶¶ 12-19, Exs. 11-13.) Since Mr. Wood can reasonably establish this water use history, he could prove such a right. As such, in granting the right to two additional acre-feet per year, assessment free, the Court is not giving Mr. Wood something that he could not have established at law. The fact that this right is not diminished by prescription or rampdown is entirely consistent with the Judgment provisions applicable to all Class Members. Class counsel knows of nothing in the law that prevents the Court from exercising its discretion and equitable powers in this regard, particularly given the fact that Judgment has now been entered for the Class. For these reasons and given incredible level of service Mr. Wood provided to the Class and to the entire Antelope Valley, the request for the additional two acre-feet per year, standing alone, is entirely reasonable.

The Stipulation for Entry of Judgment provides that none of the stipulating parties object to Richard Wood receiving an additional right of 2 afy, in lieu of a monetary payment. (Stipulation For Entry of Judgment and Physical Solution, ¶ 13.) Plaintiff believes there will be no objections to this request from any non-stipulating party.

If the Court will not grant this request, and instead believes that it can only award a monetary incentive payment, such payment should be in the amount of $25,000. (McLachlan Decl., Ex. 12, 4:17-6:10 (and cases cited therein for award of $25,000 incentive award).) While this sum comes nowhere close to compensating Mr. Wood for his time, it is at the upper end of the range of such awards. (*Ibid*.) It will cover the $10,000 in out of pocket costs Mr. Wood has incurred, and will pay him at a rate of $6.85 per hour for his time – a fairly insulting figure. If Class Counsel could find sufficient authority for doubling this monetary award in this context, it should be more like $50,000 or more. The upper bounds for monetary awards only seem so to underscore that the proper means of compensating Mr. Wood is with the additional water right. But if not, $25,000 would buy Mr. Wood some portion of than two acre-feet per year.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff Richard Wood requests that the Court approve a lodestar rate of $3,348,160, with a multiplier of 2.5, and costs of $75,242.06.

Further, Richard Wood should be awarded water right of up to 5 acre-feet per year, or alternatively, $25,000.

DATED: January 27, 2016

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

By: Michael D. McLachlan

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