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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

Lead Case No. BC 325201

Case No.: BC 391869

**APPENDIX RE: SMALL PUMPER  
CLASS' MOTIONS FOR  
ATTORNEYS' FEES**

**[Volume 3 of 4]**

1 Plaintiff Richard Wood, on behalf of himself and those similarly situated,  
2 submits the following Appendix of relevant filings regarding the current motions  
3 for attorneys' fees.

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DATED: February 25, 2022      McLACHLAN LAW, APC  
LAW OFFICE OF DANIEL M. O’LEARY

By:     //s// Michael D. McLachlan      
Michael D. McLachlan  
Attorneys for Plaintiff

## **Exhibit N**

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

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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

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 DISTRICT  
NO. 40'S OPPOSITION TO  
WOODS CLASS' MOTION FOR  
ATTORNEY FEES, COSTS AND  
INCENTIVE AWARD**

*[Filed concurrently with Opposition to  
Woods Class' Motion; Declarations of  
Wendy Y. Wang, Adam Ariki]*

Date: April 1, 2016  
Time: 1:30 p.m.  
Dept.: 1

1 I, Jeffrey V. Dunn, declare as follows:

2 1. I am a partner with the law firm of Best Best & Krieger LLP, counsel for  
3 defendant Los Angeles County Waterworks District No. 40 (“District No. 40”). I have personal  
4 knowledge of the facts stated herein and, if called upon to do so, I could testify to these facts.

5 2. Plaintiff Richard Wood filed a class action complaint against the eight public  
6 water supplier defendants who are the subject of his fee motion (“PWS”) and others on June 2,  
7 2008. The Wood Class amended that complaint on June 20, 2008. A true and correct copy of  
8 The Wood Class’ operative complaint against the PWS is attached hereto as **Exhibit A**.

9 3. The Wood Class also filed a class action complaint against numerous private  
10 landowners and farming entities in 2013

11 4. The Wood Class settled its action with the PWS in 2015 and the settlement  
12 agreement was submitted to the Court for approval on March 4, 2015. The Court approved the  
13 settlement on April 10, 2015. The settlement is memorialized in the Judgment and Physical  
14 Solution entered by the Court in December 2015, attached hereto as **Exhibit I**.

15 5. The bills attached to the Declarations of Michael D. McLachlan (“McLachlan  
16 Decl.”) and Daniel M. O’Leary (“O’Leary Decl.”) fail to differentiate between time spent on the  
17 complaint against the Public Water Suppliers and the time spent on the Wood Class complaint  
18 against the other landowner parties.

19 6. The Court’s Physical Solution allocates groundwater to parties including the Wood  
20 Class members. The physical solution imposes restrictions (e.g., pumping limits, restrictions on  
21 transfers). Pursuant to the Judgment, the Wood Class’s aggregate Production Right is 3,806.4  
22 acre-feet per year, and each class member may produce up to and including 3 acre-feet per year  
23 per existing household for reasonable and beneficial use on their overlying land. Attached hereto  
24 as **Exhibit I** is a true and correct copy of the relevant portions of the Physical Solution at pp. 17-  
25 18.

26 7. PWS also requested apportionment/the imposition of a Physical Solution in their  
27 First Amended Cross-Complaint. Attached hereto as **Exhibit O** is a true and correct copy of the  
28 PWS’s First Amended Cross-Complaint.

1           8. Pursuant to evidence admitted in Phase 6 trial for cost of AVEK water, the Wood  
2 Class's aggregate production right is worth \$1,179,984 *per year*. This constitutes over \$8.25  
3 million over the seven-year rampdown period, and over \$11.7 million over a ten year period.  
4 Attached hereto as **Exhibit N** is a true and correct copy of Public Water Suppliers' Phase 6 trial  
5 exhibit no. PWS-516, which was admitted on October 1, 2015 and which values untreated AVEK  
6 water at \$310 per acre-foot.

7           9. Under the Judgment, Wood Class did not receive economic or compensatory  
8 damages, failed to obtain any declaration of a superior priority to groundwater water, or any  
9 award of damages against the Public Water Suppliers to compensate for alleged takings and  
10 property infringement.

11           10. Yet, the Wood Class counsel motion for attorney fees is directed at only District  
12 No. 40 and the relatively small public water suppliers, which represent a small fraction of the  
13 actual groundwater users and potential users in the Basin.

14           11. A true and correct copy of Document #4431, Order After Hearing on Motion by  
15 Plaintiff Rebecca Lee Willis and the Class for Attorneys' Fees, Reimbursement of Expenses and  
16 Class Representative Incentive Award, is attached hereto as **Exhibit B**.

17           12. The 2015 settlement between Plaintiff and the PWS is nearly identical to a 2011  
18 settlement. Attached hereto as **Exhibit C** and **Exhibit D**, respectively, are true and correct copies  
19 of Document #4422 (2011 Notice of Motion and Motion for Preliminary Approval of Class  
20 Settlement) and #9622 (2015 Notice of Motion and Motion for Preliminary Approval of Class  
21 Settlement).

22           13. Mr. McLachlan arrived at 9:30 a.m. and did not attend trial in the afternoon on  
23 February 10, 2014 for Phase 5 trial.

24           14. Attached hereto as **Exhibit E** is a true and correct copy of the transcript from the  
25 November 9, 2012 Case Management Conference hearing.

26           15. Attached hereto as **Exhibit F** is a true and correct copy of the Court's Order  
27 denying the motion for determination of good faith settlement by the Wood Class settling  
28 defendants.

1           16.     Attached hereto as **Exhibit G** is a true and correct copy of Exhibit 3 to the  
2 Judgment.

3           17.     Attached hereto as **Exhibit H** is a true and correct copy Plaintiff's reply brief in  
4 support of his motion for approval of award of attorney fees and costs filed on January 1, 2014.

5           18.     Attached hereto as **Exhibit I** is a true and correct copy of the relevant portions of  
6 the Physical Solution at pp. 1-3, 5.

7           19.     Attached hereto as **Exhibit J** is a true and correct copy of District No. 40's 2004  
8 Complaint.

9           20.     To satisfy the McCarran Amendment, the PWS proceeded to identify every  
10 property owner in the Basin, created the initial potential class membership lists, and individually  
11 named all property owners not identified as a potential class member.

12           21.     District No. 40 also undertook the significant effort of defaulting against non-  
13 appearing parties.

14           22.     For the multi-week Phase 3 trial, District No. 40 along with other PWS presented  
15 evidence establishing overdraft and safe yield. Attached hereto as **Exhibit K** is a true and correct  
16 copy of the Phase 3 Statement of Decision.

17           23.     Establishing overdraft and safe yield was a necessary step towards establishing a  
18 physical solution and restraining future pumping over the safe yield – a step that the Wood Class  
19 opposed. Attached hereto as **Exhibit L** is a true and correct copy of the Wood Class objections to  
20 evidence concerning safe yield and overdraft.

21           24.     Leading up to the Phase 4 trial, District No. 40, its counsel, and its experts  
22 collectively spent hundreds of hours reviewing discovery responses and data to verify the alleged  
23 pumping. Such efforts included the use of aerial photography, LandSat analysis, well test  
24 analysis, and crop duty calculations.

25           25.     Attached hereto as **Exhibit M** is a true and correct copy of District No. 40's  
26 Summary of Bills and Reference to Billing Entries, prepared by my office at my direction.



1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed this 15th day of March, 2016, at Irvine, California.  
3  
4  
5  
6  
7



---

Jeffrey V. Dunn

**PROOF OF SERVICE**

I, Rosanna R. Pérez, declare:

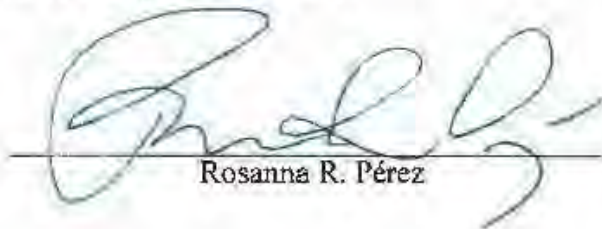
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On March 15, 2016, I served the following document(s):

**DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF DISTRICT NO. 40'S  
OPPOSITION TO WOODS CLASS' MOTION FOR ATTORNEY FEES, COSTS AND  
INCENTIVE AWARD**



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 above is true and correct. Executed on March 15, 2016, at Los Angeles, California.



Rosanna R. Pérez

26345.00000024502866.2

# EXHIBIT A

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18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
19 **COUNTY OF LOS ANGELES**

20 RICHARD A. WOOD, an individual, on behalf  
21 of himself and all others similarly situated,

22 Plaintiff,

23 v.

24 LOS ANGELES COUNTY WATERWORKS  
25 DISTRICT NO. 40; CITY OF LANCASTER;  
26 CITY OF LOS ANGELES; CITY OF  
27 PALMDALE; PALMDALE WATER  
28 DISTRICT; LITTLEROCK CREEK  
IRRIGATION DISTRICT; PALM RANCH  
IRRIGATION DISTRICT; QUARTZ HILL  
WATER DISTRICT; ANTELOPE VALLEY  
WATER CO.; ROSAMOND COMMUNITY  
SERVICE DISTRICT; MOJAVE PUBLIC  
UTILITY DISTRICT; CALIFORNIA WATER  
SERVICE COMPANY and DOES 1 through  
100;

Defendants.

Case No.: BC391869

(related to JUDICIAL COUNCIL  
COORDINATION PROCEEDING No. 4408;  
Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**REQUEST FOR JURY TRIAL**

1 Plaintiff, Richard A. Wood, by his counsel, alleges on information and belief as follows:

2 I.

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this action on behalf of himself and the class of certain other  
5 private landowners in the Antelope Valley (as defined below) seeking a judicial determination of  
6 their rights to use the groundwater within the Antelope Valley Groundwater Basin ("the Basin").  
7 In addition, Plaintiff seeks damages and just compensation for himself and the Class arising from  
8 the government entity defendants taking and interfering with plaintiff's and the Class' property  
9 rights. This action is necessary in that defendants assert a common law prescriptive right to the  
10 groundwater in the Basin which right they claim is superior to that of Plaintiff and the Class. By  
11 definition, a prescriptive right requires a wrongful taking of non-surplus water from the Basin, in  
12 an open, notorious, continuous, uninterrupted, hostile and adverse manner to the original owner  
13 for the statutory period of five years. To the extent defendants fail to prove any element of  
14 prescription or the evidence shows that defendants have indeed taken non-surplus water in  
15 derogation of the rights of overlying landowners, plaintiff's and the Class's property interests  
16 have been damaged and/or infringed.

17 2. As overlying landowners, Plaintiff and the Class have a property right in the water  
18 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin's  
19 groundwater. To the extent the Government entity defendants assert rights to that ground water  
20 or have taken non-surplus groundwater in derogation of the rights of the overlying landowners.  
21 Plaintiff and the Class are entitled to damages and just compensation under the Fifth and  
22 Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the  
23 California Constitution.

24 II.

25 **JURISDICTION AND VENUE**

26 3. This Court has jurisdiction over this action pursuant to the California  
27 Constitution, Article XI, § 10 and under California Code of Civil Procedure ("CCP") § 410.10.  
28

4. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Plaintiff resides in Los Angeles County, a number of defendants reside in this County, and a substantial part of the unlawful conduct at issue herein has taken place in this County. In addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is pending in this Court.

5. Plaintiff and the Class have suffered actual damages as a result of defendant's unlawful conduct in a presently undetermined amount.

### III.

## THE PARTIES

6. Plaintiff RICHARD A. WOOD ("Wood" or "Plaintiff") resides in Lancaster, California. Wood owns approximately 10 acres of property at 45763 North 90<sup>th</sup> Street East in Lancaster, California, within the Basin. Plaintiff's property overlies percolating groundwater, the precise extent of which is unknown.

7. Defendants (referred to alternatively as "Appropriators") are persons and entities who claim rights to use groundwater from the Basin, whose interests are in conflict with Plaintiff's interests. On information and belief, they are as follows:

A. Defendant LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 is a public agency governed by the Los Angeles County Board of supervisors that drills and pumps water in the Basin and sells such water to the public in portions of the Antelope Valley.

B. Defendant PALMDALE WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

C. Defendant LITTLE ROCK CREEK IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

D. Defendant PALM RANCH IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

E. Defendant QUARTZ HILL WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

1 F. Defendant ANTELOPE VALLEY WATER CO. is an entity that pumps  
2 and/or provides groundwater from the Basin.

3 G. Defendant ROSAMOND COMMUNITY SERVICE DISTRICT is an  
4 entity that pumps and/or provides groundwater from the Basin.

5 H. Defendant MOJAVE PUBLIC UTILITY DISTRICT is a public agency  
6 that pumps and/or provides groundwater from the Basin.

7 I. Defendant CALIFORNIA WATER SERVICE COMPANY is a California  
8 Corporation that pumps and/or provides groundwater from the Basin and is added herein  
9 as Doe 1. Defendants A-I shall collectively be referred to as "Appropriators."

10 J. Defendant CITY OF LANCASTER is a municipal corporation located  
11 within the County of Los Angeles.

12 K. Defendant CITY OF PALMDALE is a municipal corporation located  
13 within the County of Los Angeles.

14 L. DOE DEFENDANTS 1 through 100. Plaintiff alleges on information and  
15 belief that at all relevant times DOE DEFENDANTS 1 through 100, inclusive, are  
16 persons or entities who either are currently taking or providing water from the Basin or  
17 claim rights to take groundwater from the Basin. Plaintiff is presently unaware of the  
18 true names and identities of those persons sued herein as DOE Defendants 1 through 100  
19 and therefore sues these Defendants by these fictitious names. Plaintiff will amend this  
20 Complaint to allege the Doe Defendants' legal names and capacities when that  
21 information is ascertained.

22 IV.

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

24 8. The Antelope Valley Groundwater Basin is part of the South Lahontan  
25 Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave  
26 Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the  
27 Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San  
28 Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a

1 groundwater divide and on the north by various geographic features that separate it from the  
2 Fremont Valley Basin.

3 9. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the  
4 Basin's recharge comes from runoff from the surrounding mountains and hills -- in particular,  
5 from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other  
6 portions of the Valley.

7 10. The Basin has two main aquifers -- an upper aquifer, which is the primary source  
8 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin  
9 have been productive and have met the needs of users in conjunction with other sources of water,  
10 including the State Water Project.

11 11. In recent years, however, population growth and urban demands have led to  
12 increased pumping and declining groundwater levels. Plaintiff and the Class are informed and  
13 believe that at some yet unidentified point in the past, the Appropriators began to extract  
14 groundwater from the Antelope Valley to a point above and beyond an average annual safe yield.  
15 Plaintiff and the Class are further informed and believe that future population growth and  
16 demands will place increased burdens on the Basin. If the trend continues, demand may exceed  
17 supply which will cause damage to private rights and ownership in real property. Presently, the  
18 rights to the Basin's groundwater have not been adjudicated and there are no legal restrictions on  
19 pumping. Each of the Defendants is pumping water from the Basin and /or claims an interest in  
20 the Basin's groundwater. Despite the actual and potential future damage to the water supply and  
21 the rights of owners of real property within the Valley, the Appropriators have knowingly  
22 continued to extract groundwater from the Basin, and increased and continue to increase their  
23 extractions of groundwater over time. The Appropriators continued the act of pumping with the  
24 knowledge that the continued extractions were damaging, long term, the Antelope Valley and in  
25 the short term, impairing the rights of the property owners.

26 12. Plaintiff and the Class are informed and believe that the Appropriators may have  
27 pumped water in excess of the safe yield with the knowing intent and belief that they could take  
28 by claim of prescription, without compensation, the water rights of all landowners overlying the



1 Antelope Valley. Additionally, all Appropriators continued to pump ever increasing quantities  
2 of groundwater, knowing that even if their prescriptive claims failed, they could preserve the  
3 right to continue their pumping under a claim of an intervening public use. Despite the knowing  
4 intent to take the overlying property landowners' rights, no Appropriator took any steps to  
5 inform or otherwise notify Plaintiff or the Class of their adverse and hostile claim or that their  
6 pumping of groundwater was an invasion of and a taking of the landowners' property rights.

7 13. None of the Appropriators have invoked the power of eminent domain nor paid  
8 any compensation to overlying owners of land located within Antelope Valley for the property  
9 rights they have knowingly taken.

10 14. Various water users have instituted suit to assert rights to pump water from the  
11 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators  
12 have brought suit asserting that they have prescriptive rights to pump water from the Basin,  
13 which they claim are paramount and superior to the overlying rights of Plaintiff and the Class.  
14 Those claims threaten Plaintiff's right to pump water on his property.

15 15. In 1983, Plaintiff purchased his ten (10) acre property in the Antelope Valley to  
16 serve as his sole residence, which has continued to be the case to date. The most important and  
17 fundamental aspect of his purchase was the property right to use water below his land. At all  
18 relevant times, Plaintiff has extracted and used groundwater from beneath his property for  
19 standard residential purposes. Plaintiff's right to use water below the surface of the land is a  
20 valuable property right. Without the right to use the water below his property, the value of  
21 Plaintiff's land is substantially reduced.

22 16. Plaintiff is informed and believes that defendant Appropriators have extracted so  
23 much water from the Basin, by extracting non-surplus water that exceeds a safe yield for a period  
24 as yet undetermined, that his ability to pump water is threatened. Plaintiff is further informed  
25 and believes that the water level has fallen to such an unreasonable level that his property right in  
26 the use of the water has been infringed or extinguished and his interest in the real property has  
27 been impaired by the diminution of its fair market value. The Appropriators have made it  
28 economically difficult, if not impossible, for his to exercise his future right to use the water

1 because they have extracted too much water from the supply in the Basin. His water rights and  
2 the value in the real property have been damaged and will continue to be damaged unless this  
3 court intervenes on his behalf and on behalf of all class members.

4 17. Plaintiff brings this action on behalf of the following class:

5 All private (i.e., non-governmental) persons and entities that own real property  
6 within the Basin, as adjudicated, and that have been pumping on their property within the five  
7 year period preceding the filing of this action. The Class excludes the defendants herein, any  
8 person, firm, trust, corporation, or other entity in which any defendant has a controlling interest  
9 or which is related to or affiliated with any of the defendants, and the representatives, heirs,  
10 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes  
11 all persons and entities to the extent their properties are connected to a municipal water system,  
12 public utility, or mutual water company from which they receive water service, as well as all  
13 property pumping 25 acre-feet per year or more on an average annual basis during the class  
14 period.

15 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's  
16 claims are typical of the claims of the members of the Class. Plaintiff and members of the class  
17 have sustained damages arising out of the conduct complained of herein.

18 19. Plaintiff will fairly and adequately protect the interests of the members of the  
19 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class  
20 members he seeks to represent. Plaintiff has retained competent counsel experienced in class  
21 action litigation to ensure such protection.

22 20. A class action is superior to other available methods for the fair and efficient  
23 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of  
24 no difficulty that will be encountered in the management of this litigation that would preclude its  
25 maintenance as a class action.

26 21. There are common question of law and fact as to all members of the Class, which  
27 predominate over any questions affecting solely individual members of the Class. Specifically,  
28 the Class members are united in establishing (1) their priority to the use of the Basin's

1 groundwater given their capacity as overlying landowners; (2) the determination of the Basin's  
2 characteristics including yield; (3) adjudication of the Public Water Suppliers' groundwater  
3 rights including prescriptive rights; (4) determination of a physical solution to water shortage  
4 conditions including all parties' rights to store and recover non-native water in the Basin; (5) a  
5 taking, if any, under the U.S. and California Constitution; (6) damages for trespass, interference,  
6 nuisance and conversion; (7) due process violations; and (8) availability of injunctive relief.

### 8 **FIRST CAUSE OF ACTION**

#### 9 **(For Declaratory Relief Against All Defendants)**

10 22. Plaintiff realleges and incorporates herein by reference each of the allegations  
11 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
12 as follows:

13 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights  
14 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and  
15 beneficial uses on their respective properties.

16 24. Plaintiff is informed and believes, and on the basis of that information and belief  
17 alleges, that each of the defendants presently extracts and/or purveys groundwater from the Basin  
18 and/or asserts rights to that groundwater which conflict with the overlying rights of Plaintiff and  
19 the Class.

20 25. Plaintiff is informed and believes and, on the basis of that information and belief,  
21 alleges that each of the Defendants extracts groundwater primarily for non-overlying use – i.e.,  
22 for use on properties other than the property on which the water is extracted. In addition, certain  
23 of those defendants have asserted that they hold prescriptive rights to such water which they  
24 claim are superior to the rights of Plaintiff and the Class.

25 26. Plaintiff's and the Class' present overlying uses of the Basin's  
26 groundwater are superior in right to any non-overlying rights held by the Appropriator  
27 Defendants.

28 27. Plaintiff's and the Class' overlying rights need to be apportioned in a fair and

1 equitable manner among all persons holding rights to the Basin's water.

2 28. Plaintiff and the Class seek a judicial determination that their rights as overlying  
3 users are superior to the rights of all non-overlying users and that they have correlative rights vis-  
4 a-vis other overlying landowners.

5 29. Plaintiff and the Class further seek a judicial determination as to the priority and  
6 amount of water that all parties in interest are entitled to pump from the Basin.

7 30. By virtue of their property ownership, Plaintiff and the Class hold rights to utilize  
8 or derive benefit from the storage capacity of the Basin. Plaintiff and the Class seek a judicial  
9 determination as to priority and ownership of those rights. In addition, Plaintiff and the Class  
10 contend that California Water Code Sections 55370, 22456, and 31040 limit the method, manner  
11 and mode by which Appropriators may acquire private property and requires payment of  
12 compensation through eminent domain proceedings. Plaintiff and the Class seek a declaration of  
13 rights with respect to the constitutionality and applications of these Statutes.

14 **SECOND CAUSE OF ACTION**

15 **(Against All Defendants to Quiet Title)**

16 31. Plaintiff realleges and incorporates herein by reference each of the allegations  
17 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
18 as follows:

19 32. Plaintiff and the Class own land overlying the Antelope Valley alluvial  
20 groundwater basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and  
21 reasonably use groundwater on their land.

22 33. Plaintiff and the Class herein request a declaration from the Court quieting title to  
23 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

24 **THIRD CAUSE OF ACTION**

25 **(Against All Defendant Appropriators For Damages Pursuant to**  
26 **The California Constitution Takings Clause)**

27 34. Plaintiff realleges and incorporates herein by reference each of the allegations  
28

1 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
2 as follows:

3 35. Article 1 Section 19 of the California Constitution provides as follows:

4 Private Property may be *taken or damaged* for public use only when just  
5 compensation, ascertained by a jury unless waived, has first been paid to, or  
6 into court for, the owner.

7 The scope of compensable injury to property is broader in California than other States or  
8 under the U.S. Constitution. It includes a "taking" or "damage" to property. Here, Plaintiff's  
9 and the Class' interests have been infringed by the defendants. On information and belief,  
10 defendant Appropriators have extracted and will continue to extract non-surplus groundwater  
11 from the Basin in excess of a safe yield. Defendants allege that the production forms the basis of  
12 their claim for prescriptive rights. Defendants' extraction of water above a safe yield has made it  
13 more difficult and expensive for Plaintiff and the Class to use the water under their properties  
14 and constitutes an invasion of Plaintiff's property interests and therefore a taking in violation of  
15 the California Constitution. On information and belief, Plaintiff's and the Class' properties have  
16 been injured in the form of degradation of the water level and degradation of the quality of the  
17 water, in addition to the actual taking of non-surplus water.

18 36. The public entity Defendants claim priority rights to take and use the Basin's  
19 groundwater by "prescription" and as a matter of public interest and need.

20 37. If and to the extent the public entities are granted rights to use the Basin's  
21 groundwater with priority to the rights held by Plaintiff and other overlying landowners, Plaintiff  
22 and the Class are entitled to just and fair compensation pursuant to Article 1, Section 19 of the  
23 California Constitution for the diminution in fair market value of the real property. If and to the  
24 extent the public entities are not granted rights to use the Basin's groundwater with priority to the  
25 rights held by Plaintiff and other overlying landowners, Plaintiff and the Class are entitled to just  
26 and fair compensation pursuant Article 1, Section 19 of the California Constitution for wrongful  
27 taking of water rights.  
28

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendant Appropriators For Damages Pursuant to**  
3 **The United States Constitution Takings Clause)**

4 38. Plaintiff realleges and incorporates herein by reference each of the allegations  
5 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
6 as follows:

7 39. This cause of action is brought to recover damages against the Appropriators for  
8 violation of Plaintiff's and the Class's right under the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S.  
9 Constitution through the Appropriator's taking of private property for public use without paying  
10 just compensation and depriving them of both substantive and procedural due process of law.

11 40. The Appropriators, and each of them are, and at all times mentioned in this  
12 second amended complaint were, governmental entities with the capacity to sue and be sued.  
13 The Appropriators, and each of them, were, at all times mentioned in this second amended  
14 complaint, acting under color of state law.

15 41. At a yet unidentified historical point in time, the Appropriators began pumping  
16 water from the Antelope Valley as permissive appropriators. Over the course of time, it is  
17 believed that the aggregate amount of water being extracted from the Valley began to exceed the  
18 safe yield. Each Appropriator continued to pump and increased its pumping of groundwater  
19 believing that given the intervention of the committed public use, no injunction would issue to  
20 restrain and/or compel the Appropriator to reduce its dependence upon such groundwater. Each  
21 Appropriator contends that despite its status as a governmental entity, it can nonetheless take  
22 private property for a public use under a theory of prescription and without compensation. Each  
23 Appropriator did not undertake any affirmative action reasonably calculated and intended to  
24 provide notice and inform any affected landowner of its adverse and hostile claim.

25 42. Plaintiff is informed and believes and thereon alleges that he was denied due  
26 process of law prior to the taking of his property. This violation was a direct result of the  
27  
28

1 knowing customs, practices, and policies of the Appropriators to continue to pump in excess of  
2 the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever  
3 increasing intervening public use and dependence, without acceding to Constitutional limits.

4 43. The customs, practices, and policies of the Appropriators to prescript or adversely  
5 possess the property rights of property owners and/or to establish a nonenjoinable intervening  
6 use amounted to deliberate indifference to the rights of persons who stand to lose their rights to  
7 extract water from the Antelope Valley for use on their property through the actions of each  
8 Appropriator and all of them.

9 44. As a direct and proximate result of the acts of the Appropriators, Plaintiff and the  
10 Class have suffered injury, loss, and damage, including a cloud upon the title to their real  
11 property, a reduction in value, and the loss of rights in the future to extract and use groundwater  
12 from the Valley.

### 13 **FIFTH CAUSE OF ACTION**

#### 14 **(Public and Private Nuisance Against All Defendant Appropriators)**

15 45. Plaintiff realleges and incorporates herein by reference each of the allegations  
16 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
17 as follows:

18 46. The Appropriators' extractions of groundwater from the supply constitute a  
19 continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that  
20 the Appropriators have interfered with the future supply of available water that is injurious to  
21 Plaintiff's and the Class' rights to freely use and exercise their overlying property rights to  
22 extract groundwater from the Basin. The Appropriators are attempting, through the combined  
23 efforts of their pumping groundwater to take, and or alter, overlying property rights to use and  
24 access the Antelope Valley supply.

25 47. The Appropriators, and each of them, have continued to and have increased their  
26 pumping, despite the knowledge of the damage caused by pumping. The Appropriators have  
27 refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply  
28 of water. This nuisance affects a substantial number of persons in that the Appropriators claim

1 that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a  
2 chronic decline in water levels and the available natural water supply will be chronically  
3 depleted. If the present trend continues, demand will continue to exceed supply which will  
4 continue to cause a reduction in the long term supply. Additionally, the continued pumping by  
5 the Appropriators under these conditions will result in the unlawful obstruction of the overlying  
6 landowner's rights to use the water supply in the customary manner.

7 48. The Appropriators, and each of them, have threatened to and will, unless  
8 restrained by this court, continue to pump groundwater in increasing amounts, and each and  
9 every act has been, and will be, without the consent, against the will, and in violation of the  
10 rights of plaintiff and the Class.

11 49. As a proximate result of the nuisance created by the Appropriators, and each of  
12 them, plaintiff and the Class have been, and will be, damaged in a sum to be proven at trial.

13 50. In maintaining this nuisance, the Appropriators, and each of them are, and have  
14 been, acting with full knowledge of the consequences and damage being caused and their  
15 conduct is willful, oppressive, malicious and designed to interfere with and take plaintiff's right  
16 to freely access the water supply in its customary manner.

#### 17 **SIXTH CAUSE OF ACTION**

##### 18 **(Trespass Against All Defendant Appropriators)**

19 51. Plaintiff realleges and incorporates herein by reference each of the allegations  
20 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
21 as follows:

22 52. On information and belief, each Defendant alleges that it has produced more  
23 water from the Basin than it has a right to produce as an Appropriator. Defendants allege that  
24 this production forms the basis for their claims of prescriptive rights. To the extent that the  
25 alleged production in excess of rights actually occurred, this alleged production of water  
26 constitutes a trespass against plaintiff and the Class.

27 53. Defendants' use of the Basin's water has interfered with and made it more  
28 difficult for plaintiff and the Class to exercise their rights.



1           54. Plaintiff requests that the Court award monetary damages to compensate for any  
2 past injury that may have occurred to plaintiff and the Class by Defendants' trespass in an  
3 amount to be determined at trial.

4                                   **SEVENTH CAUSE OF ACTION**

5                                   **(Conversion Against All Defendant Appropriators)**

6           55. Plaintiff realleges and incorporates herein by reference each of the allegations  
7 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
8 as follows:

9           56. Plaintiff and the Class are, and at all times relevant herein were, the owners of or  
10 entitled to water rights in the Basin as overlying landowners.

11           57. Defendants wrongfully interfered with Plaintiff's interests in the above-described  
12 property by extracting non-surplus water that exceed a safe yield and by claiming priority over  
13 overlying landowners to water rights. Defendants conduct was without notice to plaintiff or the  
14 Class.

15                                   **EIGHTH CAUSE OF ACTION**

16                                   **(Against All Defendants For Violation of 42 U.S.C. § 1983)**

17           58. Plaintiff realleges and incorporates herein by reference each of the allegations  
18 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants  
19 as follows:

20           59. In committing the acts alleged above, Defendants violated plaintiff's rights  
21 guaranteed under the Constitution of the United States, including the due process clauses of the  
22 5<sup>th</sup> and 14<sup>th</sup> Amendments and the Takings Clause. These rights include the right not to be  
23 deprived of property with out due process by persons and entities acting under color of law.  
24 These rights include the right to be free from the use of excessive force by the police.

25           60. As a direct and proximate result of defendants' conduct, and each of them,  
26 including Does 1 through 100, and their agents, supervisors, managers and employees, plaintiff  
27 has suffered damages as alleged in this complaint above.  
28

**NINTH CAUSE OF ACTION**

**(Against All Defendants For Injunctive Relief)**

61. Plaintiff and the Class reallege and incorporate herein by reference each of the allegations contained in the preceding paragraphs of this Complaint, and further allege against Defendants as follows:

62. As overlying landowners, Plaintiff and the Class have superior rights to take and make reasonable and beneficial use of the Basin's groundwater.

63. By pumping and selling water from the Basin, Defendants have interfered with and made it more difficult for Plaintiff and the Class to exercise their rights to use that groundwater. If allowed to continue, Defendants' pumping from and depletion of the Basin's groundwater will further interfere with Plaintiff's and the Class's ability to exercise their lawful and superior rights as overlying landowners to make reasonable use of the Basin's groundwater.

64. Plaintiff and the Class have no adequate remedy at law.

65. Unless the Court enjoins or limits Defendants production of water from the Basin, Plaintiff and the Class will suffer irreparable injury in that they will be deprived of their rights to use and enjoy their properties.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

1. For economic and compensatory damages according to proof at trial;
2. Declaring that Plaintiff's and the Class' overlying rights to use water from the Basin are superior and have priority vis-a-vis all non-overlying users and Appropriators;
3. Apportioning water rights from the Basin in a fair and equitable manner and enjoining any and all uses inconsistent with such apportionment;
4. Awarding Plaintiff and members of the Class damages from the public entity defendants in the full amount that will compensate Plaintiff and the Class for past and future takings by those Defendants and damages for past and future property infringement;

5. Awarding Plaintiff and the Class the costs of this suit, including reasonable attorneys' and experts' fees and other disbursements; as well as such other and further relief as may be just and proper.

## JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: June 20, 2008

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

By:

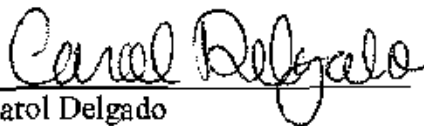
Michael D. McLachlan  
Attorneys for Plaintiff

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PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **FIRST AMENDED CLASS ACTION COMPLAINT**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.

  
Carol Delgado

# EXHIBIT B

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Judicial Council Coordination  
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California  
County of Los Angeles, 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**

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. Bothhouse 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

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

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

Judge: Honorable Jack Komar

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

*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*

2  
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].)

5  
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].)

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

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

20 Section 1021.5 states, in relevant part:

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

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

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

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*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.

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  
necessarily has discretion in making this equitable judgment...."

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

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 The Willis Class's request for costs is GRANTED.

16  
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

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

3  
4 SO ORDERED.

5  
6 Dated: 5-4-2011

7   
8 Hon. Jack Komar  
9 Judge of the Superior Court  
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# EXHIBIT C

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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

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: May 24, 2011  
Time: 9:00 a.m.  
Dept: 316

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 24, 2011, at 9:00 a.m., or as soon thereafter  
3 as the matter may be heard, in Dept. 316, located at 600 South Commonwealth Ave, Los  
4 Angeles, California, Richard Wood and Los Angeles County Waterworks District No. 40  
5 jointly move for preliminary approval of the Wood Class Settlement.

6 Richard Wood and Los Angeles County Waterworks District No. 40 bring this  
7 motion pursuant to California Rules of Court, Rule 3.769.

8 The Motion is based on this Notice, the Memorandum of Points and Authorities,  
9 the Declaration of Michael D. McLachlan, the Declaration of Eric L. Garner, the various  
10 documents attached thereto, the records and file herein, and on such evidence as may be  
11 presented at the hearing of the Motion.

12  
13 DATED: May 2, 2011

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

14  
15  
16 By: \_\_\_\_\_ //s//  
17 MICHAEL D. MCLACHLAN  
18 Attorneys for Plaintiff and the Class

19 DATED: May 2, 2011

BEST BEST & KRIEGER LLP

20  
21  
22 By: \_\_\_\_\_ //s//  
23 ERIC L. GARNER  
24 JEFFREY V. DUNN  
25 STEFANIE D. HEDLUND  
26 Attorneys for Defendant and Cross-  
27 Complainant LOS ANGELES COUNTY  
28 WATERWORKS DISTRICT NO. 40

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**  
2 **FOR ORDER GRANTING PRELIMINARY APPROVAL OF WOOD CLASS**  
3 **ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**  
4

5 **I. INTRODUCTION**

6 Plaintiff Richard Wood has entered into a Stipulation of Settlement (“Agreement”)  
7 with Defendants Los Angeles County Waterworks District No. 40, California Water  
8 Service Company, City of Lancaster, City of Palmdale, Palmdale Water District,  
9 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water  
10 District, Rosamond Community Services District, Phelan Pinon Hills Community  
11 Services District, Desert Lake Community Services District, and North Edwards Water  
12 District (collectively, the “Settling Defendants”), all of whom are referred to as the  
13 “Settling Parties,” subject to court approval and other conditions set forth in the  
14 Agreement.

15 Plaintiff requests that the court adopt the Order Granting Preliminary Approval of  
16 Class Action Settlement and Directing Notice to the Class, which would: (i) preliminarily  
17 approve the proposed Agreement; (ii) approve the form of Notice to the Class and  
18 authorize dissemination of the Notice; (iii) set dates and procedures for a fairness hearing  
19 on the proposed Agreement; and (iv) set procedures and deadlines for class members to  
20 object to the Agreement terms (the proposed Order will be lodged separately).

21 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

22 **A. History of the Wood Class Action**

23 The court is familiar with the history of this action and the details surrounding the  
24 Wood Class (the “Class”). Briefly, Plaintiff Richard Wood (“Plaintiff”) filed this action  
25 on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who  
26 have been pumping less than 25 acre feet year (“afy”) of groundwater from the Antelope  
27 Valley Groundwater Basin (“Basin”). Plaintiff filed this action so that he and the  
28 members of the Class could continue to extract groundwater from the Basin for

1 reasonable and beneficial use. This action was also filed to contest claims of prescriptive  
2 rights asserted by the Public Water Suppliers (also referred to herein as “Settling  
3 Defendants”). The court certified the Wood Class Action by Order dated September 2,  
4 2008, in which the court defined the Wood Class as:

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

16 Notice of the Pendency of the Wood Class Action was sent by first class mail to  
17 all Wood Class Members<sup>1</sup> who could be identified with reasonable effort on or about July  
18 7, 2009 and a Summary Notice was published as instructed by the court. The deadline  
19 for putative Class Members to exclude themselves (as extended) ended on December 4,  
20 2009. Throughout this process, the court made various orders allowing certain parties  
21 who had opted-out to rejoin the Class.

22 **B. Wood Class Settlement Agreement Background And Terms**

23 The Settling Parties commenced settlement negotiations in 2009, which continued  
24 intermittently. As part of those negotiations, the Settling Parties also participated  
25 in mediation before the Honorable Ronald Robie. As a result of the extensive  
26 negotiations, the parties ultimately agreed upon the terms that form the Wood Class  
27 Agreement, attached to the Declaration of Michael D. McLachlan as Exhibit “F”.

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28 <sup>1</sup> If not defined in this Motion, all capitalized references are defined in the  
Settlement Agreement. (McLachlan Decl., Ex. F.)

1 Class Counsel believes that the Wood Class Agreement, and the terms provided  
2 therein, are fair to all concerned, including the non-settling parties, although the  
3 Agreement does not bind the non-settling parties. Several of the material terms agreed  
4 upon in this Agreement are: (1) the Wood Class agrees not to contest the Settling  
5 Defendants' estimates of the Basin's Native Safe Yield as long as it is at least 82,300  
6 acre-feet of water per year; (2) the Wood Class agrees not to contest the Settling  
7 Defendants' estimate of the Basin's Total Safe Yield as long as it is at least 110,500 acre-  
8 feet of water per year; (3) the Settling Parties agree that the United States has a Federal  
9 Reserved Right to some portion of the Basin's Native Safe Yield, the amount of which  
10 will be determined by the Court; (4) the Wood Class will not contest the Settling  
11 Defendants' right to collectively produce up to 15 percent of the Basin's Federally  
12 Adjusted Native Safe Yield; (5) the Wood Class has a correlative right (along with other  
13 overlying landowners) to produce at least 85 percent of the Federally Adjusted Native  
14 Safe Yield; (6) the prescriptive rights of the Settling Defendants, if any, shall not be  
15 exercised to diminish the rights of the Wood Class; (7) if the Court imposes a Physical  
16 Solution, the Wood Class will be bound by it subject to the terms of the Agreement; (8)  
17 in the event of a Physical Solution, each Wood Class Member may pump up to 3 acre-  
18 feet for reasonable and beneficial use on their overlying land from the correlative share of  
19 the Federally Adjusted Native Safe Yield,<sup>2</sup> subject to downward adjustment if it is  
20 determined that the Class as a whole is using less than 3 afy on average; and (9) all parties  
21 have the right to recapture return flows from water that they have imported into the Basin  
22 and the Class agrees not to contest the Settling Defendants' estimates that such return  
23  
24

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25  
26 <sup>2</sup> This di minimis exemption is included in water rights settlements for numerous  
27 reasons, including the economics of enforcing the use of water by thousands of small  
28 users. Examples of the use of di minimis exemptions are discussed in the Declaration  
of Eric L. Garner, filed concurrently with this Motion. The parties respectfully request  
that the Court take judicial notice of the Exhibits to that Declaration.

flows total 28,200 acre-feet per year, of which 25,100 acre-feet is from municipal and industrial use and 3,100 is from agricultural use.

### **III. ARGUMENT**

#### **A. Standard For Preliminary Approval**

There is an overriding public interest in settling and quieting litigation, especially class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953.) Court approval is required before any action certified as a class action may be settled or compromised and subsequently dismissed. Cal Rules of Court, Rule 3.769. In deciding whether to approve a class action settlement, the court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

A class action settlement is approved in accordance with a three-step process: (1) preliminary approval of the proposed settlement and proposed notice to settlement class members; (2) dissemination of the notice of the settlement to class members; and (3) the final approval hearing, at which class members may voice their opinion about the settlement; it is also at this time that evidence and argument regarding the fairness, adequacy and reasonableness of the settlement is presented.

The scope of a court's evaluation during the preliminary hearing stage is limited. The purpose of the preliminary evaluation is simply to determine whether the proposed settlement is within the "range of reasonableness" and thus whether it is appropriate to send notice to the class of the proposed settlement terms and conditions and schedule a final settlement hearing. At the final settlement hearing, the court reviews the proposed settlement de novo, and considers in part the class members' opinions about the particular settlement.

A settlement is presumed fair where: (1) "the settlement is reached through arm's length bargaining;" (2) "investigation and discovery are sufficient to allow counsel and the court to act intelligently;" (3) "counsel is experienced in similar litigation;" and (4)



1 “the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91  
2 Cal.App.4th 224, 244-45.) A review of these factors strongly favors preliminary  
3 approval of the proposed Settlement in this action.

4 **B. The Proposed Settlement Agreement Is Well Within The Range Of**  
5 **Reasonableness And Merits Preliminary Approval.**

6 The proposed Settlement Agreement is well within the “range of reasonableness”  
7 and thus merits approval. Although Plaintiff Wood and the Class believe that their  
8 claims have merit, they recognize that, proceeding with this litigation carries considerable  
9 risk. It is, therefore, in the best interests of Plaintiff and the Class to settle with, and  
10 receive reasonable and prompt benefits from, the Settling Defendants.

11 It is elemental that a settlement is a compromise and, thus, does not ordinarily  
12 provide a plaintiff with the full relief or recovery originally sought at the time the action  
13 was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 (“In the context of a settlement  
14 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on  
15 the complaint, but rather whether the settlement is reasonable under all of the  
16 circumstances.”).) Even under the Agreement, however, the Class will benefit  
17 substantially.

18 The Agreement represents a compromise and allows for dismissal of Defendants’  
19 prescription claims. It also recognizes the correlative rights of the Class and allows class  
20 members to pump up to 3 acre feet for reasonable and beneficial use on their overlying  
21 land, should the Court ultimately impose a Physical Solution.<sup>3</sup> Additionally, the Class  
22 may benefit from a higher yield of groundwater if the court deems Defendants’ estimates,  
23 as set forth in the Agreement, are too low.

24 In sum, given the many risks faced by Plaintiff and the Class in pursuing this  
25 litigation, the Agreement represents a reasonable resolution of otherwise complex and  
26  
27  
28

1 strongly contested issues. Had the Class not settled, the resolution of those issues would  
2 have resulted in a long and considerably expensive trial. The Agreement is within the  
3 range of reasonableness in light of these circumstances.

4 **C. The Extent Of Discovery Completed And The Stage Of Proceedings**

5 This Agreement is the result of years of discovery and contested law and motion  
6 proceedings, all of which educated counsel on both sides as to the strengths and  
7 weaknesses of their claims. Class Counsel reviewed and analyzed thousands of pages of  
8 documents produced by Defendants, and have engaged in extensive research in relation  
9 to the legal and factual issues central to Plaintiff's claims. Class Counsel also has  
10 experience in complex class action litigation. Class Counsel was thus well-informed and  
11 strategically positioned to negotiate an appropriate settlement agreement, which was  
12 negotiated at arms-length over several years time

13 **D. The Proposed Notice Fairly Apprises The Class Members of the Terms**  
14 **Of The Settlement Agreement And Their Options.**

15 Notice of a class action settlement must "present a fair recital of the subject matter  
16 and proposed terms [and provide] an opportunity to be heard to all class members." (See,  
17 e.g. *In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d 1353, 1361; see  
18 also, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

19 The proposed Notice (Exhibit "G") apprises the Wood Class Members of their  
20 rights and how their rights may be exercised. The Notice informs the Wood Class  
21 Members of: (i) the persons that qualify as a member of the Wood Class; (ii) the history  
22 of the litigation; (iii) the terms of the Agreement; (iv) the binding effect of any Judgment;  
23 (v) the right of Wood Class Members to object to any aspect of the Settlement and/or to  
24 appear at the fairness hearing and the procedures and deadlines for doing so; (vii) the  
25

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26  
27 <sup>3</sup> If there is no Physical Solution imposed, or until one is imposed or some other  
28 binding order is made, the Class Members will continue to pump groundwater as they  
have historically done, the same as other parties to these coordinated proceedings.

1 date, time and location of the fairness hearing; and (viii) how to obtain additional  
2 information.

3 The method by which the Notice will be disseminated is also appropriate, as set  
4 forth in Section VI.B of the Agreement. The Settling Defendants have agreed to send  
5 Notice via the United States Postal Service directly to each of the Class Members (at their  
6 last known address), as well as publish a Summary Notice (Exhibit “H”) in three widely  
7 read newspapers in the area. These actions fully comply with all applicable rules and due  
8 process requirements. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.) Class  
9 Members wishing to opt-out of the Settlement will have 45 days from mailing of the  
10 notice to do so.

#### 11 12 **IV. CONCLUSION**

13 For all of the foregoing reasons, Plaintiff Wood and District 40 respectively  
14 request that the Court grant this Motion and: (1) preliminarily approve the proposed  
15 Agreement; (2) approve the Notice and authorize its dissemination; (3) schedule a  
16 fairness hearing on the proposed Agreement; and (4) set forth procedures and deadlines  
17 for Class Members to file objections to the proposed Agreement, as set forth in the  
18 Proposed Order submitted herewith.

19  
20 DATED: May 2, 2011

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

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22  
23 By: \_\_\_\_\_//s//  
24 MICHAEL D. MCLACHLAN  
25 Attorneys for Plaintiff and the Class  
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DATED: May 2, 2011

BEST BEST & KRIEGER LLP

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

ERIC L. GARNER  
JEFFREY V. DUNN  
STEFANIE D. HEDLUND  
Attorneys for Defendant and Cross-  
Complainant LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40

**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 Blvd., Los Angeles, California 90025.

On May 2, 2011, I caused the foregoing document(s) described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** 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

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12 Fax: (310) 481-0049

13 Attorneys for Plaintiff Richard Wood and the Class

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16 Coordination Proceeding  
17 Special Title (Rule 1550(b))

18 ANTELOPE VALLEY GROUNDWATER  
19 CASES

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

23 Plaintiff,

24 v.

25 LOS ANGELES COUNTY  
26 WATERWORKS DISTRICT NO. 40; et  
27 al.

28 Defendants.

Judicial Council Coordination  
Proceeding No. 4408  
(Honorable Jack Komar)

Case No.: BC 391869

**NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date: March 26, 2015  
Time: 10:00 a.m.  
Dept: Room 222

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 26, 2015, at 10:00 a.m., or as soon  
3 thereafter as the matter may be heard, in Room 222, located at 111 North Hill  
4 Street, Los Angeles, California, Richard Wood and Los Angeles County  
5 Waterworks District No. 40 jointly move for preliminary approval of the Small  
6 Pumper Class Settlement.

7 Richard Wood and Los Angeles County Waterworks District No. 40 bring  
8 this motion pursuant to California Rules of Court, Rule 3.769.

9 The Motion is based on this Notice, the Memorandum of Points and  
10 Authorities, the Declaration of Michael D. McLachlan, the various documents  
11 attached thereto, the records and file herein, and on such evidence as may be  
12 presented at the hearing of the Motion.

13  
14 DATED: March 4, 2015

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

15  
16 Michael D.  
17 McLachlan

Digitally signed by Michael D.  
McLachlan  
DN: cn=Michael D. McLachlan, o=Law  
Offices of Michael D. McLachlan, ou,  
email=mike@mclachlanlaw.com, c=US  
Date: 2015.03.04 16:15:58 -08'00'

By:

18 MICHAEL D. MCLACHLAN  
19 Attorneys for Plaintiff and the Class  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. INTRODUCTION**

4 Plaintiff Richard Wood has entered into a Stipulation of Settlement  
5 (“Agreement”) with Defendants Los Angeles County Waterworks District No. 40  
6 (“District 40”), California Water Service Company, City of Palmdale, Littlerock  
7 Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water  
8 District, and Desert Lake Community Services District (collectively, the “Settling  
9 Defendants”) subject to court approval and other conditions set forth in the  
10 Agreement.<sup>1</sup> By incorporation of the Stipulation for Entry of Judgment and  
11 Physical Solution and its exhibits and appendices (“Stipulation”) into this  
12 Agreement, Richard Wood is also settling with all of the signatory parties to that  
13 Stipulation. Those Parties include Defendants City of Lancaster, Palmdale Water  
14 District, Rosamond Community Services District, and Phelan Pinon Hills  
15 Community Services District, all of whom were Settling Parties in the 2014 partial  
16 Small Pumper Class Settlement. All of these parties are referred to collectively as  
17 the “Settling Parties.” The Agreement is attached as Exhibit 1 to the Declaration  
18 of Michael D. McLachlan.

19 The Agreement and Stipulation, upon which it is founded involve parties  
20 accounting for approximately 99.8% of the current production of the native safe  
21 yield. If approved, this settlement will bring this litigation to a close, and will  
22 cause a permanent physical to be imposed that will cut current groundwater  
23 production by more than 70,000 acre-feet per year, bring the basin in to balance,  
24 and provide for basin-wide management, among many other benefits.

25

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26

27 <sup>1</sup> This Agreement does not currently include Defendant North Edwards  
28 Water District because it has not yet agreed to sign. This matter will be resolved  
prior to the preliminary approval hearing.

1 Plaintiff and District 40 request that the court adopt the Order Granting  
2 Preliminary Approval of Class Action Settlement and Directing Notice to the  
3 Class, which would: (i) preliminarily approve the proposed Agreement; (ii)  
4 approve the form of Notice to the Class and authorize dissemination of the  
5 Notice; (iii) set dates and procedures for a fairness hearing on the proposed  
6 Agreement; and (iv) set procedures and deadlines for class members to object to  
7 the Agreement terms (the propose Order will be lodged separately).

## 8 9 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

### 10 **A. History of the Small Pumper Class Action**

11 The court is familiar with the history of this action and the details  
12 surrounding the Small Pumper Class (the “Class”). Briefly, Plaintiff Richard  
13 Wood (“Plaintiff”) filed this action on June 2, 2008 to protect his rights, and  
14 those of other Antelope Valley landowners who have been pumping less than 25  
15 acre feet year (“afy”) of groundwater from the Antelope Valley Groundwater  
16 Basin (“Basin”). Plaintiff filed this action so that he and the members of the Class  
17 could continue to extract groundwater from the Basin for reasonable and  
18 beneficial use. This action was also filed to contest claims of prescriptive rights  
19 asserted by the various Public Water Suppliers. The court certified the Small  
20 Pumper Class Action by Order dated September 2, 2008, in which the court  
21 defined the Small Pumper Class as:

22 All private (i.e., non-governmental) persons and entities  
23 that own real property within the Basin, as adjudicated,  
24 and that have been pumping less that 25 acre-feet per  
25 year on their property during any year from 1946 to the  
26 present. The Class excludes the defendants herein, any  
27 person, firm, trust, corporation, or other entity in which  
28 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

1 also excludes all persons and entities that are  
2 shareholders in a mutual water company.

3 Notice of the Pendency of the Small Pumper Class Action was sent by first  
4 class mail to all Small Pumper Class Members<sup>2</sup> who could be identified with  
5 reasonable effort on or about July 7, 2009 and a Summary Notice was published  
6 as instructed by the court. The deadline for putative Class Members to exclude  
7 themselves (as extended) ended on December 4, 2009. Throughout this process,  
8 the court made various orders allowing certain parties who had opted-out to  
9 rejoin the Class.

10 **B. Small Pumper Class Settlement Agreement Background**  
11 **And Terms**

12 The Settling Parties commenced settlement negotiations in 2009, which  
13 continued intermittently. As part of those negotiations, various of the Settling  
14 Parties also participated in private mediation before, William Dendy, James  
15 Waldo, and more recently, the Honorable Ronald Robie. As a result of the  
16 extensive negotiations, the parties ultimately agreed upon the terms that form the  
17 Stipulation, attached to the Agreement as “Exhibit A”.

18 Class Counsel believes that the Small Pumper Class Agreement, and the  
19 terms provided therein, are fair to the Class members and all concerned. Several  
20 of the material terms agreed upon in this Agreement are: (1) Settling parties  
21 agree that all claims between and among them are resolved, including the water  
22 rights of each party; (2) one of the nation’s most important defense assets,  
23 Edwards Air Force Base and the associate Plant 42 facilities, will have a defined  
24 and sufficient water supply going forward; (3) the Small Pumper Class has a  
25 right to produce an average of 1.2 acre-feet per year per household, and up to an  
26

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27 <sup>2</sup> If not defined in this Motion, all capitalized references are defined in the  
28 Settlement Agreement or the Stipulated Judgment. (McLachlan Decl., Ex. 1.)

1 individual household maximum of 3.0 acre-feet per year, free of replacement  
2 assessment; (4) the prescriptive rights of the Settling Defendants, if any, shall not  
3 be exercised to diminish the rights of the Small Pumper Class; (5) provides for a  
4 basin-wide management system through a watermaster, funded by assessments  
5 levied on all groundwater users in the basin; (6) reduces the current pumping by  
6 70,000 acre-feet per year; (7) brings the basin into balance; (8) permits storage  
7 of water in the basin; (8) allows for the transfer of water rights within the basin;  
8 (9) provides for future domestic pumping of residential users, such as Willis Class  
9 members; and (10) all parties have the right to recapture return flows from water  
10 that they have imported into the Basin, among other provisions.

### 11 12 **III. ARGUMENT**

#### 13 **A. Standard For Preliminary Approval**

14 There is an overriding public interest in settling and quieting litigation,  
15 especially class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955  
16 F.2d 1268, 1276, cert. denied, 506 U.S. 953.) Court approval is required before  
17 any action certified as a class action may be settled or compromised and  
18 subsequently dismissed. Cal Rules of Court, Rule 3.769. In deciding whether to  
19 approve a class action settlement, the court has broad discretion to determine  
20 whether a proposed settlement is fair under the circumstances of the case.  
21 (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

22 A class action settlement is approved in accordance with a three-step  
23 process: (1) preliminary approval of the proposed settlement and proposed notice  
24 to settlement class members; (2) dissemination of the notice of the settlement to  
25 class members; and (3) the final approval hearing, at which class members may  
26 voice their opinion about the settlement; it is also at this time that evidence and  
27 argument regarding the fairness, adequacy and reasonableness of the settlement  
28 is presented.

1 The scope of a court's evaluation during the preliminary hearing stage is  
2 limited. The purpose of the preliminary evaluation is simply to determine  
3 whether the proposed settlement is within the "range of reasonableness" and thus  
4 whether it is appropriate to send notice to the class of the proposed settlement  
5 terms and conditions and schedule a final settlement hearing. At the final  
6 settlement hearing, the court reviews the proposed settlement de novo, and  
7 considers in part the class members' opinions about the particular settlement.

8 A settlement is presumed fair where: (1) "the settlement is reached through  
9 arm's length bargaining;" (2) "investigation and discovery are sufficient to allow  
10 counsel and the court to act intelligently;" (3) "counsel is experienced in similar  
11 litigation;" and (4) "the percentage of objectors is small." (*Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45.) A review of these factors  
13 strongly favors preliminary approval of the proposed Settlement in this action.

14 **B. The Proposed Settlement Agreement Is Well Within The**  
15 **Range Of Reasonableness And Merits Preliminary**  
16 **Approval.**

17 The proposed Settlement Agreement is well within the "range of  
18 reasonableness" and thus merits approval. Although Plaintiff Wood and the  
19 Class believe that their claims have merit, they recognize that, proceeding with  
20 this litigation carries considerable risk. It is, therefore, in the best interests of  
21 Plaintiff and the Class to settle with, and receive reasonable and prompt benefits  
22 from, the Settling Defendants.

23 It is elemental that a settlement is a compromise and, thus, does not  
24 ordinarily provide a plaintiff with the full relief or recovery originally sought at  
25 the time the action was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 ("In the  
26 context of a settlement agreement, the test is not the maximum amount plaintiffs  
27 might have obtained at trial on the complaint, but rather whether the settlement  
28

1 is reasonable under all of the circumstances.”.) Even under the Agreement,  
2 however, the Class will benefit substantially.

3 The Agreement represents a compromise and allows for dismissal of  
4 Defendants’ prescription claims. It also recognizes the rights of the Class and  
5 allows class members to pump up to 3 acre feet for reasonable and beneficial use  
6 on their overlying land.

7 In sum, given the many risks faced by Plaintiff and the Class in pursuing  
8 this litigation, the Agreement represents a reasonable resolution of otherwise  
9 complex and strongly contested issues. Had the Class not settled, the resolution  
10 of those issues would have resulted in a long and considerably expensive trial.  
11 The Agreement is within the range of reasonableness in light of these  
12 circumstances.

13 **C. The Extent Of Discovery Completed And The Stage Of**  
14 **Proceedings**

15 This Agreement is the result of years of discovery, contested law and  
16 motion proceedings, and several phase of trial, all of which educated counsel on  
17 both sides as to the strengths and weaknesses of their claims. Class Counsel  
18 reviewed and analyzed thousands of pages of documents produced by  
19 Defendants, and have engaged in extensive research in relation to the legal and  
20 factual issues central to Plaintiff’s claims. Class Counsel also has experience in  
21 complex class action litigation. Class Counsel was thus well-informed and  
22 strategically positioned to negotiate an appropriate settlement agreement, which  
23 was negotiated at arms-length over several years’ time.

24 **D. The Proposed Notice Fairly Apprises The Class Members of**  
25 **the Terms Of The Settlement Agreement And Their**  
26 **Options.**

27 Notice of a class action settlement must “present a fair recital of the subject  
28 matter and proposed terms [and provide] an opportunity to be heard to all class

members.” (See, e.g. *In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d 1353, 1361; see also, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

The proposed Notice (Exhibit 2) apprises the Small Pumper Class Members of their rights and how their rights may be exercised. The Notice informs the Small Pumper Class Members of: (i) the persons that qualify as a member of the Small Pumper Class; (ii) the history of the litigation; (iii) the terms of the Agreement; (iv) the binding effect of any Judgment; (v) the right of Small Pumper Class Members to object to any aspect of the Settlement and/or to appear at the fairness hearing and the procedures and deadlines for doing so; (vii) the date, time and location of the fairness hearing; and (viii) how to obtain additional information.

The method by which the Notice will be disseminated is also appropriate, as set forth in Section VI.B of the Agreement. The Settling Defendants have agreed to send Notice via the United States Postal Service directly to each of the Class Members (at their last known address), as well as publish a Summary Notice (Exhibit 3) in three widely read newspapers in the area. These actions fully comply with all applicable rules and due process requirements. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.) Class Members have previously been given two opportunities to opt-out of the Class, and so, per instructions of the Court, the Class members are not permitted to opt-out of this settlement.

#### **IV. CONCLUSION**

For all of the foregoing reasons, Plaintiff Wood and D40 respectively request that the Court grant this Motion and: (1) preliminarily approve the proposed Agreement; (2) approve the Notice and authorize its dissemination; (3) schedule a fairness hearing on the proposed Agreement; and (4) set forth procedures and deadlines for Class Members to file objections to the proposed

1 Agreement, as set forth in the Proposed Order attached as Exhibit B to the  
2 Agreement.

3  
4 DATED: March 4, 2015

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

5 Michael D.  
6 McLachlan

Digitally signed by Michael D. McLachlan  
DN: cn=Michael D. McLachlan, o=Law  
Offices of Michael D. McLachlan, ou,  
email=mike@mclachlanlaw.com, c=US  
Date: 2015.03.04 16:16:13 -08'00'

7 By: \_\_\_\_\_

MICHAEL D. MCLACHLAN  
Attorneys for Plaintiff and the Class



# EXHIBIT E

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 1 HON. JACK KOMAR, JUDGE  
4 COORDINATION PROCEEDING ) JUDICIAL COUNCIL  
5 SPECIAL TITLE (RULE 1550(B) ) COORDINATION NO.  
6 ANTELOPE VALLEY GROUNDWATER CASES ) JCCP4408  
7 ) SANTA CLARA CASE NO.  
8 ) 1-05-CV-049053  
9 )  
10 )  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FRI DAY, NOVEMBER 9, 2012  
APPEARANCES:  
FOR LOS ANGELES COUNTY WATERWORKS DISTRICT 40, ET. AL. LEMI EUX & O' NEILL  
BY: WAYNE LEMI EUX, ESQ.  
4165 E. THOUSAND OAKS BLVD, SUITE 350  
WESTLAKE VILLAGE, CALIFORNIA 91362  
(805) 495-4770  
FOR CITY OF PALMDALE: RICHARDS WATSON & GERSHON  
BY: STEVEN R. ORR, ESQ.  
355 SOUTH GRAND AVENUE, 40TH FL.  
LOS ANGELES, CALIFORNIA 90071-3101  
(213) 626-8484  
FOR ANTELOPE VALLEY GROUNDWATER ASSOCIATION: BROWNSTEIN HYATT FARBER SCHRECK  
BY: MICHAEL FIFE, ESQ.  
21 EAST CARRILLO STREET  
SANTA BARBARA, CALIFORNIA 93101  
(805) 882-1453  
(APPEARANCES CONTINUED ON NEXT PAGE.)

1 FOR RICHARD A. LAW OFFICES OF MICHAEL MC LACHLAN  
Page 1

12-11-09 Hearing Transcript.txt  
WOOD: BY: MICHAEL MC LACHLAN, ESQ.  
10490 SANTA MONICA BOULEVARD  
LOS ANGELES, CALIFORNIA 90025  
(310) 954-8270  
FOR LOS ANGELES BEST BEST & KRIEGER  
COUNTY WATERWORKS BY: JEFFREY V. DUNN, ESQ.  
DISTRICT 40: 5 PARK PLAZA, SUITE 1500  
IRVINE, CA 92614  
(949) 263-2600  
FOR ROSAMOND LAW OFFICES OF FRANK SATALINO  
RANCH; ELIAS BY: FRANK SATALINO, ESQ.  
SHOKRIAN; SHIRLEY 19 VELARDE COURT  
SHOKRIAN: RANCHO SANTA MARGARITA, CA. 92688  
(949) 735-7604  
FOR UNITED U. S. DEPARTMENT OF JUSTICE  
STATES: ENVIRONMENT AND NATURAL  
RESOURCES DIVISION  
BY: R. LEE LEININGER, ESQ.  
999 18TH STREET, SUITE 370  
DENVER, CO 80202  
(303) 844-1364  
APPEARANCES BY TELEPHONE:  
SHELDON BLUM  
WILLIAM BRUNICK  
MARLENE ALLEN  
THEODORE CHESTER  
JANET GOLDSMITH  
KATRINA GONZALEZ  
STEFANIE HEDLUND  
BRAD HERREMA  
JOSEPH HUGHES  
BOB JOYCE  
RALPH KALFAYAN  
ROBERT KUHS  
SCOTT KUNEY  
JAMES LEWIS  
ANTHONY LEGGIO  
EMILY MADUENO  
WESLEY MILLIBAND  
MANUEL RIVAS  
CHRISTOPHER SANDERS  
WILLIAM SLOAN  
JENNIFER SPALETTA  
JOHN TOOTLE  
JOHN UKKESTAD  
JAMES WORTH  
RICHARD ZIMMER  
SANDRA GECO, CSR NO. 3806  
OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT 1 HON. JACK KOMAR, JUDGE

4 COORDINATION PROCEEDING ) JUDICIAL COUNCIL  
 SPECIAL TITLE (RULE 1550(B)) ) COORDINATION NO.  
 5 ) JCCP4408  
 ANTELOPE VALLEY GROUNDWATER CASES )  
 6 ) SANTA CLARA CASE NO.  
 7 ) 1-05-CV-049053  
 8 PALMDALE WATER DISTRICT AND QUARTZ )  
 HILL WATER DISTRICT, )  
 9 )  
 CROSS-COMPLAINANTS, )  
 10 )  
 VS. )  
 11 )  
 LOS ANGELES COUNTY WATERWORKS )  
 12 DISTRICT NO. 40, ET AL., )  
 CROSS-DEFENDANTS. )  
 13 )  
 14 )

15 REPORTER'S CERTIFICATE

16  
 17 STATE OF CALIFORNIA )  
 18 COUNTY OF LOS ANGELES ) SS  
 19 I, SANDRA GECO, OFFICIAL REPORTER OF THE  
 20 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY  
 21 OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING  
 22 PAGES, 1 THROUGH 57, INCLUSIVE, COMPRISE A FULL, TRUE AND  
 23 CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
 24 ABOVE-ENTITLED MATTER, REPORTED BY ME ON FRIDAY, NOVEMBER  
 25 9, 2012.

26 DATED THIS 12TH DAY OF NOVEMBER, 2012.

27 \_\_\_\_\_, CSR NO. 3806  
 28 OFFICIAL REPORTER

1

1 CASE NUMBER: JCCP4408  
 2 CASE NAME: COORDINATION PROCEEDING SPECIAL  
 3 TITLE (RULE 1550(B))  
 4 ANTELOPE VALLEY GROUNDWATER CASES  
 5 LOS ANGELES, CA; FRIDAY, NOVEMBER 9, 2012

12-11-09 Hearing Transcript.txt  
6 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE  
7 REPORTER: SANDRA GECO, CSR NO. 3806  
8 TIME: 09:00 A.M.  
9 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
10  
11 (THE FOLLOWING PROCEEDINGS WERE HELD  
12 IN OPEN COURT: )  
13  
14 THE COURT: GOOD MORNING. THIS IS THE CASE, I  
15 BELIEVE, CALLED THE ANTELOPE VALLEY COORDINATED CASES.  
16 ALSO CONSOLIDATED.  
17 OKAY. I UNDERSTAND THAT ROLL CALL HAS BEEN  
18 MADE OF THOSE ON THE TELEPHONE.  
19 I WOULD JUST REMIND YOU, IF YOU'RE ON THE  
20 TELEPHONE AND YOU WISH TO BE HEARD, BE SURE EACH TIME YOU  
21 IDENTIFY YOURSELF BY NAME SO THE REPORTER WILL BE ABLE TO  
22 KEEP TRACK OF WHO'S TALKING, AS WILL I.  
23 THOSE IN THE COURTROOM, I WOULD EXPECT YOU  
24 TO IDENTIFY YOURSELVES EACH TIME YOU SPEAK FOR THE  
25 BENEFIT OF THE COURT REPORTER. AND THAT WAY WE'LL HAVE A  
26 CLEAR RECORD.  
27 MR. BLUM: YOUR HONOR, IF I MAY SAY. THIS IS  
28 SHELDON BLUM. I WAS NOT PRESENT WHEN ROLL CALL WAS MADE,  
2  
1 BUT I AM CURRENTLY ON THE PHONE.  
2 THE COURT: ALL RIGHT. THANK YOU, MR. BLUM.  
3 MR. TOOTLE: YOUR HONOR, THIS IS JOHN TOOTLE. AND  
4 I WAS NOT ON THE PHONE WHEN ROLL CALL WAS CALLED. AND I  
5 AM PRESENT AS WELL.  
6 THANK YOU, YOUR HONOR.  
7 THE COURT: THANK YOU.  
8 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH  
Page 4

9 FOR THE CITY OF LOS ANGELES. I'M NOT SURE ROLL CALL WAS  
10 DONE. BUT I AM PRESENT.

11 MR. KUNEY: YES, YOUR HONOR. THIS IS SCOTT KUNEY.  
12 I DON'T BELIEVE ROLL CALL WAS DONE AS IT HAS IN THE PAST.

13 THE COURT: WELL, IF YOU CHECKED IN SO THAT WE  
14 KNOW WHO IS PRESENT.

15 MS. GONZALEZ: YOUR HONOR, THIS IS KATRINA  
16 GONZALEZ FOR COPA DE ORO LAND COMPANY. I ALSO WAS NOT  
17 PRESENT DURING THE ROLL CALL.

18 THE COURT: ALL RIGHT.

19 MR. LEWIS: YOUR HONOR, THIS IS JAMES LEWIS ON  
20 BEHALF OF LITTLE ROCK SAND AND GRAVEL AND SEVERAL OTHER  
21 ENTITIES.

22 THE COURT: ALL RIGHT.

23 MS. SPALETTA: YOUR HONOR, THIS IS JENNIFER  
24 SPALETTA.

25 MS. ALLEN: MARLENE ALLEN IS HERE FOR OUR  
26 DIFFERENT CLIENTS.

27 THE COURT: OKAY. LET ME ASK YOU TO PAUSE FOR  
28 JUST A MINUTE TO TAKE CARE OF SOME BUSINESS HERE.

3

1 THE CLERK: OKAY. COUNSEL ON THE PHONE, I'M GOING  
2 TO -- THIS IS THE CLERK FOR DEPARTMENT 1. I WILL TAKE A  
3 QUICK ROLL CALL.

4 JENNIFER SPALETTA.

5 MS. SPALETTA: HERE.

6 THE CLERK: THANK YOU.

7 JAMES LEWIS.

8 MR. LEWIS: HERE.

9 THE CLERK: THANK YOU.

10 MR. BLUM, I KNOW YOU'RE HERE.

11  
12 MR. SLOAN: YES. PRESENT.  
13 THE CLERK: THANK YOU.  
14 MANUEL RIVAS.  
15 MR. RIVAS: PRESENT.  
16 THE CLERK: THANK YOU.  
17 MR. KALFAYAN  
18 MR. KALFAYAN: HERE. PRESENT.  
19 THE CLERK: THANK YOU.  
20 MR. UKKESTAD?  
21 MR. UKKESTAD: PRESENT.  
22 THE CLERK: THANK YOU.  
23 JAMES WORTH.  
24 MR. RAYTIS: GOOD MORNING. MY NAME IS DAN RAYTIS,  
25 APPEARING IN PLACE OF JAMES WORTH.  
26 THE CLERK: THANK YOU.  
27 MR. LEGGIO?  
28 MR. LEGGIO: PRESENT.

4

1 THE CLERK: THANK YOU.  
2 MR. KUNEY?  
3 MR. KUNEY: YES.  
4 THE CLERK: THANK YOU.  
5 MS. MADUENO.  
6 MS. MADUENO: HERE.  
7 THE CLERK: THANK YOU.  
8 MR. BRUNICK?  
9 MR. BRUNICK: HERE.  
10 THE CLERK: THANK YOU.  
11 KATRINA GONZALEZ?  
12 MS. GONZALEZ: HERE.  
13 THE CLERK: THANK YOU.

14 CHRISTOPHER SANDERS?  
15 MR. SANDERS: PRESENT.  
16 THE CLERK: THANK YOU.  
17 WESLEY MILIBAND?  
18 MR. MILIBAND: PRESENT.  
19 THE CLERK: THANK YOU.  
20 MARLENE ALLEN?  
21 MS. ALLEN: PRESENT.  
22 THE CLERK: THANK YOU.  
23 MR. CHESTER, YOU'RE HERE? THANK YOU.  
24 MR. TOOTLE?  
25 MR. TOOTLE: HERE.  
26 THE CLERK: THANK YOU.  
27 MR. KUHS?  
28 MR. KUHS: HERE.

5

1 THE CLERK: THANK YOU. MR. ZIMMER.  
2 MR. ZIMMER: PRESENT.  
3 THE CLERK: THANK YOU.  
4 MR. JOYCE? BOB JOYCE? NO ANSWER.  
5 MR. HUGHES?  
6 MR. HUGHES: PRESENT.  
7 THE CLERK: THANK YOU.  
8 MR. HERREMA?  
9 MR. HERREMA: BRAD HERREMA. PRESENT.  
10 THE CLERK: THANK YOU. MS. GOLDSMITH?  
11 MS. GOLDSMITH: PRESENT.  
12 THE CLERK: THANK YOU.  
13 MS. HEDLUND?  
14 MS. HEDLUND: PRESENT.  
15 THE CLERK: THANK YOU.



16  
17 NOT CALL?  
18 THE CLERK: THAT TAKES CARE OF THAT.  
19 THANK YOU, COUNSEL.  
20 THE COURT: THANK YOU VERY MUCH.  
21 ALL RIGHT. WE HAVE SEVERAL THINGS TO TAKE  
22 CARE OF THIS MORNING.  
23 AND I WILL TELL YOU THAT I SPOKE WITH  
24 JUSTICE ROBIE YESTERDAY BY TELEPHONE. I THINK AFTER YOU  
25 HAD COMPLETED YOUR MEDIATION SESSIONS.  
26 AND HE INDICATED THAT THERE WAS GOING TO BE  
27 A FURTHER TWO-DAY CONFERENCE, THE 28TH AND THE 29TH, I  
28 BELIEVE, OF THIS MONTH.

6

1 AND HE IS AS OPTIMISTIC AS I AM THAT THE  
2 MATTER IS GOING TO GET RESOLVED IN THE MAIN. BUT  
3 CERTAINLY NOT IN ITS TOTALITY.  
4 AND WE STILL HAVE A LOT OF WORK TO DO HERE.  
5 AND I'M GOING TO MAKE AN ASSUMPTION THAT  
6 THERE'S NOT GOING TO BE A RESOLUTION OF EVERY ISSUE BY  
7 EVERY PARTY. AND WE ARE GOING TO STICK VERY CLOSELY TO  
8 THE SCHEDULED TRIAL DATE FOR THE NEXT PHASE, WHICH WILL  
9 BE FEBRUARY THE 11TH. IT'S BEEN SET NOW FOR SOMETIME.  
10 AND WE'RE GOING TO UTILIZE THAT TWO-WEEK  
11 PERIOD ONE WAY OR ANOTHER TO MOVE THIS CASE ALONG TO,  
12 HOPEFULLY, A GOOD, COMPREHENSIVE RESOLUTION OF THE ISSUES  
13 IN THIS CASE.  
14 ONE OF THE THINGS THAT I HAVE ON THIS  
15 MORNING IS A MOTION BY MR. LEMIEUX TO WITHDRAW AS  
16 COUNSEL.  
17 I HAVE NOT RECEIVED A SUFFICIENT BASIS FOR  
18 THE COURT TO GRANT THAT MOTION AT THIS POINT.

19 DID YOU HAVE SOMETHING ELSE YOU WISHED TO  
20 OFFER?

21 MR. LEMI EUX: WELL, IT WAS OUR INTENTION TO  
22 PROVIDE THAT --

23 THE COURT: WOULD YOU STAND UP WHEN YOU TALK SO  
24 THAT THE REPORTER CAN HEAR YOU?

25 MR. LEMI EUX: SURE.

26 THE COURT: AND I CAN HEAR YOU?

27 I'D ASK ALL COUNSEL TO STAND WHEN YOU  
28 ADDRESS THE COURT FOR THE BENEFIT OF THE COURT REPORTER.

7

1 WHEN YOU STAND, YOU SPEAK MORE CLEARLY.

2 MR. LEMI EUX: KEITH LEMI EUX.

3 YOUR HONOR, IT WAS OUR INTENTION TO PROVIDE  
4 THE BASIS FOR THE MOTION IN CAMERA IF WE COULD. I  
5 UNDERSTAND WE DON'T HAVE THE FACILITIES TO DO THAT HERE.

6 STARTING OVER AGAIN.

7 WHEN WE FILED THE MOTION, IT WAS OUR  
8 INTENT, SO AS NOT TO PREJUDICE THE CLIENT, TO PROVIDE THE  
9 BASIS FOR THE MOTION IN CAMERA IF WE COULD PURSUANT TO  
10 THE COURT RULES THAT WE CITED.

11 I DON'T KNOW IF WE CAN DO THAT HERE. WE  
12 COULD DO IT THROUGH A SEPARATE --

13 THE COURT: WELL, DO YOU HAVE SOMETHING IN WRITING  
14 THAT YOU CAN PROVIDE TO THE COURT FOR A REVIEW IN CAMERA?

15 MR. LEMI EUX: TODAY?

16 THE COURT: YES.

17 MR. LEMI EUX: NO.

18 THE COURT: TODAY IS THE HEARING ON THE MOTION.

19 MR. LEMI EUX: NO. I DON'T HAVE ANYTHING IN  
20 WRITING TODAY.

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21 THE COURT: SO WHAT DO YOU WANT ME TO DO?  
22 MR. LEMIEUX: WELL, I WAS HOPING MAYBE -- I THINK  
23 LAST TIME THIS CAME UP, WE SET UP A PHONE CONFERENCE.  
24 AND YOU HAD THE CLIENT COME ON THE PHONE -- PRIVATE PHONE  
25 CONFERENCE.  
26 THAT'S SORT OF WHAT I WAS EXPECTING, YOUR  
27 HONOR.  
28 THE COURT: WELL, IF YOU WANT TO DO THAT, THEN I

8

1 SUGGEST THAT YOU CALL MRS. WALKER, WHEN YOU'RE THROUGH  
2 HERE, AND SEE IF YOU CAN SCHEDULE A TIME FOR THAT TO  
3 OCCUR.  
4 MR. LEMIEUX: OKAY. AND THEN WE'LL --  
5 THE COURT: MAKING SURE THAT YOUR CLIENT  
6 UNDERSTANDS THAT THEY MUST BE REPRESENTED BY COUNSEL.  
7 MR. LEMIEUX: RIGHT.  
8 THE COURT: AND IF THEY ARE NOT REPRESENTED BY  
9 COUNSEL WITHIN A PERIOD OF TIME THAT I WILL SET, A  
10 DEFAULT WILL BE ENTERED AGAINST THEM.  
11 MR. LEMIEUX: RIGHT. THEY HAVE BEEN ADVISED THAT,  
12 YOUR HONOR.  
13 THE COURT: ALL RIGHT. DO THEY CARE?  
14 MR. LEMIEUX: I DON'T WANT TO GO INTO THE DETAILS.  
15 IT'S A LONG STORY.  
16 THE COURT: ALL RIGHT.  
17 MR. LEMIEUX: BUT I'LL SET UP THE PHONE  
18 CONFERENCE, YOUR HONOR.  
19 THE COURT: OKAY. THANK YOU.  
20 OKAY. NOW, I RECEIVED A NUMBER OF  
21 SUGGESTIONS FROM VARIOUS PARTIES AS TO HOW WE SHOULD  
22 PROCEED IN TERMS OF UTILIZATION OF PHASE FOUR, IF YOU  
23 WILL, THE NEXT PHASE OF TRIAL, FEBRUARY THE 11TH, IN THE

24 EVENT THAT ALL MATTERS HAVE TO BE -- THERE ARE NO EVEN  
25 PARTIAL SETTLEMENTS.

26 AND I'VE REVIEWED THOSE SUGGESTIONS. AND  
27 FRANKLY, THERE'S A LOT OF COMMONALITY TO THE VARIOUS  
28 PROPOSALS.

9

1 AND IT DOES SEEM TO ME THAT ONE OF THE  
2 THINGS THAT WILL HELP US TO HAVE A TRIAL DURING THAT  
3 PERIOD OF TIME THAT WILL BE EFFECTIVE TO RESOLVE A NUMBER  
4 OF THE ISSUES WILL BE IF THE COURT MAKES AN ORDER FOR  
5 SOME FORM DISCOVERY, AS I INDICATED THE LAST TIME WE WERE  
6 IN SESSION.

7 AND I HAD ASKED THAT SOME OF THE  
8 ADVERSARIES TO MEET AND CONFER. WE TOOK A BRIEF RECESS.  
9 AND WHEN I TOOK THE BENCH AGAIN FOLLOWING THE RECESS, I  
10 WAS TOLD THAT THERE WAS NO AGREEMENT AND THERE COULDN'T  
11 BE.

12 SO AT THIS POINT, I THINK I'M GOING TO HAVE  
13 TO MAKE SOME SPECIFIC ORDERS CONCERNING WHAT THAT  
14 DISCOVERY OUGHT TO BE.

15 AND I'M PREPARED TO DO THAT.

16 AND I WILL TELL YOU THAT I THINK IN THAT  
17 PHASE OF TRIAL, I WILL BE INTERESTED IN KNOWING WHAT  
18 PRODUCTION OF WATER IS CLAIMED BY EACH PARTY --  
19 IRRESPECTIVE OF CLAIMS OF PRESCRIPTION, IRRESPECTIVE OF  
20 WHETHER PARTIES ARE APPROPRIATORS OR OVERLYING  
21 LANDOWNERS, WHETHER THEY ARE GOVERNMENTAL ENTITIES, OR  
22 FARMERS, OR SOUP COMPANIES OR ANYTHING ELSE -- SO THAT  
23 I'M GOING TO EXPECT THAT WE HAVE ENOUGH INFORMATION SO  
24 THAT PARTIES CAN DECIDE WHETHER OR NOT THEY WISH TO  
25 DISPUTE ANY OF THE PARTICULAR CLAIMS.

26  
27 AN ORDER FOR THE COURT TO SIGN SPECIFYING EXACTLY WHAT  
28 I'VE JUST INDICATED. OKAY?

10

1 AND YOU CAN MEET AND CONFER WITH EACH  
2 OTHER. BUT I EXPECT SOME LEVEL OF AGREEMENT BY COUNSEL  
3 AS TO THAT, IN PARTICULAR WITH REGARD TO TIMING.

4 THIS IS A VERY OLD CASE. IT GOES BACK TO  
5 2005 FOR OUR INVOLVEMENT AS A COORDINATED CASE.

6 AND IT EXCEEDS THAT BY A NUMBER OF YEARS.  
7 AS I UNDERSTAND IT, SOMETHING LIKE 13 YEARS.

8 SO THE PARTIES HAVE TO KNOW AND UNDERSTAND  
9 WHAT'S AT ISSUE HERE.

10 THIS IS NOT NEWS. IT'S NOT A NEW CREATION  
11 OF AN ISSUE. THESE ARE ISSUES THAT HAVE EXISTED FOR A  
12 LONG PERIOD OF TIME.

13 AND I EXPECT THAT MOST OF THE INFORMATION  
14 THAT WE'RE ASKING YOU TO PROVIDE IN RESPONSE TO THE FORM  
15 INTERROGATORIES IS KNOWN TO YOU. OR MOST OF YOU.

16 SO THAT IS SOMETHING THAT HAS TO OCCUR.

17 AND I WOULD LIKE TO HEAR FROM COUNSEL SOME  
18 SUGGESTIONS AS TO WHAT THE SPECIFIC LANGUAGE OUGHT TO BE  
19 WITH REGARD TO THAT FORM DISCOVERY.

20 AND I'M INTERESTED IN HEARING FROM COUNSEL  
21 EITHER ON THE PHONE OR WHO ARE PRESENT IN THE COURTROOM.

22 LET ME START WITH YOU, MR. ZIMMER. WHAT'S  
23 YOUR RECOMMENDATION?

24 MR. ZIMMER: YES, YOUR HONOR. MR. ZIMMER FOR  
25 BOLTHOUSE.

26 THE SETTLEMENT DISCUSSIONS WE'VE BEEN  
27 HAVING DEALT WITH A PERIOD OF TIME FROM 2000 TO 2004. I  
28 THINK THAT'S IN THE TIME THAT WE HAVE A RATIONAL PERIOD,

1 IF WE'RE GOING TO DO THIS, TO HAVE PARTIES ARTICULATE  
2 THEIR PRODUCTION.

3 I THINK MOST OF THE PARTIES HAVE DONE  
4 THAT -- IN THE PROCESS WITH JUSTICE ROBE -- ARTICULATED  
5 THOSE NUMBERS.

6 AND I'M HAPPY TO -- WE CAN ARTICULATE THAT  
7 AGAIN. AND I THINK THAT WOULD BE A RATIONAL PERIOD FOR  
8 PARTIES TO DO IT SINCE IT BEARS A RATIONAL RELATIONSHIP  
9 TO THE TIME FRAME -- THE FIVE-YEAR PERIOD JUST PRIOR TO  
10 THE COMPREHENSIVE ADJUDICATION BEING FILED BY -- HAVING  
11 BEEN FILED DISTRICT 40 AND OTHER PURVEYORS.

12 THE COURT: MR. ZIMMER, IT SEEMS TO ME THAT THAT'S  
13 AN IMPORTANT PERIOD OF TIME TO PROVIDE THE INFORMATION.

14 BUT I THINK THAT CURRENT PUMPING IS ALSO  
15 EXTREMELY IMPORTANT.

16 BECAUSE IN THE EVENT THAT -- AND I THINK  
17 IT'S INEVITABLE -- THAT THE COURT ATTEMPT TO CREATE A  
18 PHYSICAL SOLUTION OF THE OVERDRAFT, CURRENT PUMPING IS  
19 VERY IMPORTANT.

20 AND I THINK THAT THOSE NUMBERS, AS WELL AS  
21 WHAT THE USE OF THAT WATER MIGHT BE, IS VERY IMPORTANT TO  
22 AN EVALUATION OF HOW WE'RE GOING TO MAKE ORDERS FOR THE  
23 PHYSICAL SOLUTION, AS WELL AS TO GIVE THE PARTIES AN  
24 OPPORTUNITY TO FOCUS ON HOW THEY MIGHT SETTLE AMONG  
25 THEMSELVES IN THAT REGARD.

26 SO I'M GOING TO ASK THAT NOT ONLY THERE BE  
27 THE HISTORICAL PUMPING INFORMATION, WHICH THE PARTIES  
28 HAVE, BUT ALSO CURRENT PUMPING.

1 MR. ZIMMER: BY HISTORICAL, YOUR HONOR, YOU MEAN

2 2000 TO 2004?

3 THE COURT: YES. WELL, I THINK --

4 MR. ZIMMER: WELL, CURRENT, WE'RE GOING TO BE  
5 TALKING ABOUT THE PAST YEAR OR --

6 THE COURT: WELL, I THINK THAT -- TO THE EXTENT  
7 THAT THERE ARE CURRENT PUMPING RECORDS FOR 2012, THAT'S  
8 USEFUL.

9 WE'RE ALMOST AT THE END OF THE YEAR. AND I  
10 THINK THAT IT WOULD BE HELPFUL TO KNOW THE ANSWER TO THAT  
11 QUESTION.

12 MR. ZIMMER: SO YOU'LL BE LOOKING AT THE 2011 TO  
13 2012 TIME PERIOD?

14 THE COURT: YES. RIGHT.

15 I MEAN, I --

16 MR. ZIMMER: AND -- I'M SORRY, YOUR HONOR. GO  
17 AHEAD.

18 THE COURT: I WAS GOING TO SAY, I DON'T KNOW HOW  
19 THE PARTIES MAINTAIN THEIR RECORDS. WHETHER THEY'RE  
20 USING THE FISCAL YEAR OR CALENDAR YEAR OR WHATEVER. BUT  
21 SOMETHING THAT INDICATES GENERALLY WHAT THE PUMPING HAS  
22 BEEN, WHAT THE USE OF THE WATER HAS BEEN WITHIN THIS LAST  
23 YEAR.

24 MR. ZIMMER: OKAY. I WOULD SUGGEST, YOUR HONOR,  
25 THAT IF WE'RE FOLLOWING THAT APPROACH, THAT THE  
26 PURVEYORS -- I KNOW THEY HAVE CLAIMED PRESCRIPTION OVER A  
27 65-YEAR TIME FRAME -- THAT AT LEAST THEY PROVIDE WHAT  
28 THEIR PRESCRIPTIVE CLAIMS ARE FOR THE 2000 TO 2004 TIME

13

1 FRAME, AS WELL AS THE -- THE LAST YEAR, I GUESS.

2 THE COURT: WE'LL GET TO THAT DISCUSSION ABOUT  
3 PRESCRIPTION AND RETURN FLOWS AND SO ON BEFORE WE'RE DONE  
4 HERE THIS MORNING.

5 BUT I WANT TO START OUT WITH AT LEAST  
6 GETTING THIS INITIAL INFORMATION AND HAVING AN  
7 UNDERSTANDING OF WHAT IT IS THAT THE COURT IS ASKING THE  
8 PARTIES TO DO. AND THAT INCLUDES EACH PARTY WHO IS  
9 INVOLVED IN THESE PROCEEDINGS.

10 MR. ORR: YOUR HONOR, STEVEN ORR FOR THE CITY OF  
11 PALMDALE, AND I THINK FOR THE PUBLIC WATER SUPPLIERS AS  
12 WELL.

13 GIVEN THE NOTICE ISSUES AND THE  
14 PRESCRIPTION CLAIMS, WE BELIEVE THAT PRODUCTION RECORDS  
15 OUGHT TO GO BACK TO 1945 BECAUSE WE'RE PLANNING -- THERE  
16 ARE VARIOUS PERIODS IN WHICH THERE WAS OVERDRAFT AND  
17 PRESCRIPTION IS BEING CLAIMED. AND THAT IS AT THE CORE  
18 OF OUR PRESCRIPTION CASE.

19 THE NOTICE, AND CERTAINLY THE PRODUCTION  
20 DURING THAT TIME, HAS BEARING ON THAT.

21 THE COURT: WELL, I UNDERSTAND THAT, MR. ORR. BUT  
22 I DON'T THINK THAT WE'RE GOING TO ADJUDICATE THE  
23 PRESCRIPTION CLAIMS IN THIS NEXT PHASE OF TRIAL.

24 I THINK THAT THOSE ARE ISSUES THAT NEED TO  
25 BE TRIED, I THINK -- TO THE EXTENT THE PARTIES REQUEST A  
26 JURY -- TO A JURY.

27 AND I THINK IT WOULD BE VERY CONFUSING TO  
28 TRY AND GET TOO DEEPLY INVOLVED IN PRESCRIPTION CLAIMS IN  
14

1 THIS NEXT PHASE.

2 WHAT I'M INTERESTED IN KNOWING IS WHAT THE  
3 PUMPING IS THAT HAS BEEN, WHAT THE PARTIES CAN AGREE TO  
4 PUMPING HAS BEEN, WHAT THEY DISPUTE IN TERMS OF WHAT  
5 PUMPING HAS BEEN, AND WHAT THE REASONABLE AND BENEFICIAL  
6 USES MIGHT BE.



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7 THOSE ARE ISSUES THAT WE CAN TRY, AND TRY  
8 NEATLY, AND I THINK GET SOME RESOLUTION OF THOSE ISSUES.  
9 SO WHAT I'M REALLY CONCERNED ABOUT IS THE  
10 SPECIFIC LANGUAGE THAT'S GOING TO BE PLACED IN THIS  
11 ORDER.  
12 AND I WANT COUNSEL TO FOCUS ON THAT AND  
13 WORK ON IT.  
14 AND I THINK THAT IT WILL GO A LONG WAY  
15 TOWARD HELPING US TO PREPARE FOR TRIAL.  
16 MR. ORR: SO IN ADDITION --  
17 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY.  
18 I WANT TO MAKE CERTAIN THAT WE'RE DIRECTLY  
19 RESPONSIVE TO THE INFORMATION YOU'RE ASKING FOR.  
20 AM I UNDERSTANDING THAT WE'RE LOOKING AT  
21 THE INITIAL PERIOD OF 2000 THROUGH 2004, PLUS, LET'S SAY,  
22 2011 AND '12 TO SHOW THE CURRENT PUMPING?  
23 THE COURT: YES.  
24 MR. KUNEY: THANK YOU, YOUR HONOR.  
25 MR. ORR: AND BOTH FACTS AND DOCUMENTS, I PRESUME?  
26 THAT THE PARTY WOULD STATE THEIR CLAIMED AMOUNT AND THEN  
27 PROVIDE EVIDENCE IN SUPPORT OF THAT CLAIMED AMOUNT.  
28 THE COURT: TO THE EXTENT THAT THAT IS POSSIBLE TO

15

1 DO, YES.

2 AND TO THE EXTENT THAT -- THERE'S BEEN A  
3 LOT OF DISCUSSION, I KNOW, IN YOUR SETTLEMENT  
4 DISCUSSIONS. AND I DON'T THINK THERE ARE ANY REAL  
5 SURPRISES AS TO WHAT THE PRIMARY CLAIMANTS' POSITIONS ARE  
6 WITH REGARD TO PUMPING. AND EVEN TO THE EXTENT OF RETURN  
7 FLOWS.

8 THE COURT DID HEAR A LOT OF EVIDENCE ABOUT  
9 RETURN FLOWS DURING THE PHASE THREE PROCEEDING WHEN WE

10 WERE ATTEMPTING TO DETERMINE WHAT THE SAFE YIELD WAS.

11 AND I THINK AT LEAST ONE OF THE PARTIES HAS  
12 SUGGESTED THAT EVIDENCE IS REALLY NOT IN GREAT DISPUTE.  
13 AND TO THE EXTENT THAT IT'S NOT IN GREAT DISPUTE, THE  
14 PARTIES OUGHT TO BE ABLE TO AGREE AS TO WHAT THOSE  
15 NUMBERS ARE, DEPENDING UPON WHAT PARTICULAR USES WHERE  
16 THE WATER THAT -- WHERE IT CAME FROM OBVIOUSLY IS  
17 IMPORTANT.

18 MR. ORR: WE AGREE. I CERTAINLY THINK THAT WE  
19 WOULD LIKE TO GET BEHIND SOME OF THE NUMBERS OF SOME OF  
20 THE PARTIES. I THINK WE DON'T HAVE QUESTION AS TO MANY.  
21 BUT AS TO SOME, THAT'S IMPORTANT THAT WE BE ABLE TO DO  
22 THAT.

23 THE COURT: OKAY. THEN I'LL INCLUDE THAT IN THE  
24 ORDER.

25 THE OTHER THING THAT I'M GOING TO ASK IS  
26 THERE BE A STATEMENT BY THE FEDERAL GOVERNMENT AS TO ITS  
27 FEDERAL RESERVED RIGHTS AND THE BASIS FOR THOSE RIGHTS.

28 RECOGNIZING THAT THE FEDERAL GOVERNMENT

16

1 PLAYS AN IMPORTANT ROLE HERE, WE WOULD NOT HAVE A  
2 COMPREHENSIVE ADJUDICATION OF THE ANTELOPE VALLEY WITHOUT  
3 THE FEDERAL GOVERNMENT'S PARTICIPATION.

4 THAT'S WHY THEY WERE SERVED. AND I EXPECT  
5 THAT WE WILL HAVE A SUFFICIENT -- ULTIMATE JUDGMENT OF  
6 ADJUDICATION IN THIS CASE THAT WILL SATISFY THE MC CARRAN  
7 ACT REQUIREMENTS.

8 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH  
9 FOR CITY OF LOS ANGELES.

10 I'M ASSUMING INCLUDED IN THE STATEMENT THAT  
11 YOU WERE REQUESTING WOULD BE DOCUMENTS SUPPORTING THAT

12 CLAIM. AM I CORRECT?

13 THE COURT: AT LEAST PRIMA FACIE DOCUMENTS. I  
14 MEAN, I'M NOT SURE THAT I EXPECT PEOPLE TO PROVIDE  
15 TRUCKLOADS OF DOCUMENTS IN SUPPORT OF THEIR CLAIMS. I  
16 THINK THAT MIGHT BE COUNTERPRODUCTIVE AT THIS POINT.

17 BUT TO THE EXTENT THAT THERE IS  
18 DOCUMENTATION TO SUPPORT IT, YOU SHOULD PROVIDE THAT.

19 AND I THINK THAT THE NEXT IMPORTANT THING  
20 IS TO MAKE SURE THAT IF IT'S CHALLENGED, YOU CAN JUSTIFY  
21 IT.

22 MR. LEMI EUX: YOUR HONOR, KEITH LEMI EUX. CAN I  
23 SPEAK?

24 THE COURT: YES, MR. LEMI EUX.

25 MR. LEMI EUX: GOING TOWARDS THIS DISCOVERY -- SO I  
26 CAN BETTER UNDERSTAND THE NEXT PHASE OF TRIAL -- WHAT I  
27 THINK I'M HEARING IS THAT WE'RE TRYING THE NUMERICAL  
28 AMOUNTS CLAIMED AND THE SORT OF FACTUAL BASIS FOR THAT

17

1 NUMERIC AMOUNT.

2 BUT I HEARD YOU SAY THAT WE'RE NOT LOOKING  
3 AT THE LEGAL UNDERPINNINGS OF PRESCRIPTION.

4 IS THE PURPOSE OF THE PHASE OF TRIAL TO  
5 EXAMINE THE SORT OF LEGAL -- FOR EXAMPLE, WITH THE  
6 FEDERAL GOVERNMENT, IS THE PURPOSE TO EXAMINE THEIR  
7 NUMERIC CLAIM OR DO A LEGAL ANALYSIS OR A LEGAL RULING  
8 ABOUT THEIR FEDERAL RESERVED RIGHT?

9 YOU UNDERSTAND THE DISTINCTION I'M MAKING?

10 THE COURT: YES. I'VE ASKED THEM TO PROVIDE US  
11 THE BASIS FOR THEIR CLAIM, WHICH WOULD OBVIOUSLY GIVE  
12 RISE TO A DISPUTE IF THERE IS ANY.

13 MR. LEMI EUX: OKAY.

14 THE COURT: AND IN LOOKING AT SOME OF THE CASE

15 MANAGEMENT STATEMENTS, I SEE THERE'S A POTENTIAL FOR SOME  
16 DISPUTED CLAIMS AS TO THE FEDERAL RESERVED RIGHT.

17 BUT THAT'S SOMETHING THAT IS BOTH A FACTUAL  
18 AND A LEGAL ISSUE.

19 MR. LEMIEUX: CORRECT. IS THERE ANY OTHER  
20 BESIDES -- I ASSUME BUILT INTO THE NUMERIC AMOUNT OF  
21 PUMPING, THERE'S A BUILT-IN ISSUE ABOUT THE  
22 REASONABLENESS OF THE USE OF THE WATER AND SO ON.

23 I ASSUME THAT'S PART OF THE TRIAL AS WELL?

24 THE COURT: WELL, I'M NOT SURE.

25 BUT I THINK TO SOME EXTENT, IT'S INEVITABLE  
26 THAT BE ADDRESSED AT THE TRIAL, JUST AS -- ONE OF THE  
27 THINGS THAT NEEDS TO BE PRESENTED IS THE PUBLIC WATER  
28 SUPPLIERS' CLAIM OF IMPORTED WATER THAT GIVES RISE TO

18

1 RETURN FLOWS.

2 THESE ARE ALL INTERTWINED.

3 MR. LEMIEUX: RIGHT. BUT, AGAIN, THAT'S THE  
4 NUMERIC AMOUNT OF THE IMPORTED WATER, NOT THE LEGAL ISSUE  
5 ABOUT RETURN FLOWS OR THE LEGAL ISSUES ABOUT  
6 PRESCRIPTION.

7 WELL, PRESCRIPTION DOESN'T HAVE ANYTHING TO  
8 DO WITH THAT, BUT --

9 THE COURT: OKAY. PRESCRIPTION IS A SPECIFIC  
10 CAUSE OF ACTION THAT'S BEEN FILED, AS I UNDERSTAND IT,  
11 ONLY BY THE PUBLIC WATER SUPPLIERS. AND NOT ALL OF THEM.  
12 BUT SOME OF THEM.

13 THE BURDEN OF PROOF IS ON THE PUBLIC WATER  
14 SUPPLIERS WHO MAKE THAT CLAIM TO PROVE THEIR CLAIM.

15 MR. LEMIEUX: RIGHT.

16 THE COURT: AND THEIR ABILITY TO DO THAT IS

17 GREATER OR LESSER DEPENDING UPON HOW DISPUTABLE THEIR  
18 CLAIMS ARE.

19 THERE ARE LEGAL ISSUES. THERE HAVE BEEN,  
20 IN THE PAST, CONCERNS THAT IT'S INAPPROPRIATE FOR THE  
21 GOVERNMENT TO OBTAIN RIGHTS AS A RESULT OF PRESCRIPTION.

22 THERE ARE A NUMBER OF CLAIMS THAT THAT  
23 SHOULD BE, AT THE VERY LEAST, INVERSE CONDEMNATION, OR  
24 EXPRESS CONDEMNATION.

25 AND I'M NOT RULING ON THOSE THINGS. BUT  
26 THOSE ARE LEGAL ISSUES THAT ULTIMATELY ARE GOING TO HAVE  
27 TO BE DECIDED IF THEY'RE RAISED.

28 AND AT THIS POINT IN TIME, I'M TELLING YOU 19

1 THAT I'M NOT GOING TO CONSIDER THOSE IN THE NEXT PHASE OF  
2 THE TRIAL.

3 MR. LEMIEUX: OKAY.

4 THE COURT: WE'RE GOING TO TRY AND CONSIDER  
5 EVERYTHING ELSE OTHER THAN THAT. AND THEN WE'LL PROBABLY  
6 HAVE TO -- IF THE PARTIES REQUIRE IT -- IMPANEL A JURY TO  
7 DEAL WITH PRESCRIPTION CLAIMS.

8 MR. LEMIEUX: OKAY. THANK YOU, YOUR HONOR.

9 MR. MILIBAND: YOUR HONOR, THIS IS WEST MILIBAND  
10 FOR PHELAN PINON HILLS CSD.

11 THE COURT: YES.

12 MR. MILIBAND: GOING BACK TO THE HISTORICAL PERIOD  
13 OF 2000 TO 2004, WE BECAME A PARTY AT THE END OF 2008.  
14 SO I'D REQUEST THAT THE COURT ALLOW HISTORICAL PRODUCTION  
15 OF INFORMATION TO INCLUDE THE PERIOD AFTER 2004. IN  
16 OTHER WORDS, FROM 2005 TO 2011.

17 THE COURT: WELL, I'LL MAKE THAT DECISION AT THE  
18 APPROPRIATE TIME.

19 IF YOU HAVE THE INFORMATION THAT YOU WISH  
Page 20

20 TO PROVIDE, YOU SHOULD DO SO.

21 AND I'M NOT SURE THAT IT'S GOING TO MAKE A  
22 LOT OF DIFFERENCE.

23 OBVIOUSLY, THIS MAY HAVE TO BE BRIEFED AT  
24 AN APPROPRIATE TIME. BUT IT DOES OCCUR TO ME THAT -- THE  
25 CLAIM OF PRESCRIPTION IS BASICALLY A CLAIM OF ADVERSE  
26 POSSESSION. AND THE TIME FOR THE PERIOD TO RUN COMMENCES  
27 AT THE TIME WHEN THERE IS OVERDRAFT, WHENEVER THAT WAS.  
28 AND THE PERIOD OF THE STATUTE OF LIMITATIONS DETERMINES 20

1 WHEN THE RIGHT ACCRUES.

2 I'M NOT MAKING AN ORDER CONCERNING THAT.

3 I'M NOT MAKING A DECISION. I'M OPINING.

4 GENERALLY, I WILL EXPECT THE PARTIES TO  
5 PROVIDE ME WITH BRIEFING AT THE APPROPRIATE TIME  
6 CONCERNING WHAT THE PERIOD OF THE STATUTE OF LIMITATIONS  
7 MIGHT BE. BUT IT'S NOT AS IF YOU TAKE THE TIME OF THE  
8 FILING OF THE COMPLAINT AND THEN GO BACK FIVE YEARS.

9 THAT IS NOT THE WAY ADVERSE POSSESSION IS  
10 ESTABLISHED AS I UNDERSTAND THE LAW, NOR IS IT THE WAY  
11 PRESCRIPTION IS ESTABLISHED AS I UNDERSTAND THE LAW.

12 BASICALLY, PRESCRIPTION AND ADVERSE  
13 POSSESSION ARE NOTHING MORE THAN A PERIOD WHERE THE  
14 STATUTE OF LIMITATIONS ON A CLAIM IS RUN.

15 NOW, THERE ARE PROBABLY SOME EXCEPTIONS TO  
16 THAT. AND CERTAINLY WHEN THE RIGHT IS ESTABLISHED MAY BE  
17 AT ISSUE, AS IT CLEARLY WILL BE IN THIS CASE.

18 IT'S NOT TOTALLY CLEAR AS TO WHAT FORM THE  
19 PRESCRIPTION CLAIM TRIAL WILL TAKE AT THIS POINT.

20 MR. FIFE, YOU'RE STANDING THERE PATIENTLY.

21 MR. MILIBAND: YOUR HONOR, MAY I JUST PROVIDE A

22 QUICK RESPONSE? WEST MILIBAND FOR PHELAN CSD.

23 THE COURT: YES.

24 MR. MILIBAND: I UNDERSTAND EVERYTHING THE COURT  
25 IS SAYING. AND IT'S PRECISELY FOR THOSE REASONS THAT I  
26 JUST WANTED TO MAKE IT CLEAR, OR ASK FOR CLARIFICATION,  
27 THAT A PARTY SUCH AS MY CLIENT IS NOT PRECLUDED FROM  
28 PROVIDING ADDITIONAL INFORMATION BEYOND THE 2004 PERIOD

21

1 ARTICULATED BY THE COURT.

2 THE COURT: MR. MILIBAND, THAT'S TRUE. AND YOU'RE  
3 CERTAINLY ENTITLED TO PROVIDE AS MUCH INFORMATION AS YOU  
4 CAN, RECOGNIZING THAT THERE ARE SOME, I THINK, HAZY  
5 ISSUES CONCERNING THE LOCATION OF YOUR PRODUCTION IN THAT  
6 PORTION OF THE VALLEY, GIVEN THE MOJAVE LITIGATION, WHICH  
7 IS ADJACENT TO IT.

8 ALL RIGHT. NOW, MR. FIFE.

9 MR. FIFE: GOOD MORNING, YOUR HONOR. MICHAEL FIFE  
10 FOR THE ANTELOPE VALLEY GROUNDWATER AGREEMENT  
11 ASSOCIATION.

12 TWO ISSUES. ONE ON RETURN FLOWS AND ONE ON  
13 THE FEDERAL RIGHTS.

14 THE RETURN FLOWS WERE ACTUALLY VERY  
15 CONTESTED IN PHASE THREE. SO I JUST WANT TO CORRECT  
16 THAT. THERE WAS A LOT OF CROSS-EXAMINATION ON THAT.

17 BUT MORE --

18 THE COURT: CROSS-EXAMINATION DOESN'T NECESSARILY  
19 ESTABLISH CONFLICT OR DISPUTE. IT MAY BE AN ATTEMPT.

20 MR. FIFE: I'LL SIMPLY STATE, THERE WAS -- WE  
21 DISPUTE THEM.

22 BUT MORE IMPORTANTLY, THE CALCULATIONS THAT  
23 WERE DONE IN PHASE THREE WERE DONE ON A GROSS BASIS. SO  
24 SIMPLY LOOKING AT THE GROSS TOTAL OF WATER THAT WAS

25 IMPORTED AND APPLYING A PERCENTAGE TO IT.

26 WHAT WE WOULD NEED TO BE ABLE TO EVALUATE  
27 THEIR CLAIMS IN THE WAY THAT THEY WILL BE EVALUATING OURS  
28 IS TO KNOW SPECIFIC INFORMATION: WHICH PURVEYOR IMPORTED

22

1 WHICH WATER, WHERE THE RETURN FLOWS WENT INTO THE GROUND,  
2 WHO WAS PUMPING WHAT DURING THE PERIOD OF 2002.

3 THAT KIND OF SPECIFIC INFORMATION THE WAY  
4 WE'RE PROVIDING SPECIFIC INFORMATION ALSO.

5 THE COURT: I AGREE COMPLETELY WITH THAT  
6 STATEMENT.

7 AND I EXPECT EACH OF THE PURVEYORS TO  
8 PROVIDE THAT INFORMATION.

9 AND I EXPECT YOU TO CONFER WITH THEM IN  
10 TERMS OF THE FORM OF THE ORDER SO THAT WE MAKE CERTAIN  
11 THAT WE HAVE THE INFORMATION THAT WE NEED.

12 MR. FIFE: THANK YOU.

13 AND THEN ON FEDERAL RIGHTS, I JUST WANTED  
14 TO MAKE CLEAR THAT THEIR ISSUE IS A LITTLE BIT DIFFERENT  
15 THAN EVERYBODY ELSE'S, BECAUSE THEIR RIGHTS AREN'T BASED  
16 ON HISTORICAL PRODUCTION. IT'S BASED ON -- AND I DON'T  
17 KNOW EVERY -- I FORGET THE EXACT LANGUAGE, BUT SOMETHING  
18 LIKE "REASONABLY ANTICIPATED NEEDS," OR SOMETHING LIKE  
19 THAT.

20 SO TO BE ABLE TO EVALUATE THEIR CLAIMS,  
21 IT'S NOT HISTORICAL PRODUCTION INFORMATION THAT WE NEED  
22 FROM THEM. IT'S RATHER --

23 THE COURT: THE CREATION OF THE RIGHT.

24 MR. FIFE: -- DOCUMENTS AND SUCH ABOUT WHAT THEY  
25 ANTICIPATE NEEDING.

26 THE COURT: WELL, THAT'S WHY I EXPECT COUNSEL TO



27 MEET AND CONFER, AND DO IT PROMPTLY, IN TERMS OF  
28 PROVIDING THE COURT WITH AN ORDER I CAN SIGN THAT CARRIES  
23

1 OUT OUR PURPOSES.

2 MR. FIFE: THANK YOU. I JUST WANT TO BE CLEAR.

3 THE COURT: THANK YOU.

4 MR. JOYCE: YOUR HONOR?

5 THE COURT: YES.

6 MR. JOYCE: THIS IS BOB JOYCE. I JUST WANTED TO  
7 LET THE COURT KNOW THAT I'M MAKING MY APPEARANCE. I WAS  
8 TIED UP IN COURT. BUT I DID JOIN THIS CALL AT ABOUT  
9 9:12.

10 THE COURT: THANK YOU, MR. JOYCE. NICE TO HAVE  
11 YOU ON BOARD.

12 MR. JOYCE: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. MR. MC LACHLAN.

14 MR. MC LACHLAN: GOOD MORNING, YOUR HONOR.

15 MICHAEL MC LACHLAN FOR RICHARD WOOD AND THE SMALL PUMPER  
16 CLASS. I HAD A COUPLE COMMENTS.

17 IN LISTENING TO YOUR HONOR DESCRIBE THIS  
18 NEXT PHASE, IT SOUNDS TO ME LARGELY TO BE A FACTUAL  
19 HEARING.

20 AND MY CONCERN IS REALLY MORE, AS A TRIAL  
21 LAWYER, NOT HAVING A MOVING TARGET. SO I'M ALL IN FAVOR  
22 OF DETERMINING RIGHT NOW WHAT EXACTLY WE'RE GOING TO BE  
23 TRYING.

24 THERE WAS A FEW OTHER COUNSEL THAT WERE  
25 ASKING, WELL, ARE WE GOING TO HAVE THIS LEGAL ISSUE AND  
26 THIS LEGAL ISSUE?

27 I THINK IT'S IMPORTANT, GIVEN THAT THERE'S  
28 ONLY THREE MONTHS LEFT -- AND REALLY WITH THE CHRISTMAS  
24

1 AND NEW YEAR'S HOLIDAYS, YOU COULD PROBABLY ARGUE THERE'S  
2 ABOUT TWO-AND-A-HALF MONTHS LEFT OF REAL PREPARATION  
3 TIME -- I THINK WE NEED TO SET THE FOUR CORNERS OF WHAT  
4 WE'RE GOING TO BE DOING SO THAT COUNSEL CAN PREPARE.

5 AND IF IT'S JUST GOING TO BE FACTUAL  
6 ISSUES, THEN WE CAN DO THAT. IF THERE'S GOING TO BE  
7 LEGAL ISSUES THAT ARE GOING TO RESULT AND SO FORTH, I  
8 THINK WE NEED TO KNOW THAT FAIRLY SOON. BECAUSE AS YOUR  
9 HONOR WELL KNOWS, THE FACTS DERIVE FROM THE LAW THAT'S AT  
10 ISSUE IN TRIAL.

11 SO I MADE MY COMMENT ON THAT.

12 OBVIOUSLY, THERE'S MY UNIQUE ISSUE, WHICH  
13 YOUR HONOR IS AWARE OF, RELATIVE TO THE COURT-APPOINTED  
14 EXPERT.

15 AND MY PREVIOUSLY EXPRESSED SERIOUS DOUBTS  
16 THAT IN A TWO-AND-A-HALF MONTH PERIOD -- LET'S ASSUME  
17 YOUR HONOR IS GOING TO CARRY FORWARD WITH WHAT YOU SAID  
18 AT THE LAST HEARING AND ORDER THE COURT-APPOINTED EXPERT.  
19 I THINK IT'S PRETTY IFFY -- I DON'T KNOW FOR CERTAIN, BUT  
20 I AM PRETTY DOUBTFUL THAT THAT WORK IS GOING TO BE DONE,  
21 PUT INTO A REPORT, IN TIME -- IN TWO-AND-A-HALF MONTHS'  
22 TIME. IT'S A LOT OF WORK.

23 SO I DON'T KNOW WHAT WE CAN DO ABOUT THAT.  
24 AND I DON'T KNOW IF I CAN SHOW UP READY IN MID-FEBRUARY  
25 TO PRESENT THE WATER USE OF THE CLASS.

26 THE COURT: OKAY. THANK YOU.

27 MR. DUNN.

28 MR. DUNN: JEFFREY DUNN.

25

1 JUST BRIEFLY IN RESPONDING TO COUNSEL'S  
2 CONCERNS ABOUT THE LIMITED TIME FOR THE WOOD CLASS.

3 IT MAY BE THAT BECAUSE THE NEXT PHASE IS  
4 FACTUAL DETERMINATIONS OF PARTIES PUMPING -- AND WE  
5 HAVEN'T HAD A CHANCE TO TALK ABOUT THIS -- IT MIGHT BE  
6 POSSIBLE, FOR SOME LIMITED PERIOD OF TIME, SEVER THE WOOD  
7 CLASS DETERMINATION TO ALLOW THE OTHER DETERMINATIONS TO  
8 GO FORWARD FIRST.

9 OBVIOUSLY, THERE'S GOING TO HAVE TO BE A  
10 PRESENTATION OF EVIDENCE. AND MAYBE THEY CAN GO LAST OR  
11 THERE'S SOME KIND OF MECHANISM -- PROCEDURAL MECHANISM IN  
12 PLAY THAT ALLOWS SUFFICIENT TIME FOR THE WOOD CLASS  
13 PERHAPS, IN A VACUUM, TO DO IT.

14 I DON'T THINK THERE'S ANY PARTICULAR  
15 URGENCY TO HAVE THEM DO IT UP-FRONT OR IN THE MIDDLE OR  
16 WHATEVER. THERE'S JUST OVERALL A NEED TO DO IT.

17 I THINK THERE'S A WAY TO ACCOMMODATE  
18 PROCEDURALLY TO ALLOW THAT TO HAPPEN.

19 THE COURT: WELL, I THINK THERE MUST BE.

20 BUT ONE OF THE THINGS THAT OCCURS TO ME, IN  
21 PARTICULAR WITH REGARD TO THE WOOD CLASS, IS THERE WAS AT  
22 ONE TIME A PROPOSED RESOLUTION BY THE PARTIES THAT, AS  
23 BETWEEN THE PARTIES THEMSELVES, STRUCK ME AS A REASONABLE  
24 AND FAIR RESOLUTION AT THAT TIME.

25 THE PROBLEM WITH THAT SETTLEMENT PROPOSAL  
26 WAS -- AND WHY THE COURT HAD NOT PRELIMINARILY APPROVED  
27 THAT SETTLEMENT -- WAS BECAUSE IT IMPACTED OTHER PEOPLE  
28 WHO WERE NOT PARTIES TO THE SETTLEMENT IN A WAY THAT

26

1 WOULD HAVE MADE ADVERSE FINDINGS AS TO THE OTHER PARTIES.

2 AND THAT'S ESSENTIALLY WHY -- MY  
3 RECOLLECTION IS ANYWAY -- THAT THE COURT DECLINED TO  
4 APPROVE THAT SETTLEMENT. BUT WHAT I DON'T UNDERSTAND IS  
5 WHY NOTHING EVER HAPPENED AFTER THAT BY PARTIES WHO

6 REALLY WANTED TO SETTLE THE CASE.

7 SO WITHOUT ASKING YOU TO TELL ME WHY  
8 NOTHING EVER HAPPENED, I JUST WANT TO SUGGEST TO YOU THAT  
9 IT WOULD BE USEFUL IF COUNSEL WOULD TALK TO EACH OTHER  
10 ABOUT SUCH THINGS, ESPECIALLY NOW, WHEN EVERYBODY IS  
11 INVOLVED IN A GLOBAL DISCUSSION OF SETTLEMENT OF THE  
12 CASE. OKAY?

13 THAT'S MY COMMENT. OKAY.

14 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON AND  
15 GRANITE.

16 THE COURT: YES, MR. KUHS.

17 MR. KUHS: WHAT SPECIFIC FACTUAL FINDINGS IS THE  
18 COURT GOING TO MAKE AND HOW ARE THOSE FINDINGS GOING TO  
19 BE BINDING ON THE PARTIES AS TO THE ISSUES RAISED IN THE  
20 PLEADINGS?

21 THE COURT: I'M NOT SURE I UNDERSTAND YOUR  
22 QUESTION.

23 MR. KUHS: WELL, IT SEEMS TO ME THAT WE'RE GOING  
24 TO HAVE, IF I UNDERSTAND THE COURT, A TRIAL ON CURRENT  
25 PUMPING. AND CURRENT PUMPING IS RELEVANT LARGELY TO THE  
26 ISSUE OF A PHYSICAL SOLUTION. AND WE HAVEN'T YET  
27 DETERMINED WHO HAS A RIGHT TO PUMP GOING FORWARD.

28 SO IN MY MIND, AT LEAST, IT'S A BIT OF

27

1 PUTTING THE CART BEFORE THE HORSE.

2 AND SO, I GUESS -- FOR EXAMPLE, WHAT'S THE  
3 SIGNIFICANCE OF LOOKING AT THE PUMPING HISTORY FOR 2000  
4 THROUGH 2004 OTHER THAN IT SIMPLY DOVETAILS WITH OUR  
5 SETTLEMENT PROCESS.

6 THE COURT: WELL, I THINK THERE'S SOME VALUE IN  
7 THAT.

8 BUT IT ALSO SEEMS TO ME THAT IF THE PARTIES  
9 ARE -- AND WHAT WE'RE REALLY TALKING ABOUT IS  
10 ADJUDICATING A COUPLE OF CLAIMS HERE.

11 ONE, THE ORIGINAL LANDOWNER LAWSUITS REALLY  
12 WERE ESSENTIALLY FOR QUIET TITLE TO THEIR PROPERTY AND  
13 THE WATER THAT UNDERLIES IT AND THE REASONABLE BOUNDARIES  
14 FOR THESE.

15 THE CROSS-COMPLAINT BY THE WATER PURVEYORS,  
16 PRODUCERS, ESSENTIALLY DIDN'T DISPUTE QUIET TITLE AND THE  
17 RIGHT TO PUMP, BUT SAID THAT THEY HAVE SOME ADDITIONAL  
18 RIGHTS THAT AROSE AS A RESULT OF PRESCRIPTION RIGHTS.

19 SO IF YOU LOOK AT THE ISSUES THAT I'M  
20 SUGGESTING THAT WE TRY IN THIS NEXT PHASE, IT REALLY  
21 RELATES TO BOTH THE QUIET TITLE ACTION AND LAYS A  
22 FOUNDATION FOR THE CROSS-COMPLAINANTS TO RAISE THEIR  
23 CLAIMS IN A SECOND PHASE.

24 BUT YOU CAN'T DO THAT IN THE ABSTRACT.  
25 THAT'S WHY YOU HAVE TO KNOW WHAT THE HISTORICAL PUMPING  
26 HAS BEEN, AS WELL AS WHAT THE CURRENT PUMPING HAS BEEN,  
27 IN TERMS OF BEING ABLE TO ADJUDICATE A PHYSICAL SOLUTION.

28 SO IT SEEMS TO ME THAT THE HORSE AND THE

28

1 CART ARE EXACTLY WHERE THEY NEED TO BE IN ORDER.

2 SO THAT MAY BE WRONG. BUT THAT'S MY  
3 IMPRESSION AT THIS POINT.

4 IN TERMS OF THE FEDERAL CLAIM, THAT HAS TO  
5 BE ADJUDICATED, BOTH FACTUALLY AND LEGALLY, IN ORDER FOR  
6 THE COURT TO DETERMINE WHAT THE BALANCE OF THE RIGHTS  
7 MIGHT BE WITH A PHYSICAL SOLUTION.

8 MR. KUHS: SO ARE WE GOING TO -- ALL ISSUES  
9 RELATING TO THE FEDERAL RESERVED RIGHT ARE GOING TO BE  
10 ADJUDICATED IN FEBRUARY.

11 THE COURT: THAT'S RIGHT. AND THAT'S WHY I NEED  
12 TO KNOW THE CLAIMS AND WHICH CLAIM.

13 MR. ZIMMER: YOUR HONOR.

14 THE COURT: YES, MR. ZIMMER.

15 MR. ZIMMER: MR. ZIMMER FOR BOLTHOUSE.

16 I'D LIKE TO ADDRESS SOME COMMENTS MADE BY  
17 MR. ORR, MR. LEMIEUX, MR. DUNN AND THEN THE FOLLOW-UP BY  
18 MR. KUHS.

19 MR. ORR WAS TALKING ABOUT PROOF OF  
20 LANDOWNER PUMPING. AND MR. LEMIEUX THEN BUILT ON THAT  
21 AND SAID SOMETHING ABOUT A TRIAL ON PUMPING. THEN  
22 MR. DUNN DESCRIBED THAT AS A FACTUAL DETERMINATION OF  
23 PARTY PUMPING.

24 WHAT I WANT TO MAKE SURE THAT WE DON'T DO  
25 IS REVERSE THE BURDEN OF PRODUCTION OR THE BURDEN OF  
26 PROOF ON THE CLAIMS THAT ARE ASSERTED.

27 THE COURT MAKES SOME QUIET TITLE CLAIM THAT  
28 WAS FILED MANY YEARS AGO -- 1999 -- BY MR. JOYCE'S

29

1 CLIENT. THAT WAS A LIMITED QUIET TITLE ACTION AGAINST A  
2 FEW PURVEYORS. THAT WAS NOT FILED AGAINST ALL PARTIES.  
3 IT WAS IN THE BASIN. IT WAS FILED AGAINST ONLY LIMITED  
4 PARTIES.

5 IN MY MIND, THAT HAS BEEN SUBSUMED BY THE  
6 CROSS-COMPLAINT FILED BY L. A. -- OR DISTRICT 40 IN L. A.  
7 COUNTY AND KERN COUNTY, THEN LATER CONSOLIDATED.

8 SO, TO ME, THAT'S THE OPERATIVE PLEADING,  
9 IS THE CLAIM BY THE PURVEYORS CLAIMING THAT THERE WAS AN  
10 OVERDRAFT AND REQUESTING AN INJUNCTION TO PREVENT OTHER  
11 PARTIES FROM PUMPING.

12 IT SEEMS TO ME THAT GIVEN THAT PROCEDURAL

13 CONTEXT, THE PURVEYORS THAT FILED THAT COMPLAINT AND/OR  
14 SEEKING THE INJUNCTION HAVE THE BURDEN OF PROVING  
15 WHATEVER CLAIMS THEY HAVE TO THE SAFE YIELD, WHETHER IT'S  
16 RETURN FLOWS OR OTHERWISE -- PRESCRIPTION -- OR ANYBODY  
17 ELSE'S PRIORITY RIGHTS TO THAT CLAIM.

18 AND WHATEVER IS LEFT OVER IS THE AMOUNT  
19 THAT IS THE NATIVE SUPPLY THAT IS SUBJECT TO THE  
20 CORRELATIVE USE OF ALL OVERLYING LANDOWNERS.

21 ONE OF THE PROBLEMS WITH HAVING SOME KIND  
22 OF A TRIAL TO, IN THEORY, QUANTIFY THE WATER RIGHTS OF AN  
23 INDIVIDUAL LANDOWNER IS THAT YOU ARE THEN SAYING THAT  
24 THEY HAVE SOME QUANTIFIED RIGHT AS OPPOSED TO A FLEXIBLE  
25 RIGHT.

26 THE CASE LAW IS VERY CLEAR THAT YOU HAVE A  
27 FLEXIBLE RIGHT TO USE WHAT'S NECESSARY IN THE FARMING  
28 OPERATIONS. NOTHING MORE THAN WHAT'S NECESSARY TO DO

30

1 THAT.

2 BUT THAT RIGHT IS FLEXIBLE AND IT CHANGES  
3 OVER TIME.

4 THE COURT: BUT YOU HAVE TO HAVE A STARTING POINT,  
5 MR. ZIMMER. YOU HAVE TO HAVE ESSENTIALLY --

6 MR. ZIMMER: I AGREE THAT AT SOME POINT, YOUR  
7 HONOR, THE PUMPING OF THE LANDOWNERS MAY BE RELEVANT.

8 I THINK THAT POINT IN TIME IS ONCE YOU KNOW  
9 WHAT THE CORRELATIVE SUPPLY IS, THEN THE CORRELATIVE  
10 PARTIES HAVE THE RIGHT TO THE REMAINING BALANCE AFTER YOU  
11 TAKE OUT RETURN FLOWS, AFTER YOU TAKE OUT PRESCRIPTION  
12 CLAIMS, AFTER YOU TAKE OUT THE FEDERAL RESERVED RIGHT, IF  
13 THERE IS ONE.

14 THEN YOU WOULD HAVE TO KNOW WHAT THE  
15 PUMPING AMOUNTS WERE, IF THERE'S INSUFFICIENT WATER, SO

16 THAT THERE'S SOME KIND OF EQUITABLE ALLOCATION BETWEEN  
17 OVERLYING LANDOWNERS IF THEY CAN'T AGREE THEMSELVES ON  
18 HOW TO ALLOCATE THAT.

19 BUT WHAT I'M CONCERNED ABOUT HAPPENING  
20 IS -- AND MR. ORR AND MR. LEMIEUX AND MR. DUNN ARE ALL  
21 PUSHING THAT, AND PUSHED IT IN THE BRIEFS -- THERE'S SOME  
22 KIND OF FLIPPING OF THE BURDEN OF PRODUCTION ONTO  
23 LANDOWNERS TO PROVE WHAT THEIR PUMPING WAS AND WHETHER IT  
24 WAS REASONABLE AND NECESSARY OR NOT.

25 ALTHOUGH REASONABLE AND NECESSARY MAY BE AN  
26 ISSUE IN THAT CORRELATIVE RIGHTS TRIAL BETWEEN THE  
27 LANDOWNERS IN THE FIRST INSTANCE, THE PURVEYORS STILL  
28 HAVE TO PROVE, UNDER TULARE, WHAT THEIR PUMPING WAS --

31

1 WHAT THEIR REASONABLE PUMPING WAS AND WHAT THEIR RIGHTS  
2 ARE TO RETURN FLOWS.

3 AND SPEAKING OF INJUNCTION, THEY HAVE TO  
4 PROVE HOW MUCH WATER IS LEFT. AND THAT PARTIES BE SHUT  
5 DOWN BECAUSE THERE'S INSUFFICIENT WATER.

6 BUT WHAT I'M CONCERNED ABOUT IS I DON'T  
7 THINK THERE SHOULD BE A FLIPPING OF THAT BURDEN OF PROOF.

8 WHEN WE'RE TALKING ABOUT THE CURRENT TIME  
9 FRAME -- AND I AGREE THAT THAT INFORMATION IS HELPFUL TO  
10 THE SETTLEMENT PROCESS BECAUSE WE'VE BEEN DISCUSSING IT.

11 WHEN YOU GO BACK 65 YEARS TO A CLAIM BY THE  
12 PURVEYORS THAT THEY REFUSED TO NARROW, WHAT THEY ARE  
13 REALLY TRYING TO DO HERE IS PUSH THE LANDOWNERS INTO THE  
14 POSITION WHERE THE LANDOWNERS, IN THEORY, HAVE TO PROVE  
15 WHAT THEIR PUMPING WAS 65 YEARS AGO, WHICH WOULD BE A  
16 VERY DAUNTING TASK. AND, THEREFORE, THE BURDEN OF  
17 PRODUCTION OF EVIDENCE AND THE BURDEN OF PROOF ON THAT



18 ISSUE ARE VERY IMPORTANT. AND THAT'S WHY THEY'RE TRYING  
19 TO PUSH IT OFF ON THE LANDOWNERS.

20 BUT I THINK IN THE FIRST INSTANCE, BEFORE  
21 YOU CAN GET TO A PHYSICAL SOLUTION BEFORE THERE IS AN  
22 ISSUE OF HOW LANDOWNERS ARE GOING TO DIVIDE THE  
23 CORRELATIVE SUPPLY, THEY STILL HAVE THE BURDEN OF PROVING  
24 EVERYTHING THEY NEED TO PROVE IN THEIR CASE IN CHIEF  
25 BASED UPON THE CROSS-COMPLAINT, BASED UPON THEIR RETURN  
26 FLOWS, BASED UPON THE PRESCRIPTION, AND/OR IN SEEKING AN  
27 INJUNCTION TO STOP OTHER PARTIES FROM PUMPING.

28 SO I UNDERSTAND THAT THIS INFORMATION IS

32

1 HELPFUL TO THE COURT. IT MAY BE HELPFUL. BUT I JUST  
2 WANT TO MAKE SURE THAT WE DO NOT GET OURSELVES INTO A  
3 SITUATION WHERE WE HAVE SOMEHOW AGREED THAT WE HAVE THE  
4 BURDEN OF PROOF SOMEHOW.

5 MY UNDERSTANDING, BASED ON THE COURT'S  
6 ORDER, IS THAT WE WILL PROVIDE HOW MUCH WE WERE PUMPING  
7 DURING THOSE TIME FRAMES AND WHAT WE WERE USING IT FOR.

8 BUT THAT'S NOT TO SAY THAT SOMEHOW, THAT  
9 PLACES THE BURDEN OF PROOF ON US, OR THAT THAT'S THE ONLY  
10 PROOF THAT'S GOING TO BE ALLOWED ON THOSE ISSUES IF AND  
11 WHEN IT IS RELEVANT.

12 THE COURT: WELL, I THINK I'VE BEEN CLEAR FROM THE  
13 VERY BEGINNING AS TO WHO HAS THE BURDEN OF PROOF HERE.  
14 AND WE'RE NOT DOING ANYTHING TO ALTER THAT CONCEPT.

15 IF A CLAIM OF PRESCRIPTION IS MADE -- AND  
16 THAT'S REALLY THE ESSENCE OF THE CROSS-COMPLAINT -- AS  
17 WELL AS A REQUEST FOR THE COURT TO RECOGNIZE THAT THERE  
18 IS AN OVERDRAFT SITUATION, THAT THE PUMPING EXCEEDS THE  
19 SAFE YIELD, AND THERE IS INSUFFICIENT RECHARGE IN THE

20 VALLEY, THOSE ARE THINGS THAT I BELIEVE HAVE BEEN PART OF  
21 THE BURDEN OF PROOF OF THE PURVEYORS, THE PUBLIC WATER  
22 PRODUCERS, FROM THE BEGINNING.

23 THAT BURDEN OF PROOF WAS MANDATED DURING  
24 THE PHASE ONE, TWO AND THREE OF THE TRIAL IN THIS CASE.  
25 AND NOTHING HAS CHANGED.

26 SO I'M NOT DISAGREEING WITH YOU,  
27 MR. ZIMMER. I'M JUST TELLING YOU THAT NOTHING HAS  
28 CHANGED. THAT THAT BURDEN REMAINS THE SAME.

33

1 BUT I THINK THAT IT'S PRETTY CLEAR THAT  
2 THERE IS AN OVERDRAFT SITUATION THE COURT HAS FOUND TO  
3 EXIST.

4 THE COURT HAS DEFINED AND DETERMINED THE  
5 SAFE YIELD. AND THAT HAS BEEN, TO SOME EXTENT, YOU CAN  
6 DESCRIBE AS PART OF THE BURDEN OF PROOF THAT HAS BEEN  
7 SATISFIED BY THE PUBLIC WATER PRODUCERS SINCE THAT WAS  
8 ESSENTIALLY THEIR CONTENTION AND ONE OF THE ELEMENTS OF  
9 THIS CASE.

10 MR. TOOTLE: YOUR HONOR, JOHN TOOTLE FOR  
11 CALIFORNIA WATER SERVICE COMPANY.

12 THE COURT: YES, MR. TOOTLE.

13 MR. TOOTLE: I JUST WANT TO GET A CLARIFICATION  
14 AND MAYBE A REQUEST THAT WOULD MAKE THE NUMBERS HELPFUL  
15 IN THE NEXT PHASE OF TRIAL. AND THAT IS TO KNOW ACTUALLY  
16 WHERE THE PUMPING OCCURRED FOR THOSE PARTICULAR YEARS AS  
17 WELL AS WHAT IT WAS USED FOR.

18 THE COURT: I AGREE THAT OUGHT TO BE IN THE ORDER.

19 AND COUNSEL ARE GOING TO JOINTLY PREPARE  
20 THAT ORDER.

21 YES, MR. MC LACHLAN.

22 MR. MC LACHLAN: IT'S LITTLE BIT OUT OF ORDER, BUT  
Page 33

23 I WANTED TO GO BACK AND AGREE WITH MR. DUNN'S COMMENT ON  
24 THE SMALL PUMPER CLASS RELATIVE TO, YOU KNOW, IF THIS IS  
25 JUST GOING TO BE A FACTUAL HEARING, I DON'T SEE WHY WE  
26 COULDN'T END UP BEING THE CABOOSE AND BE DEFERRED TO SOME  
27 POINT IN TIME IN WHICH THE EXPERT IS FINISHED WITH THE  
28 ANALYSIS.

34

1 OBVIOUSLY, THE EXPERT CAN BE PUSHED ALONG  
2 AT WHATEVER FASTEST PACE THEY CAN GO. BUT I'M OKAY WITH  
3 THAT. THIS IS, IN FACT, WHAT IT APPEARS, TO BE A FACTUAL  
4 HEARING.

5 THE SECOND POINT I HAD IS I DON'T KNOW THE  
6 EXTENT TO WHICH EXPERTS WILL BE CALLED IN HERE TO PROVIDE  
7 EVIDENCE USING EXTRAPOLATION AND OTHER METHODS THAT WE'VE  
8 SEEN EXPERTS TESTIFY IN THESE TYPE OF CASES.

9 I DO KNOW THAT TO THE EXTENT THE SMALL  
10 PUMPER CLASS IS INVOLVED, OBVIOUSLY THE COURT'S EXPERT  
11 WILL HAVE TO TESTIFY, AND THAT RAISES THE QUESTION OF  
12 SETTING AN EXPERT DESIGNATION TIME SCHEDULE. IF WE DID  
13 IT UNDER THE CODE, THEN WE'RE TALKING ABOUT DESIGNATING  
14 SOME TIME IN ABOUT FOUR, FIVE WEEKS, I THINK. PRETTY  
15 SOON.

16 SO THERE'S THAT ISSUE. AND I'M NOT SURE  
17 HOW TO DEAL WITH THAT. BUT IT SHOULD BE DEALT WITH.

18 THE COURT: WELL, I THINK THE COURT'S EXPERT IS  
19 OUTSIDE OF THE NORMAL DISCLOSURE REQUIREMENTS FOR  
20 EXPERTS.

21 TO THE EXTENT THAT A PARTY IS GOING TO USE  
22 AN EXPERT -- AND I DON'T THINK ANYBODY KNOWS, TO THE  
23 EXTENT THAT YOU ARE OR ARE NOT GOING TO USE OTHER  
24 EXPERTS, UNTIL YOU LOOK AT THE NUMBERS THAT ARE BEING

25 PRESENTED BY THE VARIOUS PARTIES, AS TO WHETHER OR NOT  
26 THEY CAN BE VALIDATED. TO THE EXTENT THEY' RE NOT  
27 DISPUTED, THEY' RE NOT DISPUTED.

28 AND THE COURT WILL WANT TO HEAR SOME

35

1 EVIDENCE, I SUPPOSE, AT SOME POINT HERE AS TO THE VALUES  
2 THAT ARE PRESENTED.

3 BUT TO THE EXTENT THAT THIS IS AN  
4 ADVERSARIAL PROCEEDING, THE COURT IS ENTITLED TO MAKE  
5 FINDINGS BASED UPON THE EVIDENCE PRESENTED.

6 MR. MC LACHLAN: THAT' S FINE. MY CONCERN IS THAT  
7 IF THERE IS GOING TO BE ANY EXPERT TESTIMONY UNDER THE  
8 CCP, THE PARTIES ARE ENTITLED TO A DEPOSITION OF THAT  
9 PERSON BEFORE THEY TESTIFY.

10 AND I THINK THAT IF A LOT OF THE RECORDS  
11 AND SO FORTH ARE GOING TO BE PUT FORTH THROUGH PERCIPIENT  
12 PARTIES, THAT INFORMATION SHOULD BE EXCHANGED AS WELL.

13 IN OTHER WORDS, SOME INTERROGATORY LIST OF  
14 WHO YOU' RE GOING TO PUT THIS TESTIMONY ON SO THAT ONE  
15 PARTY CAN NOTICE THE DEPOSITION OF THAT PERSON, IF THEY  
16 NEED BE, TO INQUIRE ABOUT THE TESTIMONY RATHER THAN JUST  
17 SHOWING UP ON FEBRUARY 1 COLD AND WINGING IT.

18 THE COURT: I AGREE WITH THAT.

19 AND ONE OF THE THINGS THAT I WANT TO TAKE  
20 UP WITH YOU THIS MORNING IS A FOLLOW-UP CASE MANAGEMENT  
21 CONFERENCE IN ABOUT A MONTH.

22 I' M THINKING SOMEWHERE AROUND THE FIRST  
23 WEEK OF DECEMBER, ABOUT 30 DAYS AWAY, SO THAT THE COURT  
24 CAN MAKE FURTHER ORDERS CONCERNING EXPERT DISCLOSURES TO  
25 THE EXTENT THAT' S NECESSARY. AND OTHER PREPARATION  
26 RULES, SUCH AS TRIAL BRIEFS, STATEMENT OF POSITIONS,  
27 WITNESS LISTS, EXHIBIT LISTS, AND THE LIKE, WHICH MUST BE

28 EXCHANGED WELL IN ADVANCE OF THE TRIAL. THIS IS AN

36

1 ADVERSARIAL PROCEEDING.

2 MR. SLOAN: YOUR HONOR, MAY I BE HEARD? THIS IS  
3 WILLIAM SLOAN FOR U. S. BORAX.

4 THE COURT: YES, MR. SLOAN.

5 MR. SLOAN: ON A COUPLE OF INSTANCES, THE COURT  
6 HAS REFERENCED THAT THIS IS AN ADVERSARIAL PROCEEDING.

7 AND I GUESS ONE OF THE QUESTIONS THAT I  
8 HAVE IS WHETHER OR NOT AT THIS POINT, WE WOULD BE LIMITED  
9 TO A DISCOVERY THAT THE COURT ORDERS, OR IS THIS GOING TO  
10 BECOME A SITUATION WHERE SUDDENLY EVERYBODY ENGAGES IN  
11 DISCOVERY AND DEPOSITION NOTICES.

12 BECAUSE, OBVIOUSLY, I THINK THAT COULD  
13 SUBSTANTIALLY HINDER OUR ABILITY TO HAVE THE SETTLEMENT  
14 MEETINGS AND SUCH.

15 THE COURT: YEAH. I WANT TO, BETWEEN NOW AND THE  
16 NEXT HEARING DATE, LIMIT THE DISCOVERY TO THE  
17 COURT-ORDERED DISCOVERY.

18 I'M GOING TO TRY TO STICK WITH OUR FEBRUARY  
19 11 DATE. THAT DOESN'T MEAN THAT AT SOME POINT, I MAY  
20 HAVE TO MODIFY THAT ORDER.

21 I DON'T KNOW AT THIS POINT.

22 BUT I DO THINK THAT THE ISSUES CONCERNING  
23 THE VALIDITY OF THE STATEMENTS AND THE CLAIMS BY THE  
24 VARIOUS PARTIES, INCLUDING THE FEDERAL GOVERNMENT, ARE  
25 GOING TO BE SUBJECT TO DISPUTE AND CONTROVERSY TO THE  
26 EXTENT THAT YOU DON'T AGREE WITH THEM.

27 AND TO THE EXTENT THAT YOU WISH TO  
28 CHALLENGE, IT MAY REQUIRE, AT THAT POINT, SOME FURTHER

37

1 DISCOVERY PROCEDURE, WHETHER IT BE REQUESTS FOR  
2 ADMISSIONS, DEPOSITIONS, OR FURTHER REQUESTS FOR  
3 INFORMATION BY WAY OF PRODUCTION OF DOCUMENTS OR  
4 INTERROGATORIES.

5 BUT I DON'T THINK IT WOULD BE HELPFUL AT  
6 THIS POINT FOR YOU TO ENGAGE IN THAT TYPE OF DISCOVERY  
7 UNTIL WE SEE WHETHER OR NOT YOU'RE GOING TO DISPUTE THE  
8 CLAIMS OR THE NUMBERS.

9 MR. SLOAN: THANK YOU.

10 MR. SATALINO: YES, YOUR HONOR.

11 FRANK SATALINO, YOUR HONOR, FOR ROSAMOND  
12 RANCH.

13 TO FOLLOW UP ON THE DISCOVERY ISSUE THAT  
14 WAS JUST BROUGHT UP, AS FAR AS THE STAY AND THE OTHER  
15 DISCOVERY, AT THE LAST HEARING, WE TALKED ABOUT THAT YOUR  
16 HONOR WANTS US TO BE ABLE TO PROVE UP OUR CLAIM. AND  
17 SOME OF THE PARTIES HAVE TO DO DISCOVERY TO GET THE  
18 DOCUMENTATION TO PROVE THAT.

19 I SENT SOME DISCOVERY OUT. I GOT SOME  
20 RESPONSES. BUT THERE ARE A FEW SUBPOENAS I NEED TO SEND  
21 TO, LIKE THE ELECTRIC COMPANY, AND TO THE PRIOR OWNER OF  
22 THE PROPERTY.

23 AND I WOULD JUST ASK THE COURT TO CONSIDER,  
24 IF YOU'RE TALKING ABOUT A FULL STAY ON DISCOVERY, BECAUSE  
25 THERE ARE SOME ITEMS -- AND I'M NOT TALKING ABOUT SETTING  
26 DEPOSITIONS, BUT EVEN WRITTEN DISCOVERY FOR DOCUMENTS --  
27 THAT I WOULD LIKE TO STILL BE ABLE TO DO.

28 NOT TO BURDEN ANYONE, BUT TO GET THE

38

1 DOCUMENTS THAT I NEED BECAUSE THERE SEEMS TO BE AN  
2 ASSUMPTION THAT THE CLAIMANTS HAVE ALL THE DOCUMENTS, BUT  
3 IT'S OTHER PARTIES THAT HAVE THE RECORDS THAT WE WOULD

4 NEED TO SHOW OUR COMPANY.

5 THE COURT: YOU'RE TALKING ABOUT THIRD PARTY  
6 DISCOVERY?

7 MR. SATALINO: IN SOME INSTANCES. BUT THERE'S A  
8 FEW PARTIES THAT ARE IN THE CASE. FOR EXAMPLE, I BELIEVE  
9 THE ELECTRIC COMPANY IS IN THE CASE. AND THEY MAY HAVE  
10 POWER RECORDS SHOWING HOW MUCH POWER WAS USED FOR THE  
11 PUMPS.

12 THE COURT: WHICH ELECTRICAL COMPANY?

13 MR. SATALINO: I THINK IT'S EDISON, BUT I'M NOT  
14 SURE.

15 THE COURT: WHO?

16 MR. SATALINO: EDISON.

17 THERE'S ONE POWER COMPANY THAT ACTUALLY  
18 CONTACTED ME. I BELIEVE THEY ARE A PARTY TO THE CASE.

19 THE COURT: YOU KNOW, I DON'T KNOW THE ANSWER TO  
20 THAT. BUT, ESSENTIALLY, I THINK YOU'RE TALKING ABOUT  
21 THIRD PARTY DISCOVERY.

22 MR. SATALINO: ESSENTIALLY, YES.

23 THE COURT: I DON'T HAVE A PROBLEM WITH YOU GOING  
24 AFTER RECORDS OF THIRD PARTIES THAT YOU NEED. ESPECIALLY  
25 YOU GOT INTO THE CASE LATE AND THERE WAS APPARENTLY A  
26 TRANSFER OF PROPERTY.

27 SO IN ORDER FOR YOU TO BE PREPARED, YOU  
28 HAVE TO DO WHAT YOU HAVE TO DO.

39

1 MR. SATALINO: THANK YOU.

2 AND, YOUR HONOR, ONE OTHER THING I WANTED  
3 TO ASK YOU.

4 AS FAR AS CURRENT PUMPING, AND THE ISSUE  
5 ABOUT CURRENT PUMPING. JUST SO I CAN UNDERSTAND AND GET

6 THE COURT'S UNDERSTANDING OF WHAT WE'RE GOING TO BE  
7 TRYING. WHAT ABOUT THE SITUATION WHERE -- WE'VE ALWAYS  
8 BEEN TALKING ABOUT PUMPING OVER THE FIVE-YEAR TIME  
9 PERIOD. WHAT ABOUT THE SITUATION WHERE A PARTY HAS  
10 UNILATERALLY DECIDED IN THE LAST YEAR TO CUT DOWN ON ITS  
11 PUMPING FOR WHATEVER REASON? HOW WOULD THAT ISSUE BE  
12 TRIED WITH THE COURT? WHEN IS THE COURT GOING TO HEAR  
13 THAT?

14 THE COURT: WELL, THAT'S GOING TO BE AN  
15 EVIDENTIARY HEARING. AND THERE ARE LEGAL CONSEQUENCES.  
16 I'M NOT GOING TO OFFER DECISIONS ON THOSE  
17 THINGS AT THIS HEARING. BUT I CAN ASSURE YOU THAT WHEN  
18 PRESENTED WITH A LEGAL ISSUE, I WILL DEAL WITH IT.

19 MR. SATALINO: THANK YOU, YOUR HONOR.

20 THE COURT: WITH THE HELP OF COUNSEL, OBVIOUSLY.

21 MR. SATALINO: THANK YOU.

22 THE COURT: AS ALWAYS. ALL RIGHT.

23 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH  
24 FOR THE CITY OF LOS ANGELES.

25 THE COURT: YES.

26 MS. GOLDSMITH: IN TALKING ABOUT RECORDS THAT  
27 OTHER FOLKS HAVE, THERE ARE SITUATIONS WHERE THERE HAVE  
28 BEEN LESSEES WHO HAVE FILED PUMPING RECORDS WHO ALSO

40

1 HAPPEN TO BE PARTIES.

2 AND I WOULD LIKE THE ABILITY TO DIRECT --  
3 VERY, VERY FOCUSED MANNER -- DIRECT INTERROGATORIES AND  
4 RECORD REQUESTS TO THOSE PARTIES FOR WHATEVER RECORDS  
5 THEY HAVE SUPPORTING THEIR CLAIMS -- OR THE RECORDATION  
6 THAT THEY MADE FOR PUMPING ON, FOR EXAMPLE, THE CITY OF  
7 LOS ANGELES' LAND.

8 THE COURT: I'M NOT SURE WHAT IT IS THAT YOU'RE



9 ASKING AND HOW SOON YOU NEED THAT INFORMATION.  
10 BUT I'M GOING TO SUGGEST THAT YOU KEEP IT  
11 TO A MINIMUM SO AS TO NOT IMPACT THE SETTLEMENT  
12 DISCUSSIONS THAT ARE GOING ON UNTIL THE NEXT HEARING.

13 MS. GOLDSMITH: MAY I SUGGEST SOMETHING?  
14 THE COURT: YES.

15 MS. GOLDSMITH: MAY I SUGGEST THAT I PRESENT  
16 WHATEVER I MAY NEED TO THE COURT, OR TO THE PARTIES, IN  
17 THE NEXT CMC SO YOU CAN EITHER SAY YES, THAT'S FINE, OR  
18 NO?

19 THE COURT: YES.

20 MS. GOLDSMITH: THANK YOU.

21 MR. SLOAN: YOUR HONOR, THIS IS MR. SLOAN AGAIN.

22 I WOULD THINK THAT WOULD BE A SENSIBLE  
23 APPROACH FOR ANY PARTY THAT WISHES TO ENGAGE IN DISCOVERY  
24 BEYOND WHAT THE COURT IS ORDERING.

25 WHY DON'T THEY MAKE A SPECIFIC REQUEST TO  
26 THE COURT AT THE NEXT CMC SO THAT WE DON'T HAVE ANYBODY  
27 WITH A MISUNDERSTANDING THAT SOMETHING IS PERMISSIBLE OR  
28 IS NOT PERMISSIBLE.

41

1 THE COURT: WELL, I THINK THAT'S APPROPRIATE.  
2 THE DIFFICULTY IS THAT SOME OF THE PARTIES  
3 ARE FAIRLY RECENT PARTIES IN THIS LAWSUIT, HAVING  
4 ACQUIRED PROPERTY DURING THE PENDENCY OF THE LAWSUIT.  
5 AND THEY'RE TRYING TO PUT TOGETHER THEIR UNDERSTANDING OF  
6 THE RIGHTS THAT MAY BE PERTINENT TO THE LAND.

7 AND IF IT'S A THIRD PARTY WHO IS NOT A  
8 PARTY TO THIS LAWSUIT, THEN I THINK THAT THEY SHOULD HAVE  
9 A FREE GO AT THEM FOR RECORD DISCOVERY AS LONG AS IT'S  
10 NOT GOING TO BE DISRUPTING WHAT'S HAPPENING HERE.

11 MR. SLOAN: THAT MAKES SENSE. THANK YOU.  
12 THE COURT: ALL RIGHT. MR. LEININGER.  
13 MR. LEININGER: GOOD MORNING, YOUR HONOR. LEE  
14 LEININGER FOR THE UNITED STATES.

15 JUST A CLARIFICATION ON OUR ROLE IN THE  
16 THIS PHASE OF TRIAL.

17 EDWARDS AIR FORCE BASE, OF COURSE, IS THE  
18 LARGEST LANDOWNER OUT THERE IN THE ENTIRE BASIN. AND WE  
19 HAVE --

20 THE COURT: I KNOW THAT.

21 MR. LEININGER: I THINK I SAY THAT EVERY TIME I  
22 STAND UP HERE.

23 BUT WE ALSO HAVE THESE OVERLYING  
24 CORRELATIVE RIGHTS IN ADDITION. AND WE ARE GROUNDWATER  
25 PUMPERS.

26 SO MY UNDERSTANDING, AT LEAST FOR THIS  
27 PURPOSE OF PRODUCTION, WE WILL ALSO BE PROVIDING THOSE  
28 RECORDS.

42

1 THAT'S OUR STATE LAW BASIS FOR WATER RIGHTS  
2 IN CALIFORNIA.

3 FEDERAL RESERVED BASIS IS BASED, OF COURSE,  
4 ON FEDERAL LAW. AND I UNDERSTAND THE COURT TO REQUEST  
5 THAT WE PROVIDE A STATEMENT PROVIDING THE BASIS UNDER LAW  
6 AND FACTS AS TO WHY WE THINK WE'RE ENTITLED TO A FEDERAL  
7 RESERVED WATER RIGHT AND THE AMOUNT WE'RE CLAIMING UNDER  
8 THE FEDERAL RESERVED WATER RIGHTS.

9 A NUMBER OF PARTIES -- I SHOULDN'T SAY A  
10 NUMBER OF PARTIES. THREE PARTIES, I BELIEVE, HAVE  
11 QUESTIONED OUR ENTITLEMENT TO A FEDERAL RESERVED WATER  
12 RIGHT, THE LEGAL BASIS.

13 MR. FIFE HAS A MOTION FOR SUMMARY JUDGMENT,  
Page 41

14 WHICH HE HAD FILED LAST SPRING.

15 MR. ZIMMER JUST RAISED THE POINT OF FEDERAL  
16 RESERVED WATER RIGHT, IF ANY.

17 SO IT APPEARS HE MAY BE WILLING TO  
18 CHALLENGE OUR ENTITLEMENT.

19 AND MR. KUHS HAD FILED A CASE MANAGEMENT  
20 STATEMENT IN WHICH HE HAD RAISED AN ISSUE WHICH I -- A  
21 LEGAL ISSUE, APPARENTLY, THAT I HAD NEVER HEARD BEFORE IN  
22 WHETHER OR NOT WE ARE ENTITLED TO A FEDERAL RESERVED  
23 WATER RIGHT.

24 THE COURT: THE SPANISH CLAIM RIGHT UNDER THE  
25 GUADALUPE?

26 MR. LEININGER: WELL, THAT'S MY PROBLEM. I DON'T  
27 QUITE UNDERSTAND THE THEORY THAT HE WILL BE PROPOUNDING  
28 HERE.

43

1 SO I GUESS WHAT I'M SUGGESTING IS THAT WE  
2 WILL PROVIDE THIS STATEMENT. AND THEN THIS QUESTION OF  
3 LEGAL ENTITLEMENT WILL HAVE BEARING ON NOT ONLY WHETHER  
4 OR NOT WE HAVE A FEDERAL RESERVED WATER RIGHT, BUT ALSO  
5 THE FACTS THAT MAY NECESSARILY IMPINGED UPON THAT FEDERAL  
6 RESERVED WATER RIGHT.

7 SO JUST FOR PURPOSES OF NEXT FEBRUARY, YOUR  
8 HONOR, I GUESS IF WE COULD PROCEED WITH UNITED STATES  
9 PROVIDING THIS STATEMENT, PARTIES THAT WISH TO RAISE  
10 UNDER SOME -- ESPECIALLY A NOVEL LEGAL THEORY COULD THEN,  
11 HOPEFULLY, REFILE OR PROCEED UNDER SOME SORT OF MOTION  
12 PROCEDURE. AND WE CAN SEE WHAT WE THEN ARE FACING WITH  
13 REGARD TO THE FEBRUARY TRIAL DATE.

14 THE COURT: THAT'S A FAIR REQUEST, IT SEEMS TO ME.

15 AND I THINK WE SHOULD TALK ABOUT THAT A

16 LITTLE BIT MORE IN TERMS OF THE PRETRIAL PREPARATION AND  
17 TRIAL BRIEFS AND CONTENTIONS AT THE NEXT HEARING SO THAT  
18 EVERYBODY IS APPRISED OF WHAT ISSUES ARE ACTUALLY GOING  
19 TO BE ADJUDICATED.

20 AND AT THIS POINT, ALL WE'RE REALLY ASKING  
21 IS A STATEMENT OF CLAIMED RIGHT, WHETHER IT BE UNDER THE  
22 FEDERAL RESERVED RIGHT, STATE CLAIMED RIGHTS, STATE LAW  
23 OR OTHERWISE SO THAT WE DON'T HAVE ANY AMBUSHES.

24 MR. LEININGER: AND WE INTEND TO FILE A STATEMENT  
25 ON BOTH, YOUR HONOR.

26 THE COURT: I'M SURE.

27 MR. LEININGER: THE ONLY OTHER POINT I WISH TO  
28 MAKE IS WITH ALL THIS INFORMATION THAT'S COMING IN WITH

44

1 REGARD TO PRODUCTION OF RECORDS, AND HOPEFULLY SUPPORT  
2 FOR THE PRODUCTION OF RECORDS, WHETHER THE COURT WOULD  
3 WANT US TO CREATE SOME SORT OF REPOSITORY OF THIS  
4 INFORMATION TO MAKE IT MORE EASILY ACCESSIBLE FOR ALL THE  
5 PARTIES.

6 IN OTHER WORDS, IN THIS COURT ORDER, IF  
7 PARTIES PROVIDE THIS INFORMATION ELECTRONICALLY, WHETHER  
8 THAT MEANS SCANNING YOUR HISTORIC INFORMATION OR  
9 PROVIDING IT IN A PDF FORMAT OR NOT, IT SEEMS WE'RE GOING  
10 TO HAVE A HUGE VOLUME OF INFORMATION THAT THE PARTIES  
11 WILL NEED TO ACCESS EASILY.

12 THE COURT: WELL, OBVIOUSLY, MUCH OF IT IS GOING  
13 TO BE FILED ELECTRONICALLY, IF NOT ALL. AND THAT IS  
14 ALWAYS GOING TO BE AVAILABLE ON THE ANTELOPE WEB SITE.

15 BUT IF YOU'RE TALKING ABOUT SEQUESTRATION  
16 INTO A PARTICULAR FILE SO THAT IT'S ALPHABETIZED AND  
17 AVAILABLE FOR PARTY DISCLOSURE, I THINK THAT'S A GOOD  
18 IDEA.

19 AND WHAT I WOULD SUGGEST IS THAT YOU PUT  
20 THAT IN THE ORDER, IF YOU CAN AGREE, AND THEN TALK WITH  
21 MRS. WALKER ABOUT HOW TO FORMULATE THAT.

22 MR. LEININGER: VERY GOOD. THANK YOU.

23 THE COURT: I THINK THAT WOULD BE VERY HELPFUL.

24 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON AND  
25 GRANITE.

26 THE COURT: YES, MR. KUHS.

27 MR. KUHS: IT OCCURS TO ME THAT ONE OF THE LEGAL  
28 ISSUES WE HAD RAISED WITH RESPECT TO THE FEDERAL RESERVED  
45

1 RIGHT DEALS WITH -- AS I UNDERSTAND THE AUTHORITY -- THAT  
2 THE FEDERAL GOVERNMENT, TO THE EXTENT THERE IS A RESERVED  
3 RIGHT, TAKES SUBJECT TO PRIOR EXISTING RIGHTS, PRIOR  
4 VESTED RIGHTS.

5 AND SO TO REACH THAT ISSUE, WE WOULD HAVE  
6 TO KNOW ESSENTIALLY WHEN THE FEDERAL RESERVED RIGHT WAS  
7 CREATED AND WHAT THE CONDITION WAS IN THE BASIN AT THAT  
8 TIME. THAT REALLY INVOLVES AN ANALYSIS OF WHETHER THE  
9 BASIN WAS IN OVERDRAFT IN THE 1930'S. A QUESTION THAT  
10 WE'RE NOT GOING TO REACH IN THIS PHASE OF THE TRIAL.

11 SO I WOULD SUGGEST THAT THAT ISSUE BE  
12 RESERVED UNTIL WE HEAR EVIDENCE IN THE PRESCRIPTION PHASE  
13 AS TO WHAT THE CONDITION OF THE BASIN WAS BACK IN THOSE  
14 EARLY YEARS.

15 THE COURT: WELL, WE'RE GOING TO HEAR WHAT THE  
16 CONTENTIONS ARE FROM THE FEDERAL GOVERNMENT IN THEIR  
17 STATEMENT IN RESPONSE TO THE COURT'S ORDER.

18 AND FROM THERE, IF THERE ARE OTHER ISSUES  
19 THAT NEED TO BE TAKEN UP AT ANOTHER TIME, WE WILL DO  
20 THAT.

21 ALL RIGHT. PARTIES GOING TO AGREE THEN TO  
22 SIT DOWN AND DEVELOP THIS ORDER, RIGHT?  
23 MR. LEININGER: YES, YOUR HONOR.  
24 THE COURT: OKAY. AND THEN YOU CAN SEND WITH ANY  
25 COMMENTS ABOUT CONFLICT, YOU CAN FORWARD THAT AND POST IT  
26 AND THE COURT WILL LOOK AT IT AND DETERMINE WHAT THE FORM  
27 OF THE ORDER OUGHT TO BE.  
28 NOW, LET'S TAKE UP MR. MC LACHLAN'S REQUEST 46

1 FOR THE COURT TO APPOINT AN EXPERT.  
2 MR. DUNN: I'M SORRY TO INTERRUPT, YOUR HONOR.  
3 CAN WE HAVE A DEADLINE FROM THE COURT TO THAT? AND COULD  
4 IT BE ONE WEEK FROM TODAY?  
5 THE COURT: IS THAT MAYBE TOO SOON?  
6 MR. DUNN: NO. I DON'T THINK SO.  
7 THE COURT: WELL, YOU SUBMIT IT TO ME.  
8 YES.  
9 TODAY IS THE 9TH. SO YOU WANT TO HAVE A  
10 FORM OF ORDER SUBMITTED TO THE COURT BY THE --  
11 MR. DUNN: 16TH.  
12 THE COURT: 16TH. YES.  
13 MR. ORR: YOUR HONOR, STEVEN ORR FOR THE CITY OF  
14 PALMDALE.  
15 I WAS GOING TO VOLUNTEER, ALONG WITH  
16 MR. FIFE, TO BE THE TWO COORDINATING ATTORNEYS TO TRY TO  
17 GET THE TWO SIDES TOGETHER.  
18 THE COURT: THANK YOU.  
19 MR. FIFE: AND IF I COULD JUST INQUIRE WITH  
20 MR. DUNN SINCE HE SUGGESTED THAT WE -- WE DO HAVE THE  
21 MEETING NEXT THURSDAY AT TOM'S OFFICE.  
22 COULD WE USE THAT TO DISCUSS ANY ISSUES?  
23 THAT WOULD MEET OUR DEADLINE OF SUBMITTING IT.

24 MR. DUNN: MAY I RESPOND, YOUR HONOR?

25 MY THOUGHT ON THAT, MR. FIFE, IS THAT WE  
26 COULD HOPEFULLY COME TO A RESOLUTION, OR AT LEAST AN  
27 AGREEMENT, ON WHAT TO SUBMIT TO THE COURT. BUT IT SEEMS  
28 TO ME THAT EVEN IF WE COULD TALK -- AS WE DID HERE

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1 TODAY -- AND SET SOMETHING UP BEFORE THURSDAY, I DON'T  
2 THINK IT WILL TAKE A TERRIBLE AMOUNT OF TIME. I THINK  
3 IT'S SOMETHING WE COULD PROBABLY DO ON A CONFERENCE CALL.

4 THE DISADVANTAGES TO EVEN TRY TO DO IT  
5 TODAY IS WE DON'T HAVE EVERYBODY HERE.

6 MY SUGGESTION IS LET'S MAKE A CALL AND  
7 FINISH IT ON THURSDAY.

8 MR. FIFE: YOUR HONOR, I AGREE A WEEK.

9 THE COURT: ALL RIGHT. NOW, MR. MC LACHLAN, YOU  
10 HAVE YOUR REQUEST FOR AN EXPERT.

11 YOU BELIEVE THAT THE COURT SHOULD ENGAGE  
12 ITS EXPERT NOW TO GET A REPORT AS SOON AS POSSIBLE; IS  
13 THAT FAIR?

14 MR. MC LACHLAN: YES. TO THE EXTENT THAT THE WOOD  
15 CLASS IS ORDERED TO PRESENT EVIDENCE IN THIS NEXT PHASE  
16 OF TRIAL OR AT SOME FACTUAL HEARING, I THINK IT'S  
17 CERTAINLY NECESSARY. AND IF WE'RE GOING TO TRY TO SETTLE  
18 THE WOOD CLASS OUT AND GET THEM PUT TO BED, THEN I THINK  
19 WE NEED IT ANYWAY. PERHAPS.

20 I DON'T KNOW IF EVERYONE WILL AGREE ON THE  
21 NUMBERS. I DON'T THINK THERE'S A LOT OF RESISTANCE  
22 BECAUSE THE NUMBERS HAVE DROPPED A LITTLE BIT FURTHER.

23 I MEAN, TO THE EXTENT PEOPLE ARE GOING TO  
24 DISAGREE, THEN THE COURT WOULD PROBABLY WANT TO HEAR FROM  
25 AN EXPERT AND SAY YEA OR NAY, AND HAVE SOME EVIDENCE

26 SUPPORTING IT FOR THE APPELLATE COURT.

27 THE COURT: SHOULD I DEFER RULING ON THIS UNTIL

28 THE NEXT HEARING?

48

1 MR. MC LACHLAN: NO. I DON'T THINK THAT'S A WISE

2 IDEA. I MEAN, IT JUST GUARANTEES ONE, THAT WE'RE NOT

3 GOING TO PROBABLY GET ANY CLOSER TO GETTING THE WOOD

4 CLASS SETTLED.

5 AND TWO, IT CERTAINLY GUARANTEES THE WOOD

6 CLASS WON'T BE PARTICIPATING IN THAT NEXT TWO-WEEK BLOCK

7 OF TIME.

8 SO THOSE ARE MY CONCERNS. BUT OBVIOUSLY,

9 YOUR HONOR IS SETTING A SCHEDULE.

10 THE COURT: WHAT I'M CONCERNED ABOUT IS IN THE

11 EVENT THAT YOU COULD COME TO AN AGREEMENT, WHICH YOU WERE

12 SO CLOSE TO COMING TO, I DON'T WANT TO UNNECESSARILY

13 EXPEND PARTIES' RESOURCES. ECONOMIC RESOURCES. MONEY.

14 MR. MC LACHLAN: I'LL SAY THIS ON THAT POINT.

15 I HAVE SPENT LITERALLY -- I THINK IT WAS

16 JUNE OF 2011 THAT WE HAD THE ORIGINAL SETTLEMENT.

17 ROUGHLY JUNE OR JULY. SINCE THAT TIME FRAME, I HAVE

18 SPENT HUNDREDS AND HUNDREDS OF HOURS DRAFTING A STRIPPED

19 DOWN WILLIS-LIKE CLASS AGREEMENT, WHICH WAS TOSSED TO THE

20 WAYSIDE.

21 AND I BROUGHT IT UP AGAIN AND AGAIN AND

22 AGAIN.

23 I'VE ENDEAVORED TO NEGOTIATE WITH THE

24 LANDOWNERS. TOLD THE LANDOWNERS THAT FAIRLY SOON, WE'RE

25 PROBABLY GOING TO SUE THEM ON A CLASS-WIDE BASIS SINCE --

26 WE'VE CREATED THIS ADVERSITY. WE MIGHT AS WELL

27 ADJUDICATE THE CLAIMS.

28 IT'S GOTTEN US NOWHERE. THIS CASE IS NOT



1 GOING TO SETTLE.

2 WE'RE BEING HELD HOSTAGE ON ONE SIDE BY THE

3 LANDOWNERS. AND I DON'T REALLY FAULT THE PUBLIC WATER

4 SUPPLIERS BECAUSE IN SOME SENSE, AS LONG AS THE

5 LANDOWNERS WANT TO USE US AS A HOSTAGE, PUBLIC WATER

6 SUPPLIERS ARE A LITTLE BIT STUCK.

7 AND THE PUBLIC WATER SUPPLIERS COULD ENTER

8 INTO THAT STRIPPED DOWN AGREEMENT WITHOUT THE WATER

9 RIGHTS, BUT THEN YOU STILL HAVE A PROBLEM OF NOT

10 ADJUDICATING THE WATER USING GROUP. WE REPRESENT THE

11 LARGEST NUMBER OF WELLS IN THE VALLEY. NOW, IT'S NOT THE

12 LARGEST CLAIM, BUT IT'S STILL SUBSTANTIAL ENOUGH THAT I

13 THINK IT HAS TO BE ADJUDICATED.

14 SO I THINK WE REALLY NEED TO GET THE

15 COURT-APPOINTED EXPERT MOVING. IT COMPLETELY TIES MY

16 HANDS. I'M DEAD IN THE WATER AND I CAN'T DO ANYTHING.

17 AND THIS CASE IS NOT GOING TO SETTLE.

18 IF I THOUGHT IT WAS GOING TO SETTLE, I'D BE

19 STRAIGHT WITH YOU, YOUR HONOR. BUT IT'S NOT.

20 THE COURT: OKAY. AND YOUR VIEW IS THAT THE

21 DIFFICULTY IS THE LANDOWNER GROUP?

22 MR. MC LACHLAN: YEAH. I THINK SO. I'VE BROACHED

23 THE LEAD COUNSEL THE IDEA OF LOOK, YOU KNOW OUR NUMBER.

24 LET'S JUST AGREE TO IT AND GET US OUT.

25 AND THERE'S ESSENTIALLY VERY LITTLE

26 INTEREST IN IT.

27 AND IF I HAVE THE COURT-APPOINTED EXPERT --

28 TO BE BLUNT, I'M PROBABLY GOING TO THREATEN TO FILE A

50

1 CLASS CASE AGAINST THEM IN ORDER TO GET IT ACCOMPLISHED,

2 BECAUSE THAT'S WHAT IT'S GOING TO TAKE.

3 AND I THINK IT'S UNFORTUNATE, BUT THAT'S

4 WHERE WE ARE.

5 THE COURT: RIGHT NOW, YOUR COMPLAINTS AND THE  
6 CLASS COMPLAINT IS AGAINST THE PUBLIC WATER SUPPLIERS; IS  
7 THAT TRUE?

8 MR. MC LACHLAN: THAT'S RIGHT. ONLY THEM.

9 THE COURT: ONLY THEM.

10 MR. MC LACHLAN: RIGHT.

11 THE COURT: AND I UNDERSTAND HOW THAT CAME ABOUT  
12 AND IT WAS A VERY SENSIBLE THING TO DO.

13 AND AS A MATTER OF FACT, THE COURT  
14 APPRECIATES YOU HAVING DONE THAT.

15 WELL, I AM GOING TO NEED EITHER A  
16 STIPULATION OF AGREEMENT BETWEEN THE PARTIES. I ASKED  
17 YOU WHAT THE WOOD CLASS PUMPING IS AND HAS BEEN; OR I'M  
18 GOING TO NEED AN EXPERT TO TESTIFY TO IT.

19 AND IF THERE'S NOT GOING TO BE AN  
20 AGREEMENT, THEN I'M TAKING THAT AT FACE VALUE.

21 THEN I'M GOING TO MAKE THE APPOINTMENT OF  
22 MR. THOMPSON AS HE HAS REQUESTED -- YOU HAVE REQUESTED, I  
23 SHOULD SAY -- AND PROVIDED HIS PROPOSAL.

24 AND I THINK THAT THE TOP DOLLAR THAT HE IS  
25 GOING TO BE ENTITLED TO, BY HIS OFFER, IS ABOUT \$80,000.

26 THAT HAS TO BE PAID.

27 THE COURT'S EXPERT, I'M GOING TO APPOINT  
28 HIM AND HIS FIRM. ENTRIX, I BELIEVE, IS THE FIRM.

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1 AND I'M GOING TO ORDER THAT THE PUBLIC  
2 WATER PROVIDERS WHO HAVE PRESCRIPTIVE CLAIMS BE  
3 RESPONSIBLE AMONG THEMSELVES FOR THE REIMBURSEMENT OR  
4 PAYMENT OF THAT AMOUNT OF \$80,000.

5                   THAT IS GOING TO BE A TAXABLE AMOUNT, SO  
6 THAT IT COULD BECOME A COST THAT IS ALLOCATED TO OTHER  
7 PARTIES IN THIS LAWSUIT DEPENDING UPON THE OUTCOME OF  
8 THIS LAWSUIT.

9                   BUT THE \$80,000 WILL BE ADVANCED BY THE  
10 PUBLIC WATER PROVIDERS.

11                   THAT'S THE ORDER.

12               MR. MC LACHLAN: YOUR HONOR IS REFERRING TO  
13 EXHIBIT 5 IN THE MOTION, WHICH IS THE TWO PAGE RIGHT DOWN  
14 BY ENTRIX.

15               THE COURT: AND I WANT YOU TO PREPARE AN ORDER FOR  
16 THE COURT TO SIGN AS I'VE INDICATED.

17               MR. MC LACHLAN: THERE'S ONE OTHER -- I GOT A --  
18 MR. THOMPSON CHECKS THE DOCKET PERIODICALLY AND IS AWARE  
19 THAT THIS IS GOING ON.

20                   I GOT A VOICE MAIL FROM HIM IN THE LAST --  
21 I THINK TWO DAYS AGO, INDICATING THAT HIS FIRM, ON THE  
22 FRONT END, I GUESS, NEVER GOT -- THEIR CUSTOM AND  
23 PRACTICE IS TO GET A CONTRACT WHEN THEY DO THIS SORT OF  
24 WORK. AND I'M NOT SURE WHO SHOULD SIGN THAT CONTRACT.

25                   I HAVEN'T SEEN THE CONTRACT. BUT WHAT I  
26 PLANNED TO DO WHEN I GO BACK IS TO SEND AN EMAIL TO HIM,  
27 AND OBVIOUSLY COPY MR. DUNN.

28                   AND I THINK MR. FIFE CAN AGREE AT SOME

52

1 POINT TO BE THE LANDOWNER'S LIAISON AND SAY, "CAN YOU  
2 SEND US THE CONTRACT IF YOUR FIRM REQUIRES IT?"

3               THE COURT: WELL, YOU KNOW, THE COURT DOESN'T  
4 ORDINARILY ENTER INTO CONTRACTS WITH THE PARTIES.

5               MR. MC LACHLAN: RIGHT.

6               THE COURT: WHAT THE COURT DOES IS ORDERS THAT

7 THINGS OCCUR.

8 MR. MC LACHLAN: MAYBE ORDER -- CAN I SIGN IT? OR  
9 MR. DUNN?

10 THE COURT: I THINK I'D LIKE TO HAVE MR. DUNN SIGN  
11 IT AND TO HAVE YOU SIGN IT AS WELL.

12 MR. MC LACHLAN: THAT'S FINE.

13 THE COURT: AND MAYBE WE OUGHT TO HAVE ALL THE  
14 WATER PROVIDERS WHO ARE BEING SUED HERE, AND WHO HAVE  
15 SUED, FOR PRESCRIPTIVE CLAIMS SIGN IT AS WELL.

16 BUT I WANT THAT TO OCCUR.

17 AND I'M SORRY THAT WE HAVE TO DO THIS. BUT  
18 THE COURT HAS TO BE INFORMED IN ORDER TO COMPLETE  
19 COMMUNICATION IN THIS CASE. AND IF THAT'S THE ONLY WAY I  
20 CAN BE INFORMED, THEN I HAVE TO HAVE THAT EXPERT TESTIFY.

21 AND I JUST WANT YOU TO INSURE THAT HE  
22 UNDERSTANDS -- THAT ENTRIX UNDERSTANDS THAT THEY ARE  
23 COURT EXPERT, AND THEY ARE TO COMPORT THEMSELVES  
24 ACCORDINGLY WITHOUT CHOOSING UP SIDES.

25 MR. MC LACHLAN: WE UNDERSTAND. I'LL TALK TO  
26 MR. DUNN AND ANYONE ELSE THAT'S INTERESTED. I'LL PUT  
27 SOME LANGUAGE IN THE ORDER RELATIVE TO -- WELL, I'M  
28 OBVIOUSLY GOING TO HAVE TO COMMUNICATE WITH ENTRIX

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1 BECAUSE THEY'RE GOING TO HAVE TO GET IN TOUCH WITH CLASS  
2 MEMBERS.

3 SO I THINK I'VE GOT A WAY IN WHICH WE CAN  
4 DO THAT THROUGH EMAIL. AND WE CAN FILE THIS STUFF WITH  
5 THE COURT SO IT'S PUBLIC.

6 THE COURT: OKAY. LET ME MAKE ONE OTHER  
7 OBSERVATION HERE THAT I'VE BEEN THINKING ABOUT. AND I'M  
8 NOT SURE -- THIS IS NOT RELATED TO THE WOOD CLASS  
9 PARTICULARLY. I'M NOT SURE IF IT'S POSSIBLE TO DO THIS.

10 BUT THIS PRESCRIPTION CLAIM IS A CLAIM THAT  
11 IS IN MANY WAYS A VERY COMPLEX CLAIM; IN OTHER WAYS A  
12 SIMPLE CLAIM.

13 MR. DUNN THINK IT'S A SIMPLE CLAIM AND  
14 EASILY PROVEN, BECAUSE EVERYBODY KNOWS WHAT WAS GOING ON  
15 IN THE VALLEY AMONG OTHER THINGS.

16 I'M WONDERING IF THERE ISN'T SOME WAY OF  
17 DOING A SUMMARY ADJUDICATION OF ISSUES TO SEE IF  
18 MR. DUNN'S VIEW IS REALLY CORRECT IN ADVANCE OF A TRIAL.  
19 JUST TRYING TO SAVE A LOT OF RESOURCES FOR THE PARTIES  
20 AS WELL AS THE COURT.

21 BECAUSE IF IT COULD BE A SUMMARY  
22 ADJUDICATION -- AND I'M TALKING ABOUT A FILING BY THE  
23 LANDOWNER PARTIES, I SUPPOSE, AND NOT BY THE PUBLIC WATER  
24 PROVIDERS. BECAUSE I DON'T THINK IT'S POSSIBLE TO SAY  
25 THERE ARE NO ISSUES OF FACT FROM THE PUBLIC WATER  
26 PROVIDERS' STANDPOINT. AND MAYBE THERE IS NO WAY OF  
27 SAYING IT FROM THE LANDOWNERS' STANDPOINT. I DON'T KNOW.

28 BUT I THINK THAT IT WOULD BE WORTHWHILE FOR  
54

1 COUNSEL TO AT LEAST TALK ABOUT THAT AS A WAY OF PERHAPS  
2 TRYING TO RESOLVE THAT ISSUE.

3 THAT'S JUST AN OBSERVATION. YOU'RE NOT  
4 REQUIRED TO DO ANYTHING, ANYTHING YOU DON'T WANT TO DO.  
5 BUT I THINK YOU OUGHT TO CONSIDER IT.

6 MR. TOOTLE: YOUR HONOR, JOHN TOOTLE ON BEHALF OF  
7 CALIFORNIA WATER SERVICE COMPANY.

8 THE COURT: YES.

9 MR. TOOTLE: SORT OF GOING BACK TO YOUR REQUEST  
10 FOR PUMPING SPECIFIC TIME PERIODS, WOULD IT BE HELPFUL TO  
11 HAVE THE PUMPING PRIOR TO THE IMPORTATION OF WATER INTO

12 THE VALLEY?

13 WE ALL KNOW HOW -- THROUGH THE PREVIOUS  
14 TRIALS HOW THAT HAS CHANGED HABITS AND ALSO CHANGED THE  
15 BASIN ITSELF. AND THAT WAS IN THE MID-SEVENTIES.

16 THE COURT: I DON'T KNOW THE ANSWER TO THAT. BUT  
17 IT'S CERTAINLY SOMETHING THAT COUNSEL SHOULD TALK ABOUT.

18 WHAT I DO WANT TO TALK ABOUT VERY BRIEFLY  
19 IS OUR NEXT HEARING DATE FOR A FURTHER CASE MANAGEMENT  
20 CONFERENCE STATUS.

21 LET ME LOOK AT MY ROBOT HERE.

22 SO DECEMBER, I WILL TELL YOU THAT AN  
23 EARLIER PART OF THE WEEK IS BETTER THAN FRIDAY FOR ME IN  
24 TERMS OF TRAVELING. AND MY ANDROID AGREES.

25 SO WHAT ABOUT THE 11TH, WHICH IS A TUESDAY?

26 MR. MC LACHLAN: I'M IN TRIAL, YOUR HONOR, THAT  
27 WHOLE WEEK. CAN WE LOOK AT THE FIRST WEEK OF DECEMBER?

28 (DISCUSSION HELD OFF THE RECORD.)

55

1 MR. ZIMMER: YOUR HONOR, THIS IS ZIMMER.

2 I THINK THAT MAY BE A LITTLE EARLY SINCE WE  
3 WILL HAVE JUST MET WITH JUSTICE ROBE. AND I THINK WE  
4 MAY WANT TO PROVIDE SOME FURTHER INFORMATION REGARDING  
5 ISSUES TO THE COURT AS WELL.

6 THE COURT: YOU'RE GOING TO MEET WITH HIM ON THE  
7 28TH AND 29TH?

8 MR. ZIMMER: I THINK THE 29TH AND 30TH.

9 THE COURT: OKAY. 29TH AND 30TH, THURSDAY AND  
10 FRIDAY.

11 WELL, I CAN DO IT THE 7TH, I GUESS. THAT'S  
12 FRIDAY.

13

14 (DISCUSSION HELD OFF THE RECORD.)

15

16 THE COURT: WHY DON'T WE TRY FOR THE 11TH.

17 OKAY. SO THAT WILL BE THE ORDER. NINE

18 O'CLOCK.

19 I'LL BE HERE.

20 MR. ZIMMER: YOUR HONOR, MR. ZIMMER. JUST A FEW

21 QUICK COMMENTS.

22 I KNOW MR. TOOTLE KIND OF CAME IN THERE AT

23 THE END ON THE IDEA THAT WE WOULD GO BACK TO THE

24 SEVENTIES. THAT WOULD BE A MAMMOTH UNDERTAKING AT THE

25 MOMENT TO DO THAT IN THE MIDDLE OF SETTLEMENT

26 NEGOTIATIONS.

27 WE'LL HAVE PLENTY TO DO. WE'VE GOT TWO

28 DRAFTING COMMITTEE MEETINGS OVER THE NEXT TWO WEEKS. AND 56

1 THEN JUSTICE ROBIE.

2 I THINK THAT THE COURT'S INITIAL THOUGHT

3 PROCESSES, THERE'S PLENTY TO BITE OFF FOR THAT NEXT

4 HEARING. THAT BEING THE 2000 TO 2004, PLUS 2011, 2012

5 TIME FRAME.

6 THE COURT: OKAY. WELL, TALK IT OVER, AND IF YOU

7 CAN AGREE, FINE. IF YOU CAN'T, YOU CAN'T.

8 MR. ZIMMER: THE OTHER COMMENT I WANTED TO MAKE,

9 YOUR HONOR.

10 MR. ZIMMER AGAIN FOR BOLTHOUSE.

11 I DON'T AGREE WITH MR. MC LACHLAN'S

12 CHARACTERIZATION OF HOW HE'S AGREEING OR NOT. I THINK IT

13 WOULD BE HELPFUL TO HAVE MR. MC LACHLAN PRESENT WHEN

14 WE'RE DISCUSSING THESE ISSUES.

15 WE SPENT A LONG TIME YESTERDAY TALKING

16 ABOUT MR. MC LACHLAN'S GROUP AND THERE ARE PROBABLY FOUR

17 OR FIVE ISSUES THAT RELATE TO HIS GROUP.

18 I THINK IT'S KIND OF UNFAIR JUST TO SIT ON  
19 THE SIDELINES AND TO JUST SAY IT HAS TO BE MY WAY OR THE  
20 HIGHWAY.

21 I THINK HE NEEDS TO COME AND DISCUSS THOSE  
22 ISSUES WITH THE GROUP, AND WITH JUSTICE ROBE IF  
23 NECESSARY, SO WE CAN WORK SOMETHING OUT.

24 I THINK WE'RE CLOSE TO SETTLEMENT. I THINK  
25 WE CAN GET HIS GROUP SETTLED SO A LOT OF THIS BECOMES  
26 UNNECESSARY.

27 BUT IT WOULD BE HELPFUL TO BE ABLE TO  
28 DISCUSS THAT WITH HIM ACTUALLY IF HE'S ACTUALLY THERE.

57

1 THE COURT: WELL, AS YOU KNOW, I ENCOURAGE ALL  
2 COUNSEL TO TALK AS MUCH AS POSSIBLE TO RESOLVE THIS  
3 MATTER.

4 AND SO THAT REMAINS.

5 ALL RIGHT. I WILL SEE EVERYBODY ON  
6 DECEMBER THE 11TH AT 9:00 A.M. OR SOONER.

7 WE'RE IN RECESS.

8 THANK YOU VERY MUCH, EVERYBODY.

9 ALL COUNSEL: THANK YOU, YOUR HONOR.

10

11 (THE ABOVE PROCEEDINGS WERE CONCLUDED.)

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# EXHIBIT F

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DISTRICT NO. 40

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

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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. BC 509546

Judicial Council Coordination Proceeding  
No. 4408

CLASS ACTION

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

~~[REDACTED]~~ ORDER DENYING MOTION  
FOR DETERMINATION OF GOOD FAITH  
SETTLEMENT BY THE WOOD CLASS  
SETTLING DEFENDANTS

Hearing

Date: January 7, 2014

Time: 10:00 a.m.

Dept.: Old Department 1, Room 222

**[PROPOSED] ORDER**

This matter having come before the court for hearing on January 7, 2014 on the Motion for Determination of Good Faith Settlement by the Wood Class Settling Defendants. For good cause shown,

**IT IS HEREBY ORDERED:**

1. The Motion for Determination of Good Faith Settlement by the Wood Class Settling Defendants is hereby DENIED.

IT IS SO ORDERED.

Dated: *January 15, 2014*

  
HON. JACK KOMAR

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
18101 VON KARMAN AVENUE, SUITE 1000  
IRVINE, CALIFORNIA 92612

# EXHIBIT G

Producer Name	Non-Overlying Production Rights (in Acre-Feet)	Percentage Share of Adjusted Native Safe Yield
Los Angeles County Waterworks District No. 40	6,789.26	9.605%
Palmdale Water District	2,769.63	3.918%
Little Rock Creek Irrigation District	796.58	1.127%
Quartz Hill Water District	563.73	0.798%
Rosamond Community Services District	404.42	0.572%
Palm Ranch Irrigation District	465.69	0.659%
Desert Lake Community Services District	73.53	0.104%
California Water Service Company	343.14	0.485%
North Edwards Water District	49.02	0.069%
Boron Community Services District	50.00	0.071%
West Valley County Water District	40.00	0.057%
<b>Total Acre Feet:</b>	<b>12,345.00</b>	

# EXHIBIT H



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Attorneys for Plaintiff and the Class

**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)

Case No.: BC 391869

**REPLY BRIEF IN SUPPORT OF  
MOTION FOR APPROVAL OF  
AWARD OF ATTORNEY FEES AND  
COSTS**

**[filed concurrently with Supplemental  
Declaration of Michael D. McLachlan]**

Date: January 7, 2014

Time: 10:00 a.m.

Dept: Los Angeles Superior Court, Old  
Dept 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 No class members have objected to the Settlement or the Settling Defendants'  
4 agreement to pay a sum certain in fees in costs in order to control their monetary  
5 exposure. Only one party has filed opposition: Los Angeles County Waterworks District  
6 No. 40 (hereinafter "D40").

7 Because D40 is not a Class member and is not deprived of any of its claims by  
8 virtue of this Settlement, it is questionable whether it has standing to challenge this  
9 Motion, as discussed in the Reply Brief on the Motion for Final Approval (and such  
10 authority incorporated herein by this reference). D40 does not indicate how any of its  
11 rights are adversely impacted by this Settlement, but to the extent such a theoretical  
12 impact can be argued, Plaintiff, through his counsel, hereby stipulates that any and all of  
13 D40s available arguments as against the Class are preserved if and when D40 faces a fee  
14 motion at some future date.

15 Nevertheless, Plaintiff addresses below some of D40's misguided arguments on  
16 issues that may be relevant to the Court's own duty of inquiry on the reasonableness of  
17 the attorneys' fees. In short, Plaintiff believes the Court should find the agreed upon  
18 legal fees to be fair and reasonable, and should approve the fee request in whole with an  
19 award of attorney's fees in the total amount of \$719,829 and costs in the amount of  
20 \$17,038.

21 **II. ARGUMENT**

22 **A. There Has Been No Collusion, Conflict or Simultaneous Negotiation of Fees**

23 For yet a third time, District 40 asserts without a shred of factual foundation, that  
24 the legal fees were simultaneously negotiated.<sup>1</sup> (Opposition, 2:13-22.) In advancing this  
25

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26 <sup>1</sup> This argument was featured prominently in D40's oppositions to the motions for  
27 preliminary approval and final approval. (See, e.g., District 40's Opp. to Preliminary  
28 Approval at 5:18-6:6.) At the October 25, 2013 hearing, Mr. Dunn stated that he had  
concerns about the simultaneous negotiation of fees, and indicated that "all the

1 utterly baseless argument as it leading argument, D40 ignores the sworn declarations of  
2 class counsel and three of its fellow water supplier counsel: Thomas Bunn, Douglas  
3 Evertz, and Wesley Miliband. (Declarations of Settling Defendants, ¶¶ 3 [Dkt #7682];  
4 McLachlan Declaration In Support of Final Approval Motion, ¶ 5 [Dkt # 7452].) In their  
5 declarations, Mssrs. Bunn, Evertz and Miliband state under oath that they “did not  
6 negotiate with the Wood Class (including its legal counsel) about the Wood Class  
7 attorneys’ fees or costs that are included within the Settlement Agreement until after  
8 [they] came to an agreement with the Wood Class on the substantive terms of the  
9 Settlement Agreement that do not relate to the payment of the Wood Class’ attorneys’  
10 fees and costs.” (Declarations of Settling Defendants, ¶¶ 3.)

11 **There was no simultaneous negotiation of legal fees in this settlement.** But D40’s  
12 repeated advancement of this baseless argument highlights one of the primary reasons  
13 Class counsel has incurred substantial fees over the past six years and why the full  
14 negotiated fee should be granted: D40 advocated and supported the formation of the  
15 Class so that it could have its comprehensive adjudication, and then proceeded to fight  
16 nearly every issue of importance to the maintenance and interests of the Class. (*See, e.g.*,  
17 Supp. McLachlan Decl, Ex. 4. (Transcript of Hearing, December 18, 2007) at 17:19-  
18 20:11; *Leuzinger v. County of Lake* (N.D.Cal. March 30, 2009) 2009 US Dist. LEXIS  
19 29843, at \*29 (2.0 multiplier for aggressively litigated case by defense and rebuffed  
20 settlement efforts).

21 The apparent purpose of raising the simultaneous negotiation of fees is to advance  
22 an argument that the Court should apply “heightened scrutiny” to this Motion. (Opp. at  
23 2:13.) D40 has made this new standard out of whole cloth; there is no authority for it.

24  
25 information that we have indicates that [the fees were negotiated simultaneously].”  
26 (Hearing Transcript of October 25, 2013, at 14:15-25.) Mr. Dunn did not elaborate on  
27 this “information,” and has not done so to date. This allegation is totally unfounded;  
28 there was no simultaneous negotiation of fees or costs. (McLachlan Declaration In  
Support of Final Approval Motion, ¶ 5; Declarations of Settling Defendants, ¶¶ 3.)

1 Indeed, if anything, the Court should take the negotiated fees and cost amounts as  
2 a strong indicator of their reasonableness. Each of the three settling defense counsel are  
3 partners at respected Southern California law firms, each with extensive experience in  
4 land use and water rights issues. The defense counsel vigorously pushed their desire to  
5 limit their fee exposure by negotiating a sum certain that the Defendants would pay for  
6 Class Counsel's fees and costs. (McLachlan Decl. In Support of Motion for Fees, ¶ 12.)  
7 They could have opted to place the matter entirely in the Court's hands, but instead opted  
8 to negotiate a fixed fee arrangement so as to limit the exposure to a larger fee award on  
9 what has been a complicated and hard-fought lawsuit. In short, the defense lawyers  
10 negotiating the deal believed that a rate of \$550 an hour was fair and reasonable,  
11 particularly given the strong potential for a fee multiplier.

12 It is entirely rational, and in fact common practice, for litigants to try to limit their  
13 respective risks by negotiating reasonable fee compromise. When the fee negotiation  
14 occurs after the substantive settlement terms are reached, "[t]his practice serves to  
15 facilitate settlements and avoids a conflict, and yet it gives the defendant a predictable  
16 measure of exposure of total monetary liability for the judgment and fees in a case. To  
17 the extent it facilitates settlements, this practice should not be discouraged." (*In re*  
18 *Consumer Privacy Cases* (2009) 175 Cal.App.4<sup>th</sup> 545, 553.) Where the fee is being paid  
19 by the defendant rather than from a common fund, as is the case here, the concerns of  
20 adverse impact on the class are significantly reduced. (*Cho v. Seagate Technology*  
21 *Holdings, Inc.* (2009) 177 Cal.App.4<sup>th</sup> 734, 744 (approving full fee negotiated in non-  
22 common fund settlement). D40 has not pointed to anything in the terms of the settlement  
23 that suggest unfairness or collusion.

24 **B. The Settlement Confers Substantial Benefit on the Class**

25 In approving the Settlement on December 11, 2013, the Court determined that the  
26 settlement conferred a significant benefit on the Class. District 40 nevertheless argues  
27 that fees cannot be awarded because the Settlement does not confer a benefit on the  
28

1 Class. (Opp at 3:23-24.)<sup>2</sup> The inquiry here need go no further than the fact that over  
2 one-third of the potential prescription claim against the Class is being surrendered by the  
3 Settling Defendants, not to mention the complete resolution of all claims against these  
4 Settling Defendants. As to these Settling Defendants, this is a unequivocal and complete  
5 victory for the Class.

6 D40 argues that the Settlement fails because it does not confer a water right. This  
7 argument is a red herring, and conveniently ignores the goals of the litigation and the  
8 specific legal claims advanced in the First Amended Class Action Complaint, which are  
9 what frame the measure of the benefit. The First Amended Class Complaint, filed June 2,  
10 2008, defines the “Nature of the Action” as follows:

11 This action is necessary in that defendants assert a common law  
12 prescriptive right to the groundwater in the Basin which right they claim is  
13 superior to that of Plaintiff and the Class. By definition, a prescriptive  
14 right requires a wrongful taking of non-surplus water from the Basin, in  
15 an open, notorious, continuous, uninterrupted, hostile and adverse  
16 manner to the original owner for the statutory period of five years. To  
17 the extent defendants fail to prove any element of prescription or the  
evidence shows that defendants have indeed taken non-surplus water in  
derogation of the rights of overlying landowners, plaintiff’s and the  
Class’s property interests have been damaged and/or infringed.

18 (First Amended Complaint, 2:9-16.)

19 Similarly, the first and primary cause of action of the First Amended Class  
20 Complaint is one for declaratory relief and alleges in paragraph 28:

21 Plaintiff and the Class seek a judicial determination that

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22  
23 <sup>2</sup> The great irony in D40’s position here is that D40 was the largest proponent of  
24 the Class, and argued extensively for the formation of the Class, but now insists that  
25 Class counsel should not be paid for doing exactly the work D40 advocated so forcefully  
26 in favor of. (*See, e.g.*, Supp. McLachlan Decl., Ex. 4 (Transcript of Hearing, December  
27 18, 2007) at 17:19-20:11 (Describing the situation as a “roadblock:” “Mr. Dunn: . . . I  
28 think where this case has to be headed, quite frankly, is in order to move it along is that  
we will need a class mechanism or class mechanisms for both groups [Willis and  
Wood].” (*Id.* at 18:13-15.)

1                   their rights as overlying users are superior to the rights of all  
2                   non-overlying users and that they have correlative rights vis-  
3                   à-vis other overlying landowners.  
(First Amended Complaint, ¶ 28, 9:2-4.)

4                   As between the Wood Class and the Settling Defendants, the issues raised by the  
5                   Wood Class Complaint have been fully resolved. The Settlement preserves any alleged  
6                   overlying rights of the Wood Class Members and precludes the Settling Defendants from  
7                   diminishing any overlying rights of the Wood Class through claims of prescription.  
8                   (Settlement Agreement, § IV.D.2., p. 11.)<sup>3</sup> As to the Wood Class' overlying correlative  
9                   rights, Section IV.C.2 (at page 9) of the Wood Class Stipulation for Settlement  
10                  ("Settlement") provides:

11                 The Settling Parties agree between and among themselves, that the Wood  
12                 Class Members have an Overlying Right to a correlative share of the  
13                 Native Safe Yield for reasonable and beneficial uses on their overlying  
14                 land. The Settling Defendants will not take any positions or enter into any  
15                 agreements that are inconsistent with the Wood Class Members' Overlying  
16                 Right to produce and use their correlative share of the Basin's Native Safe  
17                 Yield.

18                 Nowhere in the First Amended Class Action Complaint does the Class seek a  
19                 specific quantification of its water rights, collectively or individually. The questions of  
20                 basin-wide adjudication and comprehensive determination of water rights arise from the  
21                 Water Suppliers' First Amended Cross-Complaint, which introduced the United States  
22                 and the attendant McCarran Amendment concerns. But that Cross-complaint is not  
23                 operative as to the Classes because the Water Suppliers never pursued the class  
24                 allegations. Hence, the only legal claims pending between the Settling Defendants and

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25                 <sup>3</sup> This section provides: "Safe Harbor: The Wood Class Members acknowledge  
26                 that the Settling Defendants may at trial prove prescriptive rights against all  
27                 groundwater pumping of the Basin during a prior prescriptive period. If the Settling  
28                 Defendants do acquire prescriptive rights, those prescriptive rights shall not be  
                  exercised to reduce the Wood Class Members' Overlying Rights."

1 the Wood Class are in the Class Action Complaint, which have been fully settled and  
2 released. (While a specific water right for the Class may be established as a byproduct of  
3 the larger coordinated proceeding, that is not germane to this Motion.)

4 The magnitude of significant benefit conferred on the general public of a large  
5 class of persons was eloquently summarized by this Court in in conjunction with the  
6 Willis Class, as follows:

7 As for the benefit conferred, although the Willis Class did not recover any  
8 monetary payment, it was successful in achieving a significant benefit by  
9 preventing the Public Water Suppliers from proceeding on their prescription  
10 claims and by maintaining certain correlative rights to the reasonable and  
11 beneficial use of water underlying their land. By virtue of the Willis Class  
12 Action (and the Woods Class Action), the Court is able to adjudicate the  
13 claims of virtually all groundwater users in the Antelope Valley which  
14 adheres to the benefit of every resident and property owner in the  
15 adjudication area. . . . Even without the federal government involvement,  
16 without the filing of the class action, it would have been impossible to  
17 adjudicate the rights of all persons owning property and water rights within  
18 the valley. . . . The inability of the judicial system to conduct such  
19 adjudication in any other way is beyond argument. The benefit to all class  
20 members is clear and the benefit to all others living of owning property in the  
21 Antelope Valley is enormous . . . .

22 (Dunn Decl., Ex. F, p. 5-6.)

23 Further, the suggestion that no “water right” is being conferred on the Class  
24 inaccurate. The surrender of a large portion of the potential prescriptive claim puts each  
25 Class member that much closer to being whole in their water use, shift the balance of the  
26 relative water claims, and improves each Class members position with respect to his  
27 continued ability to use groundwater. Given the fact that water is a commodity regularly  
28 traded in the California market, the Class is obtaining an economic benefit if the  
prescriptive claims are indeed viable.

### 29 C. The Agreed Upon Attorneys’ Fees Are Reasonable

#### 30 1. The Proper Meaning of “Similar Work” Does Not Mean Other Water 31 Rights Adjudications

32 The first argument D40 raises is that Class counsel should not be afforded the

1 negotiated hourly rate of \$550 because they are not water lawyers. (Opp. 6:14-16.)<sup>4</sup> The  
2 authority D40 cites in its brief does not stand for the proposition that in evaluating an  
3 hourly rate, “similar work” means the specific subject matter at issue, e.g. water  
4 adjudications. “[R]ates are generally not limited to those charged or awarded in cases  
5 involving the same subject matter.” (*Cal. Attorney Fee Awards*, 3<sup>rd</sup> Ed. (2013) § 9.106,  
6 *citing* (among more than twelve other cases) *Prison Legal News v. Schwarzenegger* (9<sup>th</sup>  
7 Cir. 2010) 608 F.3d 446, 454 (applicable comparison is to rates charged in relevant  
8 community for equally complex litigation); *see also* *Utility Reform Network v. PUC*  
9 (2008) 166 Cal.App.4<sup>th</sup> 522, 535 (in determining market rates for similar services, PUC  
10 may not limit rates to those awarded PUC practitioners); *Camacho v. Bridgeport Fin.,*  
11 *Inc.* (9<sup>th</sup> Cir. 2008) 523 F.3d 973, 979 (consumer attorneys not limited to rates charged by  
12 or awarded to other consumer attorneys).

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13  
14  
15 <sup>4</sup> As has been demonstrated by the work performed by Class Counsel to date, what  
16 is far more important for Class counsel in this matter is experience and ability to litigate  
17 complex class actions matters, as that has been the bulk of the work performed. In any  
18 event, there is in fact no market for class action water lawyers – there is no evidence that  
19 any even exist. Indeed, there is no indication that any attorney has ever litigated this type  
20 of matter on a Class-basis – a fact that militates in favor of a higher rate, not a lower one.  
(Supp. McLachlan Decl. ¶ 7.)

21 While Mr. Dunn is not a water lawyer per se (as is true of nearly all of the water  
22 supplier counsel), he is an accomplished general land use litigator who himself litigates a  
23 wide variety of matters across a very broad spectrum. However, the litany of mistakes he  
24 and his co-counsel have made when trying to venture into the class action arena strongly  
25 suggest that it is far more important to have the class action and complex litigation  
26 experience than it is to have read a handful of water law cases. The failed attempt at  
27 pursuing a defense class action within the water suppliers’ the First Amended Cross-  
28 complaint is perhaps the most notable blunder. If the numerous misstatements of law and  
inapposite arguments contained in the Opposition brief to the instant motion are not  
intentional, then that brief provides further testament to the difficulty class litigation can  
pose to those unfamiliar with it. Nevertheless, it is no doubt the case that the water  
supplier counsel are not discounting their hourly rates for the class action defense work  
they have endeavored to undertake, even though they have all professed to having no  
experience in this arena. This is how the practice of law and legal markets often work.



1 To the contrary, California Courts and Federal Courts look to the fees charged by  
2 attorneys of reasonably comparable experience, skill and expertise for cases requiring  
3 similar skills. (*Blum v. Stenson* (1984) 465 U.S. 886 (rates that prevail are for other types  
4 of equally complex litigation).) And, while D40 tries to minimize the extensive  
5 groundwater litigation experience of Mr. McLachlan (McLachlan Decl. ¶ 7), that  
6 experience should properly be considered as a factor supporting a higher rate. (*Building*  
7 *a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4<sup>th</sup> 852, 870-  
8 71 (and approving \$550 hourly rate in non-class land use case.) This extensive  
9 experience in groundwater litigation has been directly relevant and indeed has been  
10 essential to litigating this matter over a nearly five year period in which Class Counsel  
11 was deprived of a groundwater expert to consult with on technical hydrologic issues.  
12 (Supp. McLachlan Decl. ¶ 5-6.)

13 2. The Negotiated Rate of \$550 Per Hour is Certainly Reasonable

14 D40 next argues that the negotiated rate that its three brethren agreed to pay is too  
15 high. (Opp. at 6:4-9:6.) None of these arguments are well taken.

16 D40 asserts that the market rates should be defined by the rates prevalent in the  
17 Antelope Valley. (Opp. at 7:19-8:7.) Again, D40 asserts the wrong standard. “The  
18 determination of ‘market rate’ is generally based on the rates prevalent in the community  
19 where the court is located.” (*Cal. Attorney Fee Awards, 3<sup>rd</sup> Ed.* (2013) § 9.114, *citing*  
20 *MBNA Am. Bank v. Gorman* (2006) 147 Cal.App.4<sup>th</sup> Supp. 1, 13.) The Supreme Court  
21 has also affirmed the use of rates prevailing in the market where counsel’s office is  
22 located. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1096 (office in San  
23 Francisco, litigation in Los Angeles). In this case, the litigation has occurred in Los  
24 Angeles and the Bay Area, and hence the rates in those communities are relevant.<sup>5</sup>

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25  
26 <sup>5</sup> Similarly, it is of no relevance that Ralph Kalfayan and David Zlotnick did not  
27 request market rates, and instead opted to pursue their own discounted hourly rates for  
28 the San Diego market (rates that are now several years out of date). (*PLCM Group, infra*,  
22 Cal.4<sup>th</sup> at 1098; *Nemecek and Cole v. Horn* (2012) 208 Cal.App.4<sup>th</sup> 641, 651.)

1           The reasonable market value of the attorney’s services is the measure of a  
2 reasonable hourly rate. (*Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122, 1133; PLCM Group,  
3 *infra*, 22 Cal.4<sup>th</sup> at 1094.) To determine a reasonable market value, courts must  
4 determine whether the requested rates are “within the range of reasonable rates charged  
5 by and judicially awarded comparable attorneys for comparable work.” (*Children’s*  
6 *Hosp. & Med. Ctr. V. Bonta* (2002) 97 Cal.App.4<sup>th</sup> 740, 783.) Furthermore, the size of  
7 the law firm is not relevant a relevant factor. (*See, e.g., U.S. v. City & County of San*  
8 *Francisco* (N.D.Cal 1990) 748 F.Supp. 1416, 1431 (sole practitioners, small law firms  
9 and nonprofit firms are entitled to commercial rates charged by “corporate attorneys of  
10 equal caliber.”).) The fees for skilled solo practitioners are properly based on the rates  
11 charged by large firms. (*Building a Better Redondo Beach, infra*, 203 Cal.App.4<sup>th</sup> 852,  
12 872 (approving small firm reliance on national survey of large firm rates); *Auer v.*  
13 *Robbins* (1997) 519 U.S. 452 (“the district court may not reduce the established market  
14 rate by some factor that it believes accounts for the differences between large and small  
15 firms.”).)

16           D40 asserts that the unadjusted Laffey Matrix should be considered. (Opp. at 8:8-  
17 16.) Numerous courts have noted that the unadjusted Laffey Matrix underestimates  
18 hourly rates due to its sole reliance on consumer price index increases. (*Fernandez v.*  
19 *Victoria Secret Stores, LLC* (C.D. Cal. 2008) 2008 WL 8150856 at \*16; *Housing Rights*  
20 *Center*, 2005 WL 3320738 at \*3; *Smith v. District of Colombia* (D.D.C. 2006) 466  
21 F.Supp.2d 151, 156 (adjusted Matrix is more accurate); *Interfaith Comm. Org. v.*  
22 *Honeywell International, Inc.* (3<sup>rd</sup> Cir. 2005) 426 F.3d 694 (same).) But even if the Court  
23 relied on both the adjusted and unadjusted Laffey schedules, the midpoint between the  
24 two is \$545 per hour. Furthermore, the published billing rates in California as well as the  
25 rates awarded by California Courts fully support the negotiated rate of \$550. (Supp.  
26 McLachlan Decl. ¶¶ 14-18, Exs. 5-8.)

1 D40 also asserts that the Court should apply multiple hourly rates over the  
2 applicable time period, or should apply something other than current rates. (Opp. at 8:17-  
3 9:1.) But, aside from the discount already built into the hourly rate, D40 also ignores the  
4 fact that the delay in payment over the years must be accounted for. The California  
5 Supreme Court has expressly recognized that delay in payment can be compensated by  
6 using historical rates with an enhancement or by using current rates. (*Graham v.*  
7 *Daimler-Chrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 583; *Perdue v. Kenny A.* (2010) 559 U.S.  
8 542, 555 (same).) But even if the Court were to use older rates, which it should not, a  
9 rate of \$550 per hour is a reasonable market rate. (Supp. McLachlan Decl. ¶¶ Exs. 5-8.)

10 3. The Factors Used to Set a Proper Lodestar All Favor A High Rate

11 It has been very difficult to litigate a class case inside a series of coordinated non-  
12 class cases, often against parties that are not defendants in this action. There should be  
13 no argument that this matter is very complicated, unique, and required a great degree of  
14 skill.<sup>6</sup> The assessment of these factors all weigh in favor of a high market rate for the  
15 services rendered. However, one factor not typically found in most cases is present here,  
16 and further supports a high hourly rate: “the undesirability of the case.”

17 The “undesirability of the case may also be a factor in determining reasonable  
18 hourly rates.” (*Cal. Attorney Fee Awards*, at § 10.48; *Camacho v. Bridgeport Fin., Inc.*  
19 (9<sup>th</sup> Cir. 2008) 523 F.3d 973, 982, n.1 (listing “the ‘undesirability’ of the case” as relevant  
20 lodestar adjustment factor); *Horsford v. Board of Trustees* (2005) 132 Cal.App.4<sup>th</sup> 359,  
21 399 (upward fee adjustment or lodestar enhancement).) Here, there is ample evidence of  
22 the undesirability of this case. Indeed, for the better part of a year, this case was largely  
23

---

24 <sup>6</sup> Ultimately, [t]he experienced trial judge is the best judge of the value of  
25 professional services rendered in his court.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)  
26 The Court’s expressed view of Class Counsel’s work has been consistently favorable  
27 over the years, e.g.: “I think that what you have done here is admirable. And it the – as  
28 far as I’m concerned, in the highest standards of the profession stepping forward . . .  
representing these people . . .” (Hearing Transcript, April 24, 2009, 21:22-26.)

1 stalled for want of counsel willing to represent the small pumpers. In 2007, David  
2 Zlotnick and Michael McLachlan made inquiries of many class attorneys in California in  
3 attempt to obtain counsel for the small pumpers, but nobody would take the case. (Supp.  
4 McLachlan Decl. Ex. 4 (Hearing Transcript, December 18, 2007) at 4:27-6:24; Supp.  
5 McLachlan Decl. ¶ 3.)

6 In May of 2008, after nearly a year if inability to locate counsel, the Court  
7 observed: “But as you can perceive, the Court is getting very frustrated with our inability  
8 to move forward with this case. . . . I know I am not alone in my frustrations.” (Hearing  
9 Transcript, May 5, 2008.) Later that month, Class Counsel agreed to take the case after  
10 lengthy discussion about the serious barriers presented *vis a vis* the then-recent opinion in  
11 *Olsen v. Automobile Club of Southern California*, which prevented the recovery of expert  
12 costs in this case. ((2008) 42 Cal.4<sup>th</sup> 1142, 1150-51; Dunn Decl., Ex C (Ex. 4 thereto,  
13 May 14, 2008 letter); Hearing Transcript, May 22, 2008, 7:6-18-20.) As the Court is  
14 aware, and is reflected in the voluminous numbers of related filings in this matter, the  
15 expert issue has occupied a great deal of time and had made the representation of the  
16 Class exceptionally challenging, as well as greatly troubling for Class Counsel. (Supp.  
17 McLachlan Decl., ¶¶ 5-6.) In sum, the case was undesirable from the outset for good  
18 reason, and has proven to be quite onerous.

19 For these reasons, the discounted hourly rate of \$550 is entirely reasonable, and  
20 should be approved.

21  
22 **D. The Court Should Award the Full Negotiated Amount As The Hours**  
23 **Worked Were Necessary and Reasonable**

24 D40 raises several minor and unfounded critiques of the work performed. First,  
25 D40 asserts that counsel spent unreasonable amounts of time researching water law – as  
26 if doing so would be improper. However, D40 does not site to a single instance of such  
27 unreasonable legal research, largely because there have been none. The one example  
28 D40 attempts to reference in September of 2011 (Opp. 10:1-4), actually involves

1 absolutely no legal research. D40 overstates the quantity of work at 21.9 hours, but more  
2 importantly mistakes what is entirely technical research on numerous water use issues  
3 impacting the Class, and directly relevant to the then-ongoing settlement discussions as  
4 well as the substance of the overall litigation. (Supp. McLachlan Decl., ¶ 8.) While a  
5 portion of this work might have been done by an expert witness, D40 did its level best to  
6 stop any expert work until December of 2012.

7 The remaining few complaints D40 raises about the work performed all fall into a  
8 category roughly summarized as “someone below Mr. McLachlan’s pay grade should  
9 have done that work.” (Opp at 10:5-11:10.) This is not the applicable standard. Rates  
10 must be based on the staffing pattern that the claiming attorneys actually used, not on  
11 some model (e.g., a pyramidal staffing pattern) that they did not use.” (*Moreno v. City of*  
12 *Sacramento* (9<sup>th</sup> Cir. 2008) 534 F.3d 1106, 1114-15 (reversing trial court for second-  
13 guessing staffing and speculating on how other firms might staff a case);<sup>7</sup> *Building a*  
14 *Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4<sup>th</sup> 852, 874  
15 (rejecting argument that associate should have been assigned tasks performed by a  
16 partner).) In this case, all of the work performed by lawyers was proper (Supp.  
17 McLachlan ¶¶ 9-13), and firms in questions did not employ associates. (*Id.* at ¶ 9.)

### 18 **E. The Multiplier**

19 If the Court approves the hourly rate of \$550, there is no need to assess the  
20 applicability of a multiplier. (*See Cho v. Seagate Technology Holdings, Inc.* (2009) 177  
21 Cal.App.4<sup>th</sup> 734, 744.) However, if the Court feels the need to use a lower hourly rate

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22  
23 <sup>7</sup> “It must also be kept in mind that lawyers are not likely to spend unnecessary  
24 time on contingency fee cases in the hope of inflating their fees. The payoff is too  
25 uncertain, as to both the result and the amount of the fee. It would therefore be the highly  
26 atypical civil rights case where plaintiff’s lawyer engages in churning. By and large, the  
27 court should defer to the winning lawyer’s professional judgment as to how much time he  
28 was required to spend on the case; after all, he won, and might not have, had he been  
more of a slacker.” (*Moreno v. City of Sacramento* (9<sup>th</sup> Cir. 2008) 534 F.3d at 1112.)

1 for some reason, than a multiplier should be applied in a percentage sufficient to approve  
2 the total stipulated attorneys' fees. These bargained for fees are supported by the market,  
3 and are entirely reasonable in total.

4 With regard to the multiplier question, D40 advances the spurious notion that there  
5 should be no fee enhancement because the Settling Defendants are public agencies. (Opp.  
6 at 12:27-13:5.) The payment of fees taxpayers is not a basis, standing alone, to justify the  
7 denial of a lodestar enhancement. (*Horsford v. Board of Trustees* (2005) 132 Cal.App.4<sup>th</sup>  
8 359, 400 ("trial court's reliance on public entity status of the defendant to completely  
9 deny an enhancement multiplier in this case was abuse of discretion."); *In re Lugo* (2008)  
10 164 Cal.App.4<sup>th</sup> 1522, 1546 (rejecting arguments that taxpayer factor required reversal of  
11 multipliers applied by trial court); *Bernardi v. County of Monterey* (2008) 167  
12 Cal.App.4<sup>th</sup> 1379, 1395 (same); *Cates v. Chiang* (2013) 213 Cal.App.4<sup>th</sup> 791, 826 (same;  
13 upholding multiplier of 1.85 in six-year litigation).)

14  
15 *Serrano III*, *Horsford* and *Schmid* preclude a rule which awards less than the  
16 fair market value of the attorneys' fees merely because the case was filed  
17 against a government agency. We also see a strong public policy against  
18 such a rule. Allowing properly documented attorneys' fees to be cut simply  
19 because the losing party is a government entity would defeat the purpose of []  
section 1021.5 and would also incentivize government agencies to  
negligently and deliberately run up a claimant's attorneys' fees, without any  
concern for the consequences.

20 (*Rogel v. Lynwood Redev. Agency* (2011) 194 Cal.App.4<sup>th</sup> 1319, 1332.) Denying a  
21 multiplier or reducing the fees here based solely on public agency status would not only  
22 be contrary to law, but would also incentivize D40 to continue to refuse reasonable  
23 settlement terms and perpetuate the endless cycle of litigation.

24 The two cases D40 cites are not contrary to the law cited above, as both involved  
25 numerous other negative multiplier factors not present here. The taxpayer factor should  
26 also be ignored here because the costs of the fees are not borne by taxpayers, but rather  
27 ratepayers who have a direct stake in the litigation, and should expect their water rates to  
28

1 fluctuate depending on the outcome of the case.<sup>8</sup> In this regard, there is no rational basis  
2 to favor one water user simply because he is attached to a public pipeline, at the expense  
3 of another who is not.

4 In sum, regardless of how the Court assesses the fee request, the result should  
5 capture the full measure of the value of the services rendered by Class Counsel. “In  
6 *Serrano IV*, applying the same principles to the statutory fee award under Code of Civil  
7 Procedure section 1021.5, we reiterated that fee awards should be fully compensatory.”  
8 (*Ketchum, infra*, 24 Cal.4<sup>th</sup> at 1133.) Plaintiff suggests that the Court simply approve the  
9 negotiated hourly rate, and defer the question of any multiplier to a later fee motion, if  
10 and when that were to occur. (*See Cho v. Seagate*, 177 Cal.App.4<sup>th</sup> at 744.)

### 11 **III. CONCLUSION**

12 For all of the foregoing reasons, Plaintiff Richard Wood, with the support of the  
13 Settling Defendants, requests that the Court approve of an award of attorney’s fees in the  
14 total amount of \$719,829 and costs in the amount of \$17,038, which are uncontested and  
15 stipulated.

16  
17 DATED: December 31, 2013

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

18  
19 Michael  
McLachlan

20 By:

MICHAEL D. MCLACHLAN  
Attorneys for Plaintiff and the Class

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Date: 2014.01.01 09:35:55 -0800

21  
22  
23  
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25  
26 <sup>8</sup> [T]he funding of a governmental entity’s ongoing operations has little, if any,  
27 bearing on the “fair market value” of attorney’s fees for the legal work performed by  
28 lawyers who represented a prevailing party in an action against a government entity.”  
(*Id.* at 1331.)

# EXHIBIT I



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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding Special Title  
(Rule 1550(b))

**ANTELOPE VALLEY  
GROUNDWATER CASES**

Judicial Council Coordination Proceeding No.  
4408

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

Judge: The Honorable Jack Komar, Dept. 17

[PROPOSED] JUDGMENT AND PHYSICAL  
SOLUTION

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**INDEX OF EXHIBITS AND APPENDICES**

**Exhibits:**

- Exhibit 1: Listing of Parties Against Which a Default Judgment Has Been Entered.
- Exhibit 2: Map of Area Adjudicated in This Action.
- Exhibit 3: Non-Overlying Production Rights.
- Exhibit 4: Overlying Production Rights
- Exhibit 5: Phase 3 Trial Decision.
- Exhibit 6: Map of boundaries of Edwards Air Force Base.
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- Exhibit 8: Rights to Produce Imported Water Return Flows.
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**Appendices:**

- Appendix A: Non-Pumper Class Judgment.
- Appendix B: Non-Pumper Class Stipulation of Settlement.

1 A number of Parties have agreed and stipulated to entry of a Judgment consistent with the  
2 terms of this Judgment and Physical Solution (hereafter “this Judgment”). The stipulations of the  
3 Parties are conditioned upon further proceedings that will result in a Judgment binding all Parties  
4 to the Action. The Court, having considered the pleadings, the stipulations of the Parties, and the  
5 evidence presented, and being fully informed in the matter, approves the Physical Solution<sup>1</sup>  
6 contained herein. This Judgment is entered as a Judgment binding on all Parties served or  
7 appearing in this Action, including without limitation, those Parties which have stipulated to this  
8 Judgment, are subject to prior settlement(s) and judgment(s) of this Court, have defaulted or  
9 hereafter stipulate to this Judgment.

## 10 **I. DESCRIPTION OF LITIGATION**

### 11 **1. PROCEDURAL HISTORY**

#### 12 **1.1 Initiation of Litigation.**

13 On October 29, 1999, Diamond Farming Company (“Diamond Farming”) filed in  
14 the Riverside County Superior Court (Case No. RIC 344436) the first complaint in what would  
15 become these consolidated complex proceedings known as the Antelope Valley Groundwater  
16 Cases. Diamond Farming's complaint names as defendants the City of Lancaster, Palmdale  
17 Water District, Antelope Valley Water Company, Palm Ranch Irrigation District, Quartz Hill  
18 Water District, Rosamond Community Services District, and Mojave Public Utility District.

19 On February 22, 2000, Diamond Farming filed another complaint in the Riverside  
20 County Superior Court (Case No. RIC 344468). The two Diamond Farming actions were  
21 subsequently consolidated.

22 On January 25, 2001, Wm. Bolthouse Farms, Inc. (“Bolthouse”) filed a complaint  
23 in the same Court against the same entities, as well as Littlerock Creek Irrigation District and Los  
24 Angeles Waterworks Districts Nos. 37 and 40 (Case No. RIC 353840).

25 <sup>1</sup> A “physical solution” describes an agreed upon or judicially imposed resolution of conflicting claims in a manner  
26 that advances the constitutional rule of reasonable and beneficial use of the state’s water supply. (*City of Santa Maria*  
27 *v. Adam* (2012) 211 Cal. App. 4th 266, 288.) It is defined as “an equitable remedy designed to alleviate overdrafts  
28 and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to  
prevent waste and unreasonable water use and to maximize the beneficial use of this state’s limited resource.”  
(*California American Water v. City of Seaside* (2010) 183 Cal. App. 4th 471, 480.)



1 The Diamond Farming and Bolthouse complaints variously allege that unregulated  
2 pumping by these named public agencies (collectively the Public Water Suppliers) has irreparably  
3 harmed Diamond Farming and Bolthouse's rights to produce Groundwater from the Antelope  
4 Valley Groundwater Basin, and interfered with their rights to put that Groundwater to reasonable  
5 and beneficial uses on property they own or lease. Diamond Farming and Bolthouse's complaints  
6 seek a determination of their water rights and to quiet title as to the same.

7 In 2001, the Diamond Farming and Bolthouse actions were consolidated in the  
8 Riverside County Superior Court.

9 In August 2002, a Phase 1 trial commenced in the Riverside County Superior  
10 Court in the consolidated Diamond Farming/Bolthouse proceedings for the purpose of  
11 determining the geographic boundary of the area to be adjudicated. That Phase 1 trial was not  
12 concluded and the Court did not determine any issues or make any factual findings at that time.

### 13 **1.2 General Adjudication Commenced.**

14 In 2004, Los Angeles County Waterworks District No. 40 ("District No. 40")  
15 initiated a general Groundwater adjudication for the Antelope Valley Ground Water Basin by  
16 filing identical complaints for declaratory and injunctive relief in the Los Angeles and Kern  
17 County Superior Courts (Los Angeles County Superior Court Case No. BC 325201 and Kern  
18 County Superior Court Case No. S-1500-CV 254348). District No. 40's complaints sought a  
19 judicial determination of the respective rights of the Parties to produce Groundwater from the  
20 Antelope Valley Groundwater Basin.

21 On December 30, 2004, District No. 40 petitioned the Judicial Council of  
22 California for coordination of the above-referenced actions. On June 17, 2005, the Judicial  
23 Council of California granted the petition and assigned the "Antelope Valley Groundwater Cases"  
24 (Judicial Council Coordination Proceeding No. 4408) to this Court (Santa Clara County Superior  
25 Court Case No. 1-05-CV-049053 (Hon. Jack Komar)).

26 For procedural purposes, the Court requested that District No. 40 refile its  
27 complaint as a first amended cross-complaint in the now coordinated proceedings. Joined by the  
28

1 other Public Water Suppliers, District No. 40 filed a first amended cross-complaint seeking  
2 declaratory and injunctive relief and an adjudication of the rights to all Groundwater within the  
3 Antelope Valley Groundwater Basin. The Public Water Suppliers' cross-complaint, as currently  
4 amended, requests an adjudication to protect the public's water supply, prevent water quality  
5 degradation, and stop land subsidence. Some of the Public Water Suppliers allege they have  
6 acquired prescriptive and equitable rights to the Groundwater in the Basin. They allege the Basin  
7 has been in overdraft for more than five consecutive Years and they have pumped water from the  
8 Basin for reasonable and beneficial purposes in an open, notorious, and continuous manner. They  
9 allege each non-public cross-defendant had actual or constructive notice of these activities,  
10 sufficient to establish prescriptive rights in their favor. In order to alleviate overdraft conditions  
11 and protect the Basin, the Public Water Suppliers also request a physical solution.

### 12 1.3 Other Actions

13 In response to the Public Water Suppliers first amended cross-complaint,  
14 numerous Parties filed cross-complaints seeking various forms of relief.

15 On August 30, 2006, Antelope Valley-East Kern Water Agency ("AVEK") filed a  
16 cross-complaint seeking declaratory and injunctive relief and claiming overlying rights and rights  
17 to pump the supplemental yield attributable to return flows from State Water Project water  
18 imported to the Basin.

19 On January 11, 2007, Rebecca Lee Willis filed a class action complaint in the Los  
20 Angeles County Superior Court (Case No. BC 364553) for herself and on behalf of a class of  
21 non-pumping overlying property owners ("Non-Pumper Class"), through which she sought  
22 declaratory relief and money damages from various public entities. Following certification, the  
23 Non-Pumper Class entered into a settlement agreement with the Public Water Suppliers  
24 concerning the matters at issue in the class complaint. On September 22, 2011, the Court  
25 approved the settlement through an amended final judgment.

26 On June 2, 2008, Richard A. Wood filed a class action complaint for himself and  
27 on behalf of a class of small property owners in this action ("Small Pumper Class"), *Wood v. Los*

1 *Angeles Co. Waterworks Dist. 40, et al.*, (Case No.: BC 391869) through which he sought  
2 declaratory relief and money damages from various public entities. The Small Pumper Class was  
3 certified on September 2, 2008.

4 On February 24, 2010, following various orders of coordination, the Court granted  
5 the Public Water Suppliers' motion to transfer and consolidate all complaints and cross-  
6 complaints in this matter, with the exception of the complaint in Sheldon R. Blum, etc. v. Wm.  
7 Bolthouse Farms, Inc. (Santa Clara County Superior Court Case No. 1-05-CV-049053), which  
8 remains related and coordinated.

#### 9 **1.4 McCarran Amendment Issues**

10 The Public Water Suppliers' cross-complaint names Edwards Air Force Base,  
11 California and the United States Department of the Air Force as cross-defendants, seeking the  
12 same declaratory and injunctive relief as sought against the other cross-defendants. This  
13 Judgment, or any other determination in this case regarding rights to water, is contingent on a  
14 Judgment satisfying the requirements of the McCarran Amendment, 43 U.S.C. §666. The United  
15 States reserves all rights to object or otherwise challenge any interlocutory judgment and reserves  
16 all rights to appeal a Judgment that does not satisfy the requirements of the McCarran  
17 Amendment.

#### 18 **1.5 Phased Trials**

19 The Court has divided the trial in this matter into multiple phases, four of which  
20 have been tried.

21 Through the Phase 1 trial, the Court determined the geographical boundaries of the  
22 area adjudicated in this Action which is defined as the Basin. On November 3, 2006, the Court  
23 entered an order determining that issue.

24 Through the Phase 2 trial, the Court determined that all areas within the Basin are  
25 hydrologically connected and a single aquifer, and that there is sufficient hydraulic connection  
26 between the disputed areas and the rest of the Basin such that the Court must include the disputed  
27 areas within the adjudication area. The Court further determined that it would be premature to make  
28

1 any determinations regarding, *inter alia*, claims that portions of the Basin should be treated as a  
2 separate area for management purposes. On November 6, 2008, the Court entered its Order after  
3 Phase Two Trial on Hydrologic Nature of Antelope Valley.

4 Through the Phase 3 trial, the Court determined the Basin is in a current state of  
5 overdraft and the safe yield is 110,000 acre-feet per Year. The Court found the preponderance of  
6 the evidence presented established that setting the safe yield at 110,000 acre-feet per Year will  
7 permit management of the Basin in such a way as to preserve the rights of the Parties in  
8 accordance with the California Constitution and California law. On July 13, 2011, the Court filed  
9 its Statement of Decision.

10 Through the Phase 4 trial, the Court determined the overall Production occurring  
11 in the Basin in calendar Years 2011 and 2012.

#### 12 **1.6 Defaults**

13 Numerous Parties have failed to respond timely, or at all, to the Public Water  
14 Suppliers' cross-complaint, as amended, and their defaults have been entered. The Court has  
15 given the defaulted Parties notice of this Judgment and Physical Solution, together with the  
16 opportunity to be heard regarding this Judgment, and hereby enters default judgments against all  
17 such Parties and incorporates those default judgments into this Judgment. Pursuant to such  
18 default judgments a defaulted Party has no right to Produce Groundwater from the Basin. All  
19 Parties against which a default judgment has been entered are identified on Exhibit 1, attached  
20 hereto and incorporated herein by reference.

#### 21 **2. GENERAL ADJUDICATION DOES NOT APPLY TO SURFACE WATER**

22 Pursuant to California law, surface water use since 1914 has been governed by the Water  
23 Code. This Judgment does not apply to surface water as defined in the Water Code and is not  
24 intended to interfere with any State permitted or licensed surface water rights or pre-1914 surface  
25 water right. The impact of any surface water diversion should be considered as part of the State  
26 Water Resources Control Board permitting and licensing process and not as part of this Judgment.

1     **II. DECREE**

2             **3. JURISDICTION, PARTIES, DEFINITIONS.**

3                     **3.1 Jurisdiction.** This Action is an *inter se* adjudication of all claims to the  
4 rights to Produce Groundwater from the Basin alleged between and among all Parties. This Court  
5 has jurisdiction over the subject matter and Parties herein to enter a Judgment declaring and  
6 adjudicating the rights to reasonable and beneficial use of water by the Parties in the Action  
7 pursuant to Article X, section 2 of the California Constitution.

8                     **3.2 Parties.** The Court required that all Persons having or claiming any  
9 right, title or interest to the Groundwater within the Basin be notified of the Action. Notice has  
10 been given pursuant to the Court's order. All Public Water Suppliers, landowners, Non-Pumper  
11 Class and Small Pumper Class members and other Persons having or making claims have been or  
12 will be included as Parties to the Action. All named Parties who have not been dismissed have  
13 appeared or have been given adequate opportunity to appear.

14                    **3.3 Factual and Legal Issues.** The complaints and cross-complaints in the  
15 Action frame many legal issues. The Action includes over 4,000 Parties, as well as the members  
16 of the Non-Pumper Class and the members of the Small Pumper Class. The Basin's entire  
17 Groundwater supply and Groundwater rights, extending over approximately 1390 square miles,  
18 have been brought to issue. The numerous Groundwater rights at issue in the case include,  
19 without limitation, overlying, appropriative, prescriptive, and federal reserved water rights to  
20 Groundwater, rights to return flows from Imported Water, rights to recycled water, rights to  
21 stored Imported Water subject to the Watermaster rules and regulations, and rights to utilize the  
22 storage space within the Basin. After several months of trial, the Court made findings regarding  
23 Basin characteristics and determined the Basin's Safe Yield. The Court's rulings and judgments  
24 in this case, including the Safe Yield determination, form the basis for this Judgment.

25                    **3.4 Need for a Declaration of Rights and Obligations for a Physical**  
26 **Solution.** A Physical Solution for the Basin, based on a declaration of water rights and a formula  
27 for allocation of rights and obligations, is necessary to implement the mandate of Article X,  
28

1 section 2 of the California Constitution and to protect the Basin and the Parties' rights to the  
2 Basin's water resources. The Physical Solution governs Groundwater, Imported Water and Basin  
3 storage space, and is intended to ensure that the Basin can continue to support existing and future  
4 reasonable and beneficial uses. A Physical Solution requires determining individual Groundwater  
5 rights for the Public Water Suppliers, landowners, Non-Pumper Class and Small Pumper Class  
6 members, and other Parties within the Basin. The Physical Solution set forth in this Judgment:  
7 (1) is a fair and reasonable allocation of Groundwater rights in the Basin after giving due  
8 consideration to water rights priorities and the mandate of Article X, section 2 of the California  
9 Constitution; (2) provides for a reasonable sharing of Imported Water costs; (3) furthers the  
10 mandates of the State Constitution and State water policy; and (4) is a remedy that gives due  
11 consideration to applicable common law rights and priorities to use Basin water and storage space  
12 without substantially impairing such rights. Combined with water conservation, water  
13 reclamation, water transfers, water banking, and improved conveyance and distribution methods  
14 within the Basin, present and future Imported Water sources are sufficient both in quantity and  
15 quality to assure implementation of a Physical Solution. This Judgment will facilitate water  
16 resource planning and development by the Public Water Suppliers and individual water users.

17 **3.5 Definitions.** As used in this Judgment, the following terms shall have the  
18 meanings set forth herein:

19 **3.5.1 Action.** The coordinated and consolidated actions included in the  
20 Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408, Santa  
21 Clara Superior Court Case No. 1-05-CV-049053.

22 **3.5.2 Adjusted Native Safe Yield.** The Native Safe Yield minus (1) the  
23 Production Right allocated to the Small Pumper Class under Paragraph 5.1.3, (2) the Federal  
24 Reserved Water Right under Paragraph 5.1.4, and (3) the State of California Production Right  
25 under Paragraph 5.1.5. The Adjusted Native Safe Yield as of the date of entry of this Judgment is  
26 70,686.6 acre-feet per year.

1                   **3.5.3 Administrative Assessment.** The amount charged by the  
2 Watermaster for the costs incurred by the Watermaster to administer this Judgment.

3                   **3.5.4 Annual Period.** The calendar Year.

4                   **3.5.5 Antelope Valley United Mutuals Group.** The members of the  
5 Antelope Valley United Mutuals Group are Antelope Park Mutual Water Company, Aqua-J  
6 Mutual Water Company, Averydale Mutual Water Company, Baxter Mutual Water Company,  
7 Bleich Flat Mutual Water Company, Colorado Mutual Water Co., El Dorado Mutual Water  
8 Company, Evergreen Mutual Water Company, Land Projects Mutual Water Co., Landale Mutual  
9 Water Co., Shadow Acres Mutual Water Company, Sundale Mutual Water Company, Sunnyside  
10 Farms Mutual Water Company, Inc., Tierra Bonita Mutual Water Company, West Side Park  
11 Mutual Water Co. and White Fence Farms Mutual Water Co., together with the successor(s)-in-  
12 interest to any member thereof. Each of the members of the Antelope Valley United Mutuals  
13 Group was formed when the owner(s) of the lands that were being developed incorporated the  
14 mutual water company and transferred their water rights to the mutual water company in  
15 exchange for shares of common stock. The mutual water company owns, operates and maintains  
16 the infrastructure for the production, storage, distribution and delivery of water solely to its  
17 shareholders. The shareholders of each of these mutual water companies, who are the owners of  
18 the real property that is situated within the mutual water company's service area, have the right to  
19 have water delivered to their properties, a right appurtenant to their land. [*See, Erwin v. Gage*  
20 *Canal Company* (1964) 226 Cal.App.2d 189].

21                   **3.5.6 AVEK.** The Antelope Valley–East Kern Water Agency.

22                   **3.5.7 Balance Assessment.** The amount of money charged by the  
23 Watermaster on all Production Rights, excluding the United States' actual Production, to pay for  
24 the costs, not including infrastructure, to purchase, deliver, produce in lieu, or arrange for  
25 alternative pumping sources in the Basin.

26                   **3.5.8 Basin.** The area adjudicated in this Action as shown on Exhibit 2,  
27 attached hereto and incorporated herein by reference, which lies within the boundaries of the line  
28

1 labeled “Boundaries of the Adjudicated Area” and described therein. The Basin generally  
2 encompasses the Antelope Valley bordered on the West and South by the San Gabriel and  
3 Tehachapi Mountains, with the eastern boundary being the Los Angeles-San Bernardino County  
4 line, as determined by the Court.

5 **3.5.9 Carry Over.** The right to Produce an unproduced portion of an  
6 annual Production Right or a Right to Imported Water Return Flows in a Year subsequent to the  
7 Year in which the Production Right or Right to Imported Water Return Flows was originally  
8 available.

9 **3.5.10 Conjunctive Use.** A method of operation of a groundwater basin  
10 under which Imported Water is used or stored in the Basin in Years when it is available; allowing  
11 the Basin to refill, and more Groundwater is Produced in Years when Imported Water is less  
12 available.

13 **3.5.11 Defaulting Party.** A Party who failed to file a responsive pleading  
14 and against which a default judgment has been entered. A list of Defaulting Parties is attached as  
15 Exhibit 1.

16 **3.5.12 Drought Program.** The water management program in effect only  
17 during the Rampdown period affecting the operations and Replacement Water Assessments of the  
18 participating Public Water Suppliers.

19 **3.5.13 Judgment.** A judgment, consistent with Cal.C.C.P. §§ 577 and  
20 1908(a)(1) and 43 U.S.C. § 666, determining all rights to Groundwater in the Basin, establishing  
21 a Physical Solution, and resolving all claims in the Action.

22 **3.5.14 Groundwater.** Water beneath the surface of the ground and within  
23 the zone of saturation, excluding water flowing through known and definite channels.

24 **3.5.15 Imported Water.** Water brought into the Basin from outside the  
25 watershed of the Basin as shown in Exhibit 9.

26 **3.5.16 Imported Water Return Flows.** Imported Water that net  
27 augments the Basin Groundwater supply after use.



1                   **3.5.17 In Lieu Production.** The amount of Imported Water used by a  
2 Producer in a Year instead of Producing an equal amount of that Producer's Production Right.

3                   **3.5.18 Material Injury.** Material Injury means impacts to the Basin caused  
4 by pumping or storage of Groundwater that:

5                               **3.5.18.1**           Causes material physical harm to the Basin, any  
6 Subarea, or any Producer, Party or Production Right, including, but not limited to, Overdraft,  
7 degradation of water quality by introduction of contaminants to the aquifer by a Party and/or  
8 transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and  
9 other material physical injury caused by elevated or lowered Groundwater levels. Material physical  
10 harm does not include "economic injury" that results from other than direct physical causes, including  
11 any adverse effect on water rates, lease rates, or demand for water.

12                               **3.5.18.2**           If fully mitigated, Material Injury shall no longer be  
13 considered to be occurring.

14                   **3.5.19 Native Safe Yield.** Naturally occurring Groundwater recharge to  
15 the Basin, including "return flows" from pumping naturally occurring recharge, on an average  
16 annual basis. Imported Water Return Flows are not included in Native Safe Yield.

17                   **3.5.20 New Production.** Any Production of Groundwater from the Basin  
18 not of right under this Judgment, as of the date of this Judgment.

19                   **3.5.21 Non-Overlying Production Rights.** The rights held by the Parties  
20 identified in Exhibit 3, attached hereto and incorporated herein by reference.

21                   **3.5.22 Non-Pumper Class.** All private (i.e., non-governmental) Persons  
22 and entities that own real property within the Basin, as adjudicated, that are not presently  
23 pumping water on their property and did not do so at any time during the five Years preceding  
24 January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase,  
25 gift, inheritance, or otherwise of such Non-Pumper Class members' land within the Basin. The  
26 Non-Pumper Class excludes (1) all Persons to the extent their properties are connected to a  
27 municipal water system, public utility, or mutual water company from which they receive water  
28

1 service, (2) all properties that are listed as “improved” by the Los Angeles County or Kern  
2 County Assessor's offices, unless the owners of such properties declare under penalty of perjury  
3 that they do not pump and have never pumped water on those properties, and (3) those who opted  
4 out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have  
5 been individually named under the Public Water Suppliers' cross-complaint, unless such a  
6 landowner has opted into such class.

7 **3.5.23 Non-Pumper Class Judgment.** The amended final Judgment that  
8 settled the Non-Pumper Class claims against the Public Water Suppliers approved by the Court  
9 on September 22, 2011.

10 **3.5.24 Non-Stipulating Party.** Any Party who had not executed a  
11 Stipulation for Entry of this Judgment prior to the date of approval of this Judgment by the Court.

12 **3.5.25 Overdraft.** Extractions in excess of the Safe Yield of water from  
13 an aquifer, which over time will lead to a depletion of the water supply within a groundwater  
14 basin as well as other detrimental effects, if the imbalance between pumping and extraction  
15 continues.

16 **3.5.26 Overlying Production Rights.** The rights held by the Parties  
17 identified in Exhibit 4, attached hereto and incorporated herein by reference.

18 **3.5.27 Party (Parties).** Any Person(s) that has (have) been named and  
19 served or otherwise properly joined, or has (have) become subject to this Judgment and any prior  
20 judgments of this Court in this Action and all their respective heirs, successors-in-interest and  
21 assigns. For purposes of this Judgment, a “Person” includes any natural person, firm, association,  
22 organization, joint venture, partnership, business, trust, corporation, or public entity.

23 **3.5.28 Pre-Rampdown Production.** The reasonable and beneficial use of  
24 Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the  
25 Production Right, whichever is greater.

26 **3.5.29 Produce(d).** To pump Groundwater for existing and future  
27 reasonable beneficial uses.



1                   **3.5.39 Replacement Obligation.** The obligation of a Producer to pay for  
2 Replacement Water for Production of Groundwater from the Basin in any Year in excess of the  
3 sum of such Producer's Production Right and Imported Water Return Flows.

4                   **3.5.40 Replacement Water.** Water purchased by the Watermaster or  
5 otherwise provided to satisfy a Replacement Obligation.

6                   **3.5.41 Replacement Water Assessment.** The amount charged by the  
7 Watermaster to pay for all costs incurred by the Watermaster related to Replacement Water.

8                   **3.5.42 Responsible Party.** The Person designated by a Party as the  
9 Person responsible for purposes of filing reports and receiving notices pursuant to the provisions  
10 of this Judgment.

11                   **3.5.43 Safe Yield.** The amount of annual extractions of water from the  
12 Basin over time equal to the amount of water needed to recharge the Groundwater aquifer and  
13 maintain it in equilibrium, plus any temporary surplus. [*City of Los Angeles v. City of San*  
14 *Fernando* (1975) 14 Cal. 3d 199, 278.]

15                   **3.5.44 Small Pumper Class.** All private (i.e., non-governmental)  
16 Persons and entities that own real property within the Basin, as adjudicated, and that have been  
17 pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the  
18 present. The Small Pumper Class excludes the defendants in *Wood v. Los Angeles Co.*  
19 *Waterworks Dist. 40, et al.*, any Person, firm, trust, corporation, or other entity in which any such  
20 defendants has a controlling interest or which is related to or affiliated with any such defendants,  
21 and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded  
22 party. The Small Pumper Class also excludes all Persons and entities that are shareholders in a  
23 mutual water company. The Small Pumper Class does not include those who opted out of the  
24 Small Pumper Class.

25                   **3.5.45 Small Pumper Class Members.** Individual members of the Small  
26 Pumper Class who meet the Small Pumper Class definition, and for purposes of this Judgment  
27 and any terms pertaining to water rights, where two or more Small Pumper Class Members reside  
28

1 in the same household, they shall be treated as a single Small Pumper Class Member for purposes  
2 of determining water rights.

3 **3.5.46 State of California.** As used herein, State of California shall mean  
4 the State of California acting by and through the following State agencies, departments and  
5 associations: (1) The California Department of Water Resources; (2) The California Department  
6 of Parks and Recreation; (3) The California Department of Transportation; (4) The California  
7 State Lands Commission; (5) The California Department of Corrections and Rehabilitation; (6)  
8 The 50th District Agricultural Association; (7) The California Department of Veteran Affairs; (8)  
9 The California Highway Patrol; and, (9) The California Department of Military.

10 **3.5.47 State Water Project.** Water storage and conveyance facilities  
11 operated by the State of California Department of Water Resources from which it delivers water  
12 diverted from the Feather River and the Sacramento-San Joaquin Delta via the California  
13 Aqueduct to public agencies it has contracted with.

14 **3.5.48 Stipulating Party.** Any Party who has executed a Stipulation for  
15 Entry of this Judgment prior to the date of approval of this Judgment by the Court.

16 **3.5.49 Stored Water.** Water held in storage in the Basin, as a result of  
17 direct spreading or other methods, for subsequent withdrawal and use pursuant to agreement with  
18 the Watermaster and as provided for in this Judgment. Stored Water does not include Imported  
19 Water Return Flows.

20 **3.5.50 Subareas.** Portions of the Basin, as described in this document,  
21 divided for management purposes.

22 **3.5.51 Total Safe Yield.** The amount of Groundwater that may be safely  
23 pumped from the Basin on a long-term basis. Total Safe Yield is the sum of the Native Safe  
24 Yield plus the Imported Water Return Flows.

25 **3.5.52 Watermaster.** The Person(s) appointed by the Court to administer  
26 the provisions of this Judgment.

**3.5.53 Watermaster Engineer.** The engineering or hydrology expert or firm retained by the Watermaster to perform engineering and technical analysis and water administration functions as provided for in this Judgment.

**3.5.54 District No. 40.** Los Angeles County Waterworks District No. 40.

**3.5.55 Year.** Calendar year.

#### 4. SAFE YIELD AND OVERDRAFT

**4.1      Safe Yield:** The Native Safe Yield of the Basin is 82,300 acre-feet per Year. With the addition of Imported Water Return Flows, the Total Safe Yield is approximately 110,000 acre-feet per Year, but will vary annually depending on the volume of Imported Water.

**4.2      Overdraft:** In its Phase 3 trial decision, the Court held that the Basin, defined by the Court's March 12, 2007 Revised Order After Hearing On Jurisdictional Boundaries, is in a state of overdraft based on estimate of extraction and recharge, corroborated by physical evidence of conditions in the Basin. Reliable estimates of the long-term extractions from the Basin have exceeded reliable estimates of the Basin's recharge by significant margins, and empirical evidence of overdraft in the Basin corroborates that conclusion. Portions of the aquifer have sustained a significant loss of Groundwater storage since 1951. The evidence is persuasive that current extractions exceed recharge and therefore that the Basin is in a state of overdraft. The Court's full Phase 3 trial decision is attached as Exhibit 5 and is incorporated herein by reference.

## 5. PRODUCTION RIGHTS

**5.1 Allocation of Rights to Native Safe Yield.** Consistent with the goals of this Judgment and to maximize reasonable and beneficial use of the Groundwater of the Basin pursuant to Article X, section 2 of the California Constitution, all the Production Rights established by this Judgment are of equal priority, except the Federal Reserved Water Right which is addressed in Paragraph 5.1.4, and with the reservation of the Small Pumper Class Members' right to claim a priority under Water Code section 106.

1                   **5.1.1 Overlying Production Rights.** The Parties listed in Exhibit 4,  
2 attached hereto and incorporated herein by reference, have Overlying Production Rights. Exhibit  
3 4 sets forth the following for each Overlying Production Right: (1) the Pre-Rampdown  
4 Production; (2) the Production Right; and (3) the percentage of the Production from the Adjusted  
5 Native Safe Yield.

6                   **5.1.1.1** The Parties listed on Exhibit 4 have the right to Produce  
7 Groundwater, on an annual basis, up to their Overlying Production Right set forth in Exhibit 4 for  
8 each Party. Each Party's Overlying Production Right is subject to the following conditions and  
9 limitations:

10                   **5.1.1.2** Pursuant to the terms of this Judgment, the Parties listed on  
11 Exhibit 4 have the right to Produce their Overlying Production Right for use on land they own or  
12 lease and without the need for Watermaster approval.

13                   **5.1.1.3** Overlying Production Rights may be transferred pursuant to  
14 the provisions of Paragraph 16 of this Judgment.

15                   **5.1.1.4** Overlying Production Rights are subject to Pro-Rata  
16 Reduction or Increase only pursuant to Paragraph 18.5.10.

17                   **5.1.2 Non-Pumper Class Rights.** The Non-Pumper Class members  
18 claim the right to Produce Groundwater from the Native Safe Yield for reasonable and beneficial  
19 uses on their overlying land as provided for in this Judgment. On September 22, 2011, the Court  
20 approved the Non-Pumper Class Stipulation of Settlement through an amended final judgment  
21 that settled the Non-Pumper Class' claims against the Public Water Suppliers ("Non-Pumper  
22 Class Judgment"). A copy of the Non-Pumper Class Judgment and the Non-Pumper Class  
23 Stipulation of Settlement are attached for reference only as Appendices A and B. This Judgment  
24 is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. Future  
25 Production by a member of the Non-Pumper Class is addressed in the Physical Solution.

26                   **5.1.2.1** The Non-Pumper Class members shall have no right to  
27 transfer water pursuant to this Judgment.

1                               **5.1.3 Small Pumper Class Production Rights.** Subject only to the  
2 closure of the Small Pumper Class membership, the Small Pumper Class's aggregate Production  
3 Right is 3806.4 acre-feet per Year. Allocation of water to the Small Pumper Class is set at an  
4 average Small Pumper Class Member amount of 1.2 acre-feet per existing household or parcel  
5 based upon the 3172 known Small Pumper Class Member parcels at the time of this Judgment.  
6 Any Small Pumper Class Member may Produce up to and including 3 acre-feet per Year per  
7 existing household for reasonable and beneficial use on their overlying land, and such Production  
8 will not be subject to Replacement Water Assessment. Production by any Small Pumper Class  
9 Member above 3 acre-feet per Year per household or parcel will be subject to Replacement Water  
10 Assessment, as set forth in this Judgment. Administrative Assessments for unmetered Production  
11 by Small Pumper Class Members shall be set based upon the allocation of 1.2 acre-feet per Year  
12 per household or parcel, whichever is the case; metered Production shall be assessed in accord  
13 with the actual Production. A Small Pumper Class Member who is lawfully, by permit, operating  
14 a shared well with an adjoining Small Pumper Class Member, shall have all of the same rights  
15 and obligations under this Judgment without regard to the location of the shared well, and such  
16 shared use is not considered a prohibited transfer of a pumping right under Paragraph 5.1.3.3.

17                               **5.1.3.1** The Production of Small Pumper Class Members of up to 3  
18 acre-feet per Year of Groundwater per household or per parcel for reasonable and beneficial use  
19 shall only be subject to reduction if: (1) the reduction is based upon a statistically credible study  
20 and analysis of the Small Pumper Class' actual Native Safe Yield Production, as well as the  
21 nature of the use of such Native Safe Yield, over at least a three Year period; and (2) the  
22 reduction is mandated by Court order after notice to the Small Pumper Class Members affording a  
23 reasonable opportunity for the Court to hear any Small Pumper Class Member objections to such  
24 reduction, including a determination that Water Code section 106 may apply so as to prevent a  
25 reduction.

26                               **5.1.3.2** The primary means for monitoring the Small Pumper Class  
27 Members' Groundwater use under the Physical Solution will be based on physical inspection by  
28



1 the Watermaster, including the use of aerial photographs and satellite imagery. All Small Pumper  
2 Class Members agree to permit the Watermaster to subpoena the electrical meter records  
3 associated with their Groundwater wells on an annual basis. Should the Watermaster develop a  
4 reasonable belief that a Small Pumper Class Member household is using in excess of 3 acre-feet  
5 per Year, the Watermaster may cause to be installed a meter on such Small Pumper Class  
6 Member's well at the Small Pumper Class Member's expense.

7 **5.1.3.3** The pumping rights of Small Pumper Class Members are  
8 not transferable separately from the parcel of property on which the water is pumped, provided  
9 however a Small Pumper Class Member may move their water right to another parcel owned by  
10 that Small Pumper Class Member with approval of the Court. If a Small Pumper Class Member  
11 parcel is sold, absent a written contract stating otherwise and subject to the provisions of this  
12 Judgment, the water right for that Small Pumper Class Member parcel shall transfer to the new  
13 owners of that Small Pumper Class Member parcel. The pumping rights of Small Pumper Class  
14 Members may not be aggregated for use by a purchaser of more than one Small Pumper Class  
15 Member's property.

16 **5.1.3.4** Defaults or default judgments entered against any Small  
17 Pumper Class Member who did not opt out of the Small Pumper Class are hereby deemed non-  
18 operative and vacated *nunc pro tunc*, but only with respect to their ownership of real property  
19 meeting the Small Pumper Class definition.

20 **5.1.3.5** The Small Pumper Class shall be permanently closed to new  
21 membership upon issuance by the Court of its order granting final approval of the Small Pumper  
22 Class Settlement (the "Class Closure Date"), after the provision of notice to the Class of the Class  
23 Closure Date. Any Person or entity that does not meet the Small Pumper Class definition prior to  
24 the Class Closure Date is not a Member of the Small Pumper Class. Similarly, any additional  
25 household constructed on a Small Pumper Class Member parcel after the Class Closure Date is  
26 not entitled to a Production Right as set forth in Paragraphs 5.1.3 and 5.1.3.1.

1                   **5.1.3.6** Unknown Small Pumper Class Members are defined as: (1)  
2 those Persons or entities that are not identified on the list of known Small Pumper Class Members  
3 maintained by class counsel and supervised and controlled by the Court as of the Class Closure  
4 Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior  
5 to the Class Closure Date. Within ten (10) Court days of the Class Closure Date, class counsel  
6 for the Small Pumper Class shall publish to the Court website and file with the Court a list of the  
7 known Small Pumper Class Members.

8                   **5.1.3.7** Given the limited number of additions to the Small Pumper  
9 Class during the more than five Years since the initial notice was provided to the Class, the Court  
10 finds that the number of potentially unknown Small Pumper Class Members and their associated  
11 water use is likely very low, and any Production by unknown Small Pumper Class Members is  
12 hereby deemed to be *de minimis* in the context of this Physical Solution and shall not alter the  
13 Production Rights decreed in this Judgment. However, whenever the identity of any unknown  
14 Small Pumper Class Member becomes known, that Small Pumper Class Member shall be bound  
15 by all provisions of this Judgment, including without limitation, the assessment obligations  
16 applicable to Small Pumper Class Members.

17                   **5.1.3.8** In recognition of his service as class representative, Richard  
18 Wood has a Production Right of up to five 5 acre-feet per Year for reasonable and beneficial use  
19 on his parcel free of Replacement Water Assessment. This Production Right shall not be  
20 transferable and is otherwise subject to the provisions of this Judgment.

21                   **5.1.4 Federal Reserved Water Right.** The United States has a right to  
22 Produce 7,600 acre-feet per Year from the Native Safe Yield as a Federal Reserved Water Right  
23 for use for military purposes at Edwards Air Force Base and Air Force Plant 42. *See Cappaert v.*  
24 *United States*, 426 U.S. 128, 138 (1976); *United States v. New Mexico*, 438 U.S. 696, 700 (1978).  
25 Maps of the boundaries of Edwards Air Force Base and Plant 42 are attached hereto as Exhibits 6  
26 and 7. The United States may Produce any or all of this water at any time for uses consistent with  
27 the purposes of its Federal Reserved Water Right. Water uses at Edwards Air Force Base and  
28

1 Plant 42 as of the date of this Judgment are consistent with the military purposes of the facilities.  
2 The Federal Reserved Water Right to Produce 7,600 acre-feet per Year is not subject to  
3 Rampdown or any reduction including Pro-Rata Reduction due to Overdraft.

4 **5.1.4.1** In the event the United States does not Produce its  
5 entire 7,600 acre-feet in any given Year, the unused amount in any Year will be allocated to the  
6 Non-Overlying Production Rights holders, except for Boron Community Services District and  
7 West Valley County Water District, in the following Year, in proportion to Production Rights set  
8 forth in Exhibit 3. This Production of unused Federal Reserved Water Right Production does not  
9 increase any Non-Overlying Production Right holder's decreed Non-Overlying Production Right  
10 amount or percentage, and does not affect the United States' ability to fully Produce its Federal  
11 Reserved Water Right as provided in Paragraph 5.1.4 in any subsequent Year. Upon entry of a  
12 judgment confirming its Federal Reserved Water Rights consistent with this Judgment, the United  
13 States waives any rights under State law to a correlative share of the Groundwater in the Basin  
14 underlying Edwards Air Force Base and Air Force Plant 42.

15 **5.1.4.2** The United States is not precluded from acquiring State law  
16 based Production Rights in excess of its Federal Reserved Water Right through the acquisition of  
17 Production Rights in the Basin.

18 **5.1.5 State of California Production Rights.** The State of California  
19 shall have a Production Right of 207 acre-feet per Year from the Native Safe Yield and shall have  
20 the additional right to Produce Native Safe Yield as set forth in Paragraphs 5.1.5.3 and 5.1.5.4  
21 below. This Production of Native Safe Yield shall not be subject to Pro-Rata Reduction. Any  
22 Production by the State of California above 207 acre-feet per Year that is not Produced pursuant  
23 to Paragraphs 5.1.5.3 and 5.1.5.4 below shall be subject to Replacement Assessments. All  
24 Production by the State of California shall also be subject to the Administrative Assessment and  
25 the Balance Assessment except in emergency situations as provided in Paragraph 5.1.5.4.3 below.  
26 Any Production of Native Safe Yield pursuant to Paragraphs 5.1.5.3 and 5.1.5.4 below shall not  
27 reduce any other Party's Production Rights pursuant to this Judgment.

**5.1.5.1** The State of California's Production Right in the amount of 207 acre-feet per Year is allocated separately to each of the State agencies, departments, and associations as listed below in Paragraph 5.1.5.2. Notwithstanding the separate allocations, any Production Right, or portion thereof, of one of the State agencies, departments, and associations may be transferred or used by the other State agencies, departments, and associations on parcels within the Basin. This transfer shall be done by agreement between the State agencies, departments, or associations without a Replacement Water Assessment and without the need for Watermaster approval. Prior to the transfer of another State agency, department, or association's Production Right, the State agency, department, or association receiving the ability to use the Production Right shall obtain written consent from the transferor. Further, the State agency, department, or association receiving the Production Right shall notify the Watermaster of the transfer.

**5.1.5.2** The Production Rights are allocated as follows and may be exercised by the following nine (9) State agencies:

acre- feet per Year.

**5.1.5.2.2** The California Department of Parks and Recreation-  
9 acre-feet per Year.

5.1.5.2.3 The California Department of Transportation -47

acre-feet per Year.

**5.1.5.2.4** The California State Lands Commission-3 acre-feet per Year

**5.1.5.2.5** The California Department of Corrections and Rehabilitation-3 acre-feet per Year.

**5.1.5.2.6** The 50th District Agricultural Association-32 acre-feet per Year.

1                                   **5.1.5.2.7**           The California Department of Veteran Affairs-3  
2 acre-feet per Year.

3                                   **5.1.5.2.8**           The California Highway Patrol -3 acre- feet per  
4 Year.

5                                   **5.1.5.2.9**           The California Department of Military-3 acre-feet  
6 per Year.

7                                   **5.1.5.3**           If at any time, the amount of water supplied to the State of  
8 California by District No. 40, AVEK, or Rosamond Community Service District is no longer  
9 available or no longer available at reasonable rates to the State of California, the State of  
10 California shall have the additional right to Produce Native Safe Yield to meet its reasonable and  
11 beneficial needs up to 787 acre-feet per Year, the amount provided by District No. 40, AVEK and  
12 Rosamond Community Services District to the State of California in the Year 2013.

13                                   **5.1.5.4**           The following provisions will also apply to each specific  
14 agency listed below:

15                                   **5.1.5.4.1**           California Department of Corrections &  
16 Rehabilitation (CDCR). In addition to its Production Right pursuant to Paragraphs 5.1.5.2.5 and  
17 5.1.5.3, CDCR may also pump Groundwater: (1) to the extent necessary to conduct periodic  
18 maintenance of its well pumping equipment; and (2) as a supplementary source of drinking water  
19 or as an emergency back-up supply as set forth in Water Code section 55338.

20                                   **5.1.5.4.2**           California Department of Water Resources (DWR).  
21 In addition to its Production pursuant to Paragraphs 5.1.5.2.1 and 5.1.5.3 above, DWR may also  
22 pump Native Safe Yield from the area adjacent to and beneath the California Aqueduct and  
23 related facilities at a time and in an amount it determines is reasonably necessary to protect the  
24 physical integrity of the California Aqueduct and related facilities from high Groundwater.  
25 Further, notwithstanding provisions of this Judgment prohibiting the export of Native Safe Yield  
26 from the Basin, DWR may place the Native Safe Yield that it pumps for the protection of the  
27 California Aqueduct into the California Aqueduct, whether or not such Native Safe Yield is  
28

1 ultimately returned to the Basin. However, DWR and AVEK shall use their best efforts to enter  
2 into an agreement allowing AVEK to recapture the Native Safe Yield DWR puts into the  
3 California Aqueduct and return it to the Basin.

4 **5.1.5.4.3** Department of Military. The Department of Military  
5 may Produce additional Groundwater in an amount necessary to protect and promote public  
6 health and safety during an event deemed to be an emergency by the Department of Military  
7 pursuant to California Government Code sections 8567 and 8571, and California Military and  
8 Veterans Code sections 143 and 146. Such Production shall be free from any assessment,  
9 including any Administrative, Balance, or Replacement Water Assessment.

10 **5.1.5.4.4** The California Department of Veterans Affairs. The  
11 California Department of Veteran Affairs has begun the expansion and increased occupancy  
12 project of the Veterans Home of California – Lancaster facility owned by the State of California  
13 by and on behalf of the California Department of Veterans Affairs. The California Department of  
14 Veterans Affairs fully expects that it will be able to purchase up to an additional 40 acre-feet per  
15 Year for use at this facility from District No. 40.

16 **5.1.6 Non-Overlying Production Rights.** The Parties listed in Exhibit 3  
17 have Production Rights in the amounts listed in Exhibit 3. Exhibit 3 is attached hereto, and  
18 incorporated herein by reference. Non-Overlying Production Rights are subject to Pro-Rata  
19 Reduction or Increase only pursuant to Paragraph 18.5.10.

20 **5.1.7 City of Lancaster.** The City of Lancaster ("Lancaster") can  
21 Produce up to 500 acre-feet of Groundwater for reasonable and beneficial uses at its National  
22 Soccer Complex. Such production shall only be subject to Administrative Assessment and no  
23 other assessments. Lancaster will stop Producing Groundwater and will use Recycled Water  
24 supplied from District No. 40, when it becomes available, to meet the reasonable and beneficial  
25 water uses of the National Soccer Complex. Lancaster may continue to Produce up to 500 acre-  
26 feet of Groundwater until Recycled Water becomes available to serve the reasonable and  
27 beneficial water uses of the National Soccer Complex. Nothing in this paragraph shall be

1 construed as requiring Lancaster to have any responsibility for constructing, or in any way  
2 contributing to the cost of, any infrastructure necessary to deliver Recycled Water to the National  
3 Soccer Complex.

4 **5.1.8 Antelope Valley Joint Union High School District.** Antelope  
5 Valley Joint Union High School District is a public school entity duly organized and existing  
6 under the laws of the State of California. In addition to the amounts allocated to Antelope Valley  
7 Joint Union High School District (“AVJUHS”) and pursuant to Exhibit 4, AVJUHS can  
8 additionally produce up to 29 acre-feet of Groundwater for reasonable and beneficial uses on its  
9 athletic fields and other public spaces. When recycled water becomes available to Quartz Hill  
10 High School (located at 6040 West Avenue L, Quartz Hill, CA 93535) which is a site that is part  
11 of AVJUHS, at a price equal to or less than the lowest cost of any of the following:  
12 Replacement Obligation, Replacement Water, or other water that is delivered to AVJUHS at  
13 Quartz Hill High School, AVJUHS will stop producing the 29 acre-feet of Groundwater  
14 allocated to it and use recycled water as a replacement to its 29 acre-feet production. AVJUHS  
15 retains its production rights and allocation pursuant to Exhibit 4 of this Judgment.

16 **5.1.9 Construction of Solar Power Facilities.** Any Party may Produce  
17 Groundwater in excess of its Production Right allocated to it in Exhibit 4 for the purpose of  
18 constructing a facility located on land overlying the Basin that will generate, distribute or store  
19 solar power through and including December 31, 2016 and shall not be charged a Replacement  
20 Water Assessment or incur a Replacement Obligation for such Production in excess of its  
21 Production Rights. Any amount of such production in excess of the Production Right through  
22 and including December 31, 2016 shall be reasonable to accomplish such construction but shall  
23 not exceed 500 acre-feet per Year for all Parties using such water.

24 **5.1.10 Production Rights Claimed by Non-Stipulating Parties.** Any  
25 claim to a right to Produce Groundwater from the Basin by a Non-Stipulating Party shall be  
26 subject to procedural or legal objection by any Stipulating Party. Should the Court, after taking  
27 evidence, rule that a Non-Stipulating Party has a Production Right, the Non-Stipulating Party  
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1 shall be subject to all provisions of this Judgment, including reduction in Production necessary to  
2 implement the Physical Solution and the requirements to pay assessments, but shall not be  
3 entitled to benefits provided by Stipulation, including but not limited to Carry Over pursuant to  
4 Paragraph 15 and Transfers pursuant to Paragraph 16. If the total Production by Non-Stipulating  
5 Parties is less than seven percent (7%) of the Native Safe Yield, such Production will be  
6 addressed when Native Safe Yield is reviewed pursuant to Paragraph 18.5.9. If the total  
7 Production by Non-Stipulating Parties is greater than seven percent (7%) of the Native Safe  
8 Yield, the Watermaster shall determine whether Production by Non-Stipulating Parties would  
9 cause Material Injury, in which case the Watermaster shall take action to mitigate the Material  
10 Injury, including, but not limited to, imposing a Balance Assessment, provided however, that the  
11 Watermaster shall not recommend any changes to the allocations under Exhibits 3 and 4 prior to  
12 the redetermination of Native Safe Yield pursuant to Paragraph 18.5.9. In all cases, however,  
13 whenever the Watermaster re-determines the Native Safe Yield pursuant to Paragraph 18.5.9, the  
14 Watermaster shall take action to prevent Native Safe Yield Production from exceeding the Native  
15 Safe Yield on a long-term basis.

16 **5.2 Rights to Imported Water Return Flows.**

17 **5.2.1 Rights to Imported Water Return Flows.** Return Flows from  
18 Imported Water used within the Basin which net augment the Basin Groundwater supply are not a  
19 part of the Native Safe Yield. Subject to review pursuant to Paragraph 18.5.11, Imported Water  
20 Return Flows from Agricultural Imported Water use are 34% and Imported Water Return Flows  
21 from Municipal and Industrial Imported Water use are 39% of the amount of Imported Water  
22 used.

23 **5.2.2 Water Imported Through AVEK.** The right to Produce Imported  
24 Water Return Flows from water imported through AVEK belongs exclusively to the Parties  
25 identified on Exhibit 8, attached hereto, and incorporated herein by reference. Each Party shown  
26 on Exhibit 8 shall have a right to Produce an amount of Imported Water Return Flows in any  
27 Year equal to the applicable percentage multiplied by the average amount of Imported Water used  
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1 by that Party within the Basin in the preceding five Year period (not including Imported Stored  
2 Water in the Basin). Any Party that uses Imported Water on lands outside the Basin but within the  
3 watershed of the Basin shall be entitled to Produce Imported Water Return Flows to the extent  
4 such Party establishes to the satisfaction of the Watermaster the amount that its Imported Water  
5 Return Flows augment the Basin Groundwater supply. This right shall be in addition to that  
6 Party's Overlying or Non-Overlying Production Right. Production of Imported Water Return  
7 Flows is not subject to the Replacement Water Assessment. All Imported Water Return Flows  
8 from water imported through AVEK and not allocated to Parties identified in Exhibit 8 belong  
9 exclusively to AVEK, unless otherwise agreed by AVEK. Notwithstanding the foregoing, Boron  
10 Community Services District shall have the right to Produce Imported Water Return Flows, up to  
11 78 acre-feet annually, based on the applicable percentage multiplied by the average amount of  
12 Imported Water used by Boron Community Services District outside the Basin, but within its  
13 service area in the preceding five Year period (not including Imported Stored Water in the Basin)  
14 without having to establish that the Imported Water Return Flows augment the Basin  
15 Groundwater supply.

16 **5.2.3 Water Not Imported Through AVEK.** After entry of this  
17 Judgment, a Party other than AVEK that brings Imported Water into the Basin from a source  
18 other than AVEK shall notify the Watermaster each Year quantifying the amount and uses of the  
19 Imported Water in the prior Year. The Party bringing such Imported Water into the Basin shall  
20 have a right to Produce an amount of Imported Water Return Flows in any Year equal to the  
21 applicable percentage set forth above multiplied by the average annual amount of Imported Water  
22 used by that Party within the Basin in the preceding five Year period (not including Imported  
23 Stored Water in the Basin).

24 **5.3 Rights to Recycled Water.** The owner of a waste water treatment plant  
25 operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive  
26 right to the Recycled Water as against anyone who has supplied the water discharged into the  
27 waste water collection and treatment system. At the time of this Judgment those Parties that  
28

1 produce Recycled Water are Los Angeles County Sanitation Districts No. 14 and No. 20,  
2 Rosamond Community Services District, and Edwards Air Force Base. Nothing in this Judgment  
3 affects or impairs this ownership or any existing or future agreements for the use of Recycled  
4 Water within the Basin.

5 **6. INJUNCTION**

6 **6.1 Injunction Against Unauthorized Production**. Each and every Party, its  
7 officers, directors, agents, employees, successors, and assigns, except for the United States, is  
8 ENJOINED AND RESTRAINED from Producing Groundwater from the Basin except pursuant  
9 to this Judgment. Without waiving or foreclosing any arguments or defenses it might have, the  
10 United States agrees that nothing herein prevents or precludes the Watermaster or any Party from  
11 seeking to enjoin the United States from Producing water in excess of its 7,600 acre-foot per Year  
12 Reserved Water Right if and to the extent the United States has not paid the Replacement  
13 Assessments for such excess Production or entered into written consent to the imposition of  
14 Replacement Assessments as described in Paragraph 9.2.

15 **6.2 Injunction Re Change in Purpose of Use Without Notice to The**  
16 **Watermaster**. Each and every Party, its officers, directors, agents, employees, successors, and  
17 assigns, is ENJOINED AND RESTRAINED from changing its Purpose of Use of Groundwater at  
18 any time without notifying the Watermaster.

19 **6.3 Injunction Against Unauthorized Capture of Stored Water**. Each and  
20 every Party, its officers, directors, agents, employees, successors and assigns, is ENJOINED  
21 AND RESTRAINED from claiming any right to Produce the Stored Water that has been  
22 recharged in the Basin, except pursuant to a Storage Agreement with the Watermaster, and as  
23 allowed by this Judgment, or pursuant to water banking operations in existence and operating at  
24 the time of this Judgment as identified in Paragraph 14. This Paragraph does not prohibit Parties  
25 from importing water into the Basin for direct use, or from Producing or using Imported Water  
26 Return Flows owned by such Parties pursuant to Paragraph 5.2.

1                   **6.4       Injunction Against Transportation From Basin.** Except upon further  
2 order of the Court, each and every Party, its officers, agents, employees, successors and assigns,  
3 is ENJOINED AND RESTRAINED from transporting Groundwater hereafter Produced from the  
4 Basin to areas outside the Basin except as provided for by the following. The United States may  
5 transport water Produced pursuant to its Federal Reserved Water Right to any portion of Edwards  
6 Air Force Base, whether or not the location of use is within the Basin. This injunction does not  
7 prevent Saint Andrew's Abbey, Inc., U.S. Borax and Tejon Ranchcorp/Tejon Ranch Company  
8 from conducting business operations on lands both inside and outside the Basin boundary, and  
9 transporting Groundwater Produced consistent with this Judgment for those operations and for  
10 use on those lands outside the Basin and within the watershed of the Basin as shown in Exhibit 9.  
11 This injunction also does not apply to any California Aqueduct protection dewatering Produced  
12 by the California Department of Water Resources. This injunction does not apply to the recovery  
13 and use of stored Imported Water by any Party that stores Imported Water in the Basin pursuant  
14 to Paragraph 14 of this Judgment.

15                   **6.4.1       Export by Boron and Phelan Piñon Hills Community Services**  
16 **Districts.**

17                   **6.4.1.1**       The injunction does not prevent Boron Community Services  
18 District from transporting Groundwater Produced consistent with this Judgment for use outside  
19 the Basin, provided such water is delivered within its service area.

20                   **6.4.1.2**       The injunction does not apply to any Groundwater Produced  
21 within the Basin by Phelan Piñon Hills Community Services District and delivered to its service  
22 areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is  
23 available for Production without causing Material Injury, and the District pays a Replacement  
24 Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to  
25 protect Production Rights decreed herein, on all water Produced and exported in this manner.

26                   **6.5       Continuing Jurisdiction.** The Court retains and reserves full jurisdiction,  
27 power and authority for the purpose of enabling the Court, upon a motion of a Party or Parties  
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1 noticed in accordance with the notice procedures of Paragraph 20.6 hereof, to make such further  
2 or supplemental order or directions as may be necessary or appropriate to interpret, enforce,  
3 administer or carry out this Judgment and to provide for such other matters as are not  
4 contemplated by this Judgment and which might occur in the future, and which if not provided for  
5 would defeat the purpose of this Judgment.

### 6 **III. PHYSICAL SOLUTION**

#### 7 **7. GENERAL**

8 **7.1 Purpose and Objective.** The Court finds that the Physical Solution  
9 incorporated as part of this Judgment: (1) is a fair and equitable basis for satisfaction of all water  
10 rights in the Basin; (2) is in furtherance of the State Constitution mandate and the State water  
11 policy; and (3) takes into account water rights priorities, applicable public trust interests and the  
12 Federal Reserved Water Right. The Court finds that the Physical Solution establishes a legal and  
13 practical means for making the maximum reasonable and beneficial use of the waters of the Basin  
14 by providing for the long-term Conjunctive Use of all available water in order to meet the  
15 reasonable and beneficial use requirements of water users in the Basin. Therefore, the Court  
16 adopts, and orders the Parties to comply with this Physical Solution.

17 **7.2 Need For Flexibility.** This Physical Solution must provide flexibility and  
18 adaptability to allow the Court to use existing and future technological, social, institutional, and  
19 economic options in order to maximize reasonable and beneficial water use in the Basin.

20 **7.3 General Pattern of Operations.** A fundamental premise of the Physical  
21 Solution is that all Parties may Produce sufficient water to meet their reasonable and beneficial  
22 use requirements in accordance with the terms of this Judgment. To the extent that Production by  
23 a Producer exceeds such Producer's right to Produce a portion of the Total Safe Yield as provided  
24 in this Judgment, the Producer will pay a Replacement Water Assessment to the Watermaster and  
25 the Watermaster will provide Replacement Water to replace such excess production according to  
26 the methods set forth in this Judgment.

1                   **7.4       Water Rights.** A Physical Solution for the Basin based upon a declaration  
2 of water rights and a formula for allocation of rights and obligations is necessary to implement  
3 the mandate of Article X, section 2 of the California Constitution. The Physical Solution requires  
4 quantifying the Producers' rights within the Basin in a manner which will reasonably allocate the  
5 Native Safe Yield and Imported Water Return Flows and which will provide for sharing Imported  
6 Water costs. Imported Water sources are or will be available in amounts which, when combined  
7 with water conservation, water reclamation, water transfers, and improved conveyance and  
8 distribution methods within the Basin, will be sufficient in quantity and quality to assure  
9 implementation of the Physical Solution. Sufficient information and data exists to allocate  
10 existing water supplies, taking into account water rights priorities, within the Basin and as among  
11 the water users. The Physical Solution provides for delivery and equitable distribution of  
12 Imported Water to the Basin.

13                   **8.       RAMPDOWN**

14                   **8.1       Installation of Meters.** Within two (2) Years from the entry of this  
15 Judgment all Parties other than the Small Pumper Class shall install meters on their wells for  
16 monitoring Production. Each Party shall bear the cost of installing its meter(s). Monitoring or  
17 metering of Production by the Small Pumper Class shall be at the discretion of the Watermaster,  
18 subject to the provisions of Paragraph 5.1.3.2.

19                   **8.2       Rampdown Period.** The "Rampdown Period" is seven Years beginning  
20 on the January 1 following entry of this Judgment and continuing for the following seven (7)  
21 Years.

22                   **8.3       Reduction of Production During Rampdown.** During the first two Years  
23 of the Rampdown Period no Producer will be subject to a Replacement Water Assessment.  
24 During Years three through seven of the Rampdown Period, the amount that each Party may  
25 Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual  
26 increments, from its Pre-Rampdown Production to its Production Right. Except as is determined  
27 to be exempt during the Rampdown period pursuant to the Drought Program provided for in  
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Paragraph 8.4, any amount Produced over the required reduction shall be subject to Replacement Water Assessment. The Federal Reserved Water Right is not subject to Rampdown.

**8.4        Drought Program During Rampdown for Participating Public Water**

**Suppliers.** During the Rampdown period a drought water management program (“Drought Program”) will be implemented by District No. 40, Quartz Hill Water District, Littlerock Creek Irrigation District, California Water Service Company, Desert Lake Community Services District, North Edwards Water District, City of Palmdale, and Palm Ranch Irrigation District, (collectively, "Drought Program Participants"), as follows:

**8.4.1**        During the Rampdown period, District No. 40 agrees to purchase from AVEK each Year at an amount equal to 70 percent of District No. 40's total annual demand if that amount is available from AVEK at no more than the then current AVEK treated water rate. If that amount is not available from AVEK, District No. 40 will purchase as much water as AVEK makes available to District No. 40 at no more than the then current AVEK treated water rate. Under no circumstances will District No. 40 be obligated to purchase more than 50,000 acre-feet of water annually from AVEK. Nothing in this Paragraph affects AVEK’s water allocation procedures as established by its Board of Directors and AVEK’s Act.

**8.4.2**        During the Rampdown period, the Drought Program Participants each agree that, in order to minimize the amount of excess Groundwater Production in the Basin, they will use all water made available by AVEK at no more than the then current AVEK treated water rate in any Year in which they Produce Groundwater in excess of their respective rights to Produce Groundwater under this Judgment. During the Rampdown period, no Production by a Drought Program Participant shall be considered excess Groundwater Production exempt from a Replacement Water Assessment under this Drought Program unless a Drought Program Participant has utilized all water supplies available to it including its Production Right to Native Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water Rights, Imported Water, and Production rights previously transferred from another party. Likewise, no Production by a Drought Program Participant will be considered excess

1 Groundwater Production exempt from a Replacement Water Assessment under this Drought  
2 Program in any Year in which the Drought Program Participant has placed water from such  
3 sources described in this Paragraph 8.4.2 into storage or has transferred such water to another  
4 Person or entity.

5 **8.4.3** During the Rampdown period, the Drought Program Participants  
6 will be exempt from the requirement to pay a Replacement Water Assessment for Groundwater  
7 Production in excess of their respective rights to Produce Groundwater under this Judgment up to  
8 a total of 40,000 acre-feet over the Rampdown Period with a maximum of 20,000 acre-feet in any  
9 single Year for District No. 40 and a total of 5,000 acre-feet over the Rampdown Period for all  
10 other Drought Program Participants combined. During any Year that excess Groundwater is  
11 produced under this Drought Program, all Groundwater Production by the Drought Program  
12 Participants will be for the purpose of a direct delivery to customers served within their respective  
13 service areas and will not be transferred to other users within the Basin.

14 **8.4.4** Notwithstanding the foregoing, the Drought Program Participants  
15 remain subject to the Material Injury limitation as provided in this Judgment.

16 **8.4.5** Notwithstanding the foregoing, the Drought Program Participants  
17 remain subject to a Balance Assessment as provided in Paragraph 9.3 of this Judgment.

18 **9. ASSESSMENTS.**

19 **9.1 Administrative Assessment.** Administrative Assessments to fund the  
20 Administrative Budget adopted by the Watermaster shall be levied uniformly on an annual basis  
21 against (1) each acre foot of a Party's Production Right as described in Paragraph 5.1, (2) each  
22 acre foot of a Party's right to Produce Imported Water Return Flows as determined pursuant to  
23 Paragraph 5.2, (3) each acre foot of a Party's Production for which a Replacement Water  
24 Assessment has been imposed pursuant to Paragraph 9.2, and (4) during the Rampdown, each  
25 acre foot of a Party's Production in excess of (1)-(3), above, excluding Production from Stored  
26 Water and/or Carry Over water, except that the United States shall be subject to the  
27 Administrative Assessment only on the actual Production of the United States. During the  
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Rampdown the Administrative Assessment shall be no more than five (5) dollars per acre foot, or as ordered by the Court upon petition of the Watermaster. Non-Overlying Production Rights holders using the unused Production allocation of the Federal Reserved Water Right shall be subject to Administrative Assessments on water the Non-Overlying Production Rights holders Produce pursuant to Paragraph 5.1.4.1.

**9.2        Replacement Water Assessment.** In order to ensure that each Party may fully exercise its Production Right, there will be a Replacement Water Assessment. Except as is determined to be exempt during the Rampdown period pursuant to the Drought Program provided for in Paragraph 8.4, the Watermaster shall impose the Replacement Water Assessment on any Producer whose Production of Groundwater from the Basin in any Year is in excess of the sum of such Producer's Production Right and Imported Water Return Flow available in that Year, provided that no Replacement Water Assessment shall be imposed on the United States except upon the United States' written consent to such imposition based on the appropriation by Congress, and the apportionment by the Office of Management and Budget, of funds that are available for the purpose of, and sufficient for, paying the United States' Replacement Water Assessment. The Replacement Water Assessment shall not be imposed on the Production of Stored Water, In-Lieu Production or Production of Imported Water Return Flows. The amount of the Replacement Water Assessment shall be the amount of such excess Production multiplied by the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs. All Replacement Water Assessments collected by the Watermaster shall be used to acquire Imported Water from AVEK, Littlerock Creek Irrigation District, Palmdale Water District, or other entities. AVEK shall use its best efforts to acquire as much Imported Water as possible in a timely manner. If the Watermaster encounters delays in acquiring Imported Water which, due to cost increases, results in collected assessment proceeds being insufficient to purchase all Imported Water for which the Assessments were made, the Watermaster shall purchase as much water as the proceeds will allow when the water becomes available. If available Imported Water is insufficient to fully meet the Replacement Water obligations under contracts, the Watermaster



1 shall allocate the Imported Water for delivery to areas on an equitable and practicable basis  
2 pursuant to the Watermaster rules and regulations.

3                   **9.2.1**           The Non-Pumper Class Stipulation of Settlement, executed by its  
4 signatories and approved by the Court in the Non-Pumper Class Judgment, specifically provides  
5 for imposition of a Replacement Water Assessment on Non-Pumper Class members. This  
6 Judgment is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. The  
7 Non-Pumper Class members specifically agreed to pay a replacement assessment if that member  
8 produced “more than its annual share” of the Native Safe Yield less the amount of the Federal  
9 Reserved Right. (See Appendix B at paragraph V., section D. Replacement Water.) In approving  
10 the Non-Pumper Class Stipulation of Settlement this Court specifically held in its Order after  
11 Hearing dated November 18, 2010, that “the court determination of physical solution cannot be  
12 limited by the Class Settlement.” The Court also held that the Non-Pumper Class Stipulation of  
13 Settlement “may not affect parties who are not parties to the settlement.”

14                   **9.2.2**           Evidence presented to the Court demonstrates that Production by  
15 one or more Public Water Suppliers satisfies the elements of prescription and that Production by  
16 overlying landowners during portion(s) of the prescriptive period exceeded the Native Safe Yield.  
17 At the time of this Judgment the entire Native Safe Yield is being applied to reasonable and  
18 beneficial uses in the Basin. Members of the Non-Pumper Class do not and have never Produced  
19 Groundwater for reasonable beneficial use as of the date of this Judgment. Pursuant to *Pasadena*  
20 *v. Alhambra* (1949) 33 Cal 2d 908, 931-32 and other applicable law, the failure of the Non-  
21 Pumper Class members to Produce any Groundwater under the facts here modifies their rights to  
22 Produce Groundwater except as provided in this Judgment. Because this is a comprehensive  
23 adjudication pursuant to the McCarran Amendment, consistent with the California Supreme Court  
24 decisions, including *In Re Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339,  
25 this Court makes the following findings: (1) certainty fosters reasonable and beneficial use of  
26 water and is called for by the mandate of Article X, section 2; (2) because of this mandate for  
27 certainty and in furtherance of the Physical Solution, any New Production, including that by a  
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1 member of the Non-Pumper Class must comply with the New Production Application Procedure  
2 specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-Pumper Class has  
3 established a Production Right to the reasonable and beneficial use of Groundwater based on their  
4 unexercised claim of right to Produce Groundwater; (4) if in the future a member of the Non-  
5 Pumper Class proposes to Produce Groundwater for reasonable and beneficial use, the  
6 Watermaster as part of the New Production Application Procedure, has the authority to determine  
7 whether such a member has established that the proposed New Production is a reasonable and  
8 beneficial use in the context of other existing uses of Groundwater and then-current Basin  
9 conditions; and (5) the Watermaster's determinations as to the approval, scope, nature and priority  
10 of any New Production is reasonably necessary to the promotion of the State's interest in fostering  
11 the most reasonable and beneficial use of its scarce water resources. All provisions of this  
12 Judgment regarding the administration, use and enforcement of the Replacement Water  
13 Assessment shall apply to each Non-Pumper Class member that Produces Groundwater. Prior to  
14 the commencement of Production, each Producing Non-Pumper Class member shall install a  
15 meter and report Production to the Watermaster. The Court finds that this Judgment is consistent  
16 with the Non-Pumper Stipulation of Settlement and Judgment.

17           **9.3       Balance Assessment.** In order to ensure that after Rampdown each Party  
18 may fully exercise its Production Right, there may be a Balance Assessment imposed by the  
19 Watermaster. The Balance Assessment shall be assessed on all Production Rights, excluding the  
20 United States' actual Production, but including that portion of the Federal Reserved Right  
21 Produced by other Parties, in an amount determined by the Watermaster. A Balance Assessment  
22 may not be imposed until after the end of the Rampdown. In determining whether to adopt a  
23 Balance Assessment, and in what amount, the Watermaster Engineer shall consider current Basin  
24 conditions as well as then-current pumping existing after Rampdown exclusive of any  
25 consideration of an effect on then-current Basin conditions relating to Production of Groundwater  
26 pursuant to the Drought Program which occurred during the Rampdown, and shall only assess a  
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1 Balance Assessment or curtail a Party's Production under section 9.3.4 below, to avoid or  
2 mitigate Material Injury that is caused by Production after the completion of the Rampdown.

3 **9.3.1** Any proceeds of the Balance Assessment will be used to purchase,  
4 deliver, produce in lieu, or arrange for alternative pumping sources of water in the Basin, but shall  
5 not include infrastructure costs.

6 **9.3.2** The Watermaster Engineer shall determine and collect from any  
7 Party receiving direct benefit of the Balance Assessment proceeds an amount equal to that Party's  
8 avoided Production costs.

9 **9.3.3** The Balance Assessment shall not be used to benefit the United  
10 States unless the United States participates in paying the Balance Assessment.

11 **9.3.4** The Watermaster Engineer may curtail the exercise of a Party's  
12 Production Right under this Judgment, except the United States' Production, if it is determined  
13 necessary to avoid or mitigate a Material Injury to the Basin and provided that the Watermaster  
14 provides an equivalent quantity of water to such Party as a substitute water supply, with such  
15 water paid for from the Balance Assessment proceeds.

16 **10. SUBAREAS.** Subject to modification by the Watermaster the following Subareas  
17 are recognized:

18 **10.1 Central Antelope Valley Subarea.** The Central Antelope Valley Subarea  
19 is the largest of the five Subareas and underlies Rosamond, Quartz Hill, Lancaster, Edwards AFB  
20 and much of Palmdale. This Subarea also contains the largest amount of remaining agricultural  
21 land use in the Basin. The distinctive geological features of the Central Antelope Valley Subarea  
22 are the presence of surficial playa and pluvial lake deposits; the widespread occurrence of thick,  
23 older pluvial lake bed deposits; and alluvial deposits from which Groundwater is produced above  
24 and below the lake bed deposits. The Central Antelope Valley Subarea is defined to be east of the  
25 largely buried ridge of older granitic and tertiary rocks exposed at Antelope Buttes and extending  
26 beyond Little Buttes and Tropico Hill. The Central Subarea is defined to be southwest and  
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1 northeast of the extension of the Buttes Fault, and northwest of an unnamed fault historically  
2 identified from Groundwater level differences, as shown on Exhibit 10.

3           **10.2       West Antelope Valley Subarea.** The West Antelope Valley Subarea is  
4 the second largest subarea. The area is characterized by a lack of surficial lake bed deposits, and  
5 little evidence of widespread subsurface lake beds, and thick alluvial deposits. The Western  
6 Antelope Valley Subarea is defined to be south of the Willow Springs-Cottonwood Fault and  
7 west of a largely buried ridge of older granitic and tertiary rocks that are exposed at Antelope  
8 Buttes and Little Buttes, and continue to Tropico Hill, as shown on Exhibit 10.

9           **10.3       South East Subarea.** The South East Subarea is characterized by granitic  
10 buttes to the north, shallow granitic rocks in the southwest, and a lack of lake bed deposits. The  
11 South East Subarea is defined to encompass the remainder of the Basin from the unnamed fault  
12 between the Central and South East subareas, to the county-line boundary of the Basin. Notably,  
13 this area contains Littlerock and Big Rock creeks that emanate from the mountains to the south  
14 and discharge onto the valley floor.

15           **10.4       Willow Springs Subarea.** The Willow Springs Subarea is separated from  
16 the West Antelope Subarea primarily because the Willow Springs fault shows some signs of  
17 recent movement and there is substantial Groundwater hydraulic separation between the two  
18 adjacent areas, suggesting that the fault significantly impedes Groundwater flow from the Willow  
19 Springs to the lower West Antelope Subarea. Otherwise, the Willow Springs Subarea is  
20 comparable in land use to the West Antelope Subarea, with some limited agricultural land use and  
21 no municipal development, as shown on Exhibit 10.

22           **10.5       Rogers Lake Subarea.** The Rogers Lake Subarea is characterized by  
23 surficial pluvial Lake Thompson and playa deposits, and a narrow, fault-bound, central trough  
24 filled with alluvial deposits. The area is divided into north and south subareas on opposite sides  
25 of a buried ridge of granite rock in the north lake, as shown on Exhibit 10.

26           **11.       INCREASE IN PRODUCTION BY THE UNITED STATES.**  
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1                   **11.1           Notice of Increase of Production Under Federal Reserved Water**

2     **Right.** After the date of entry of this Judgment, the United States shall provide the Watermaster  
3 with at least ninety (90) days advanced notice if Production by the United States is reasonably  
4 anticipated to increase more than 200 acre-feet per Year in a following 12 month period.

5                   **11.2           Water Substitution to Reduce Production by United States.** The United

6 States agrees that maximizing Imported Water is essential to improving the Basin's health and  
7 agrees that its increased demand can be met by either increasing its Production or by accepting  
8 deliveries of Imported Water of sufficient quality to meet the purpose of its Federal Reserved  
9 Water Right under the conditions provided for herein. Any Party may propose a water  
10 substitution or replacement to the United States to secure a reduction in Groundwater Production  
11 by the United States. Such an arrangement would be at the United States' sole discretion and  
12 subject to applicable federal law, regulations and other requirements. If such a substitution or  
13 replacement arrangement is agreed upon, the United States shall reduce Production by the amount  
14 of Replacement Water provided to it, and the Party providing such substitution or replacement of  
15 water to the United States may Produce a corresponding amount of Native Safe Yield free from  
16 Replacement Water Assessment in addition to their Production Right.

17                   **12.           MOVEMENT OF PUBLIC WATER SUPPLIERS PRODUCTION**  
18 **FACILITIES.**

19                   **12.1           No Requirement to Move Public Water Suppliers' Production Wells.**

20 One or more of the Public Water Suppliers intend to seek Federal or State legislation to pay for  
21 all costs related to moving the Public Water Suppliers Production wells to areas that will reduce  
22 the impact of Public Water Supplier Production on the United States' current Production wells.  
23 The Public Water Suppliers shall have no responsibility to move any Production wells until  
24 Federal or State legislation fully funding the costs of moving the wells is effective or until  
25 required to do so by order of this Court which order shall not be considered or made by this Court  
26 until the seventeenth (17th) Year after entry of this Judgment. The Court may only make such an  
27 order if it finds that the Public Water Supplier Production from those wells is causing Material  
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1 Injury. The Court shall not impose the cost of moving the Public Water Supplier Production  
2 Facilities on any non-Public Water Supplier Party to this Judgment.

3 **13. FEDERAL APPROVAL.** This Judgment is contingent on final approval by the  
4 Department of Justice. Such approval will be sought upon final agreement of the terms of this  
5 Judgment by the settling Parties. Nothing in this Judgment shall be interpreted or construed as a  
6 commitment or requirement that the United States obligate or pay funds in contravention of the  
7 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. Nothing in this  
8 Judgment, specifically including Paragraphs 9.1, 9.2 and 9.3, shall be construed to deprive any  
9 federal official of the authority to revise, amend, or promulgate regulations. Nothing in this  
10 Judgment shall be deemed to limit the authority of the executive branch to make  
11 recommendations to Congress on any particular piece of legislation. Nothing in this Judgment  
12 shall be construed to commit a federal official to expend federal funds not appropriated by  
13 Congress. To the extent that the expenditure or advance of any money or the performance of any  
14 obligation of the United States under this Judgment is to be funded by appropriation of funds by  
15 Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of  
16 funds by Congress that are available for this purpose and the apportionment of such funds by the  
17 Office of Management and Budget and certification by the appropriate Air Force official that  
18 funding is available for this purpose, and an affirmative obligation of the funds for payment made  
19 by the appropriate Air Force official. No breach of this Judgment shall result and no liability  
20 shall accrue to the United States in the event such funds are not appropriated or apportioned.

21 **14. STORAGE.** All Parties shall have the right to store water in the Basin pursuant to  
22 a Storage Agreement with the Watermaster. If Littlerock Creek Irrigation District or Palmdale  
23 Water District stores Imported Water in the Basin it shall not export from its service area that  
24 Stored Water. AVEK, Littlerock Creek Irrigation District or Palmdale Water District may enter  
25 into exchanges of their State Water Project "Table A" Amounts. Nothing in this Judgment limits  
26 or modifies operation of preexisting banking projects (including AVEK, District No. 40, Antelope  
27 Valley Water Storage LLC, Tejon Ranchcorp and Tejon Ranch Company, Sheep Creek Water  
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Co., Rosamond Community Services District and Palmdale Water District) or performance of preexisting exchange agreements of the Parties. The Watermaster shall promptly enter into Storage Agreements with the Parties at their request. The Watermaster shall not enter into Storage Agreements with non-Parties unless such non-Parties become expressly subject to the provisions of this Judgment and the jurisdiction of the Court. Storage Agreements shall expressly preclude operations which will cause a Material Injury on any Producer. If, pursuant to a Storage Agreement, a Party has provided for pre-delivery or post-delivery of Replacement Water for the Party's use, the Watermaster shall credit such water to the Party's Replacement Water Obligation at the Party's request. Any Stored Water that originated as State Water Project water imported by AVEK, Palmdale Water District or Littlerock Creek Irrigation District may be exported from the Basin for use in a portion of the service area of any city or public agency, including State Water Project Contractors, that are Parties to this action at the time of this Judgment and whose service area includes land outside the Basin. AVEK may export any of its Stored State Project Water to any area outside its jurisdictional boundaries and the Basin provided that all water demands within AVEK's jurisdictional boundaries are met. Any Stored Water that originated as other Imported Water may be exported from the Basin, subject to a requirement that the Watermaster make a technical determination of the percentage of the Stored Water that is unrecoverable and that such unrecoverable Stored Water is dedicated to the Basin.

**15. CARRY OVER**

**15.1 In Lieu Production Right Carry Over.** Any Producer identified in Paragraph 5.1.1, 5.1.5 and 5.1.6 can utilize In Lieu Production by purchasing Imported Water and foregoing Production of a corresponding amount of the annual Production of Native Safe Yield provided for in Paragraph 5 herein. In Lieu Production must result in a net reduction of annual Production from the Native Safe Yield in order to be entitled to the corresponding Carry Over benefits under this paragraph. In Lieu Production does not make additional water from the Native Safe Yield available to any other Producer. If a Producer foregoes pumping and uses Imported Water In Lieu of Production, the Producer may Carry Over its right to the unproduced portion of

1 its Production Right for up to ten (10) Years. A Producer must Produce its full current Year's  
2 Production Right before any Carry Over water is Produced. Carry Over water will be Produced  
3 on a first-in, first-out basis. At the end of the Carry Over period, the Producer may enter into a  
4 Storage Agreement with the Watermaster to store unproduced portions, subject to terms and  
5 conditions in the Watermaster's discretion. Any such Storage Agreements shall expressly  
6 preclude operations, including the rate and amount of extraction, which will cause a Material  
7 Injury to another Producer or Party, any subarea or the Basin. If not converted to a Storage  
8 Agreement, Carry Over water not Produced by the end of the tenth Year reverts to the benefit of  
9 the Basin and the Producer no longer has a right to the Carry Over water. The Producer may  
10 transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.

11 **15.2 Imported Water Return Flow Carry Over.** If a Producer identified in  
12 Paragraph 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full amount of Imported Water Return Flows  
13 in the Year following the Year in which the Imported Water was brought into the Basin, the  
14 Producer may Carry Over its right to the unproduced portion of its Imported Water Return Flows  
15 for up to ten (10) Years. A Producer must Produce its full Production Right before any Carry  
16 Over water, or any other water, is Produced. Carry Over water will be Produced on a first-in,  
17 first-out basis. At the end of the Carry Over period, the Producer may enter into a Storage  
18 Agreement with the Watermaster to store unproduced portions, subject to terms and conditions in  
19 the Watermaster's discretion. Any such Storage Agreements shall expressly preclude operations,  
20 including the rate and amount of extraction, which will cause a Material Injury to another  
21 Producer or Party, any subarea or the Basin. If not converted to a Storage Agreement, Carry Over  
22 water not Produced by the end of the tenth Year reverts to the benefit of the Basin and the  
23 Producer no longer has a right to the Carry Over water. The Producer may transfer any Carry  
24 Over water or Carry Over water stored pursuant to a Storage Agreement.

25 **15.3 Production Right Carry Over.** If a Producer identified in Paragraph  
26 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full Production Right in any Year, the Producer may  
27 Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years. A  
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1 Producer must Produce its full Production Right before any Carry Over water, or any other water,  
2 is Produced. Carry Over water will be Produced on a first-in, first-out basis. At the end of the  
3 Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to  
4 store unproduced portions, subject to terms and conditions in the Watermaster's discretion. Any  
5 such Storage Agreements shall expressly preclude operations, including the rate and amount of  
6 extraction, which will cause a Material Injury to another Producer or Party, any subarea or the  
7 Basin. If not converted to a Storage Agreement, Carry Over water not Produced by the end of the  
8 tenth Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry  
9 Over water. The Producer may transfer any Carry Over water or Carry Over water stored  
10 pursuant to a Storage Agreement.

11 **16. TRANSFERS.**

12 **16.1 When Transfers are Permitted.** Pursuant to terms and conditions to be  
13 set forth in the Watermaster rules and regulations, and except as otherwise provided in this  
14 Judgment, Parties may transfer all or any portion of their Production Right to another Party so  
15 long as such transfer does not cause Material Injury. All transfers are subject to hydrologic  
16 review by the Watermaster Engineer.

17 **16.2 Transfers to Non-Overlying Production Right Holders.** Overlying  
18 Production Rights that are transferred to Non-Overlying Production Right holders shall remain on  
19 Exhibit 4 and be subject to adjustment as provided in Paragraph 18.5.10, but may be used  
20 anywhere in the transferee's service area.

21 **16.3 Limitation on Transfers of Water by Antelope Valley United Mutuals**  
22 **Group.** After the date of this Judgment, any Overlying Production Rights pursuant to Paragraph  
23 5.1.1, rights to Imported Water Return Flows pursuant to Paragraph 5.2, rights to Recycled Water  
24 pursuant to Paragraph 5.3 and Carry Over water pursuant to Paragraph 15 (including any water  
25 banked pursuant to a Storage Agreement with the Watermaster) that are at any time held by any  
26 member of the Antelope Valley United Mutuals Group may only be transferred to or amongst  
27 other members of the Antelope Valley United Mutuals Group, except as provided in Paragraph  
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1 16.3.1. Transfers amongst members of the Antelope Valley United Mutuals Group shall be  
2 separately reported in the Annual Report of the Watermaster pursuant to Paragraphs 18.4.8 and  
3 18.5.17. Transfers amongst members of the Antelope Valley United Mutuals Group shall not be  
4 deemed to constitute an abandonment of any member's non-transferred rights.

5 **16.3.1** Nothing in Paragraph 16.3 shall prevent Antelope Valley United  
6 Mutuals Group members from transferring Overlying Production Rights to Public Water  
7 Suppliers who assume service of an Antelope Valley United Mutuals Group member's  
8 shareholders.

9 **16.4** Notwithstanding section 16.1, the Production Right of Boron Community  
10 Services District shall not be transferable. If and when Boron Community Services District  
11 permanently ceases all Production of Groundwater from the Basin, its Production Right shall be  
12 allocated to the other holders of Non-Overlying Production Rights, except for West Valley  
13 County Water District, in proportion to those rights.

14 **17. CHANGES IN POINT OF EXTRACTION AND NEW WELLS.** Parties may  
15 change the point of extraction for any Production Right to another point of extraction so long as  
16 such change of the point of extraction does not cause Material Injury. A replacement well for an  
17 existing point of extraction which is located within 300 feet of a Party's existing well shall not be  
18 considered a change in point of extraction.

19 **17.1 Notice of New Well.** Any Party seeking to construct a new well in order to  
20 change the point of extraction for any Production Right to another point of extraction shall notify  
21 the Watermaster at least 90 days in advance of drilling any well of the location of the new point  
22 of extraction and the intended place of use of the water Produced.

23 **17.2 Change in Point of Extraction by the United States.** The point(s) of  
24 extraction for the Federal Reserved Water Right may be changed, at the sole discretion of the  
25 United States, and not subject to the preceding limitation on Material Injury, to any point or  
26 points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction  
27 for the Federal Reserved Water Right may be changed to points outside the boundaries of  
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1 Edwards Air Force Base or Plant 42, provided such change in the point of extraction does not  
2 cause Material Injury. In exercising its discretion under this Paragraph 17.2, the United States  
3 shall consider information in its possession regarding the effect of Production from the intended  
4 new point of extraction on the Basin, and on other Producers. Any such change in point(s) of  
5 extraction shall be at the expense of the United States. Nothing in this Paragraph is intended to  
6 waive any monetary claim(s) another Party may have against the United States in federal court  
7 based upon any change in point of extraction by the United States.

8 **18. WATERMASTER**

9 **18.1 Appointment of Initial Watermaster.**

10 **18.1.1** Appointment and Composition: The Court hereby appoints a  
11 Watermaster. The Watermaster shall be a five (5) member board composed of one representative  
12 each from AVEK and District No. 40, a second Public Water Supplier representative selected by  
13 District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation  
14 District, California Water Service Company, Desert Lake Community Services District, North  
15 Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch Irrigation District, and  
16 Rosamond Community Services District, and two (2) landowner Parties, exclusive of public  
17 agencies and members of the Non-Pumper and Small Pumper Classes, selected by majority vote  
18 of the landowners identified on Exhibit 4 (or their successors in interest) based on their  
19 proportionate share of the total Production Rights identified in Exhibit 4. The United States may  
20 also appoint a non-voting Department of Defense (DoD) Liaison to the Watermaster committee to  
21 represent DoD interests. Participation by the DoD Liaison shall be governed by Joint Ethics  
22 Regulation 3-201. The opinions or actions of the DoD liaison in participating in or contributing  
23 to Watermaster proceedings cannot bind DoD or any of its components.

24 **18.1.2** Voting Protocol for Watermaster Actions:

25 **18.1.2.1** The Watermaster shall make decisions by unanimous vote  
26 for the purpose of selecting or dismissing the Watermaster Engineer.  
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1                   **18.1.2.2**       The Watermaster shall determine by unanimous vote, after  
2 consultation with the Watermaster Engineer, the types of decisions that shall require unanimous  
3 vote and those that shall require only a simple majority vote.

4                   **18.1.2.3**       All decisions of the Watermaster, other than those  
5 specifically designated as being subject to a simple majority vote, shall be by a unanimous vote.

6                   **18.1.2.4**       All board members must be present to make any decision  
7 requiring a unanimous vote.

8                   **18.1.3**       In carrying out this appointment, the Watermaster shall segregate  
9 and separately exercise in all respects the Watermaster powers delegated by the Court under this  
10 Judgment. All funds received, held, and disbursed by the Watermaster shall be by way of  
11 separate Watermaster accounts, subject to separate accounting and auditing. Meetings and  
12 hearings held by the Watermaster shall be noticed and conducted separately.

13                  **18.1.4**       Pursuant to duly adopted Watermaster rules, Watermaster staff and  
14 administrative functions may be accomplished by AVEK, subject to strict time and cost  
15 accounting principles so that this Judgment does not subsidize, and is not subsidized by AVEK.

16                  **18.2       Standard of Performance.** The Watermaster shall carry out its duties,  
17 powers and responsibilities in an impartial manner without favor or prejudice to any Subarea,  
18 Producer, Party, or Purpose of Use.

19                  **18.3       Removal of Watermaster.** The Court retains and reserves full  
20 jurisdiction, power, and authority to remove any Watermaster for good cause and substitute a new  
21 Watermaster in its place, upon its own motion or upon motion of any Party in accordance with the  
22 notice and hearing procedures set forth in Paragraph 20.6. The Court shall find good cause for  
23 the removal of a Watermaster upon a showing that the Watermaster has: (1) failed to exercise its  
24 powers or perform its duties; (2) performed its powers in a biased manner; or (3) otherwise failed  
25 to act in the manner consistent with the provisions set forth in this Judgment or subsequent order  
26 of the Court.

1                   **18.4           Powers and Duties of the Watermaster.** Subject to the continuing  
2 supervision and control of the Court, the Watermaster shall have and may exercise the following  
3 express powers and duties, together with any specific powers and duties set forth elsewhere in  
4 this Judgment or ordered by the Court:

5                   **18.4.1           Selection of the Watermaster Engineer.** The Watermaster shall  
6 select the Watermaster Engineer with the advice of the Advisory Committee described in  
7 Paragraph 19.

8                   **18.4.2           Adoption of Rules and Regulations.** The Court may adopt  
9 appropriate rules and regulations prepared by the Watermaster Engineer and proposed by the  
10 Watermaster for conduct pursuant to this Judgment. Before proposing rules and regulations, the  
11 Watermaster shall hold a public hearing. Thirty (30) days prior to the date of the hearing, the  
12 Watermaster shall send to all Parties notice of the hearing and a copy of the proposed rules and  
13 regulations or amendments thereto. All Watermaster rules and regulations, and any amendments  
14 to the Watermaster rules and regulations, shall be consistent with this Judgment and are subject to  
15 approval by the Court, for cause shown, after consideration of the objections of any Party.

16                   **18.4.3           Employment of Experts and Agents.** The Watermaster may  
17 employ such administrative personnel, engineering, legal, accounting, or other specialty services,  
18 and consulting assistants as appropriate in carrying out the terms of this Judgment.

19                   **18.4.4           Notice List.** The Watermaster shall maintain a current list of  
20 Parties to receive notice. The Parties have an affirmative obligation to provide the Watermaster  
21 with their current contact information. For Small Pumper Class Members, the Watermaster shall  
22 initially use the contact information contained in the list of Small Pumper Class members filed  
23 with the Court by class counsel.

24                   **18.4.5           Annual Administrative Budget.** The Watermaster shall prepare a  
25 proposed administrative budget for each Year. The Watermaster shall hold a public hearing  
26 regarding the proposed administrative budget and adopt an administrative budget. The  
27 administrative budget shall set forth budgeted items and Administrative Assessments in sufficient  
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1 detail to show the allocation of the expense among the Producers. Following the adoption of the  
2 budget, the Watermaster may make expenditures within budgeted items in the exercise of powers  
3 herein granted, as a matter of course.

4 **18.4.6 Investment of Funds.** The Watermaster may hold and invest any  
5 funds in investments authorized from time to time for public agencies in the State of California.  
6 All funds shall be held in separate accounts and not comingled with the Watermaster's personal  
7 funds.

8 **18.4.7 Borrowing.** The Watermaster may borrow in anticipation of  
9 receipt of proceeds from any assessments authorized in Paragraph 9 in an amount not to exceed  
10 the annual amount of assessments.

11 **18.4.8 Transfers.** On an annual basis, the Watermaster shall prepare and  
12 maintain a report or record of any transfer of Production Rights among Parties. Upon reasonable  
13 request, the Watermaster shall make such report or record available for inspection by any Party.  
14 A report or records of transfer of Production Rights under this Paragraph shall be considered a  
15 ministerial act.

16 **18.4.9 New Production Applications.** The Watermaster shall consider  
17 and determine whether to approve applications for New Production after consideration of the  
18 recommendation of the Watermaster Engineer.

19 **18.4.10 Unauthorized Actions.** The Watermaster shall bring such action  
20 or motion as is necessary to enjoin any conduct prohibited by this Judgment.

21 **18.4.11 Meetings and Records.** Watermaster shall provide notice of and  
22 conduct all meetings and hearings in a manner consistent with the standards and timetables set  
23 forth in the Ralph M. Brown Act, Government Code sections 54950, et seq. Watermaster shall  
24 make its files and records available to any Person consistent with the standards and timetables set  
25 forth in the Public Records Act, Government Code sections 6200, et seq.

26 **18.4.12 Assessment Procedure.** Each Party hereto is ordered to pay the  
27 assessments authorized in Paragraph 9 of this Judgment, which shall be levied and collected in  
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accordance with the procedures and schedules determined by the Watermaster. Any assessment which becomes delinquent, as defined by rules and regulations promulgated by the Watermaster shall bear interest at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located. The United States shall not be subject to payment of interest absent congressional waiver of immunity for the imposition of such interest. This interest rate shall apply to any said delinquent assessment from the due date thereof until paid. The delinquent assessment, together with interest thereon, costs of suit, attorneys fees and reasonable costs of collection, may be collected pursuant to (1) motion by the Watermaster giving notice to the delinquent Party only; (2) Order to Show Cause proceeding, or (3) such other lawful proceeding as may be instituted by the Watermaster or the Court. The United States shall not be subject to costs and fees absent congressional waiver of immunity for such costs and fees. The delinquent assessment shall constitute a lien on the property of the Party as of the same time and in the same manner as does the tax lien securing county property taxes. The property of the United States shall not be subject to any lien. The Watermaster shall annually certify a list of all such unpaid delinquent assessments. The Watermaster shall include the names of those Parties and the amounts of the liens in its list to the County Assessor's Office in the same manner and at the same time as it does its Administrative Assessments. Watermaster shall account for receipt of all collections of assessments collected pursuant to this Judgment, and shall pay such amounts collected pursuant to this Judgment to the Watermaster. The Watermaster shall also have the ability to seek to enjoin Production of those Parties, other than the United States, who do not pay assessments pursuant to this Judgment.

**18.5 Watermaster Engineer.** The Watermaster Engineer shall have the following duties:

**18.5.1 Monitoring of Safe Yield.** The Watermaster Engineer shall monitor all the Safe Yield components and include them in the annual report for Court approval. The annual report shall include all relevant data for the Basin.

1                   **18.5.2       Reduction in Groundwater Production.** The Watermaster  
2 Engineer shall ensure that reductions of Groundwater Production to the Native Safe Yield  
3 (Rampdown) take place pursuant to the terms of this Judgment and any orders by the Court.

4                   **18.5.3       Determination of Replacement Obligations.** The Watermaster  
5 Engineer shall determine Replacement Obligations for each Producer, pursuant to the terms of  
6 this Judgment.

7                   **18.5.4       Balance Obligations.** The Watermaster Engineer shall determine  
8 Balance Assessment obligations for each Producer pursuant to the terms of this Judgment. In  
9 addition, the Watermaster Engineer shall determine the amount of water derived from the Balance  
10 Assessment that shall be allocated to any Producer to enable that Producer to fully exercise its  
11 Production Right.

12                   **18.5.5       Measuring Devices, Etc.** The Watermaster Engineer shall  
13 propose, and the Watermaster shall adopt and maintain, rules and regulations regarding  
14 determination of Production amounts and installation of individual water meters. The rules and  
15 regulations shall set forth approved devices or methods to measure or estimate Production.  
16 Producers who meter Production on the date of entry of this Judgment shall continue to meter  
17 Production. The Watermaster rules and regulations shall require Producers who do not meter  
18 Production on the effective date of entry of this Judgment, except the Small Pumper Class, to  
19 install water meters within two Years.

20                   **18.5.6       Hydrologic Data Collection.** The Watermaster Engineer shall (1)  
21 operate, and maintain such wells, measuring devices, and/or meters necessary to monitor stream  
22 flow, precipitation, Groundwater levels, and Basin Subareas, and (2) to obtain such other data as  
23 may be necessary to carry out this Judgment.

24                   **18.5.7       Purchases of and Recharge with Replacement Water.** To the  
25 extent Imported Water is available, the Watermaster Engineer shall use Replacement Water  
26 Assessment proceeds to purchase Replacement Water, and deliver such water to the area deemed  
27 most appropriate as soon as practicable. The Watermaster Engineer may pre-purchase  
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1 Replacement Water and apply subsequent assessments towards the costs of such pre-purchases.  
2 The Watermaster Engineer shall reasonably and equitably actively manage the Basin to protect  
3 and enhance the health of the Basin.

4 **18.5.8 Water Quality.** The Watermaster Engineer shall take all  
5 reasonable steps to assist and encourage appropriate regulatory agencies to enforce reasonable  
6 water quality regulations affecting the Basin, including regulation of solid and liquid waste  
7 disposal, and establishing Memorandums of Understanding with Kern and Los Angeles Counties  
8 regarding well drilling ordinances and reporting.

9 **18.5.9 Native Safe Yield.** Ten (10) Years following the end of the seven  
10 Year Rampdown period, in the seventeenth (17th) Year, or any time thereafter, the Watermaster  
11 Engineer may recommend to the Court an increase or reduction of the Native Safe Yield. The  
12 Watermaster Engineer shall initiate no recommendation to change Native Safe Yield prior to the  
13 end of the seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its  
14 report to the Court that the Native Safe Yield be revised based on the best available science, the  
15 Court shall conduct a hearing regarding the recommendations and may order a change in Native  
16 Safe Yield. Watermaster shall give notice of the hearing pursuant to Paragraph 20.3.2. The most  
17 recent Native Safe Yield shall remain in effect until revised by Court order according to this  
18 paragraph. If the Court approves a reduction in the Native Safe Yield, it shall impose a Pro-Rata  
19 Reduction as set forth herein, such reduction to be implemented over a seven (7) Year period. If  
20 the Court approves an increase in the Native Safe Yield, it shall impose a Pro-Rata Increase as set  
21 forth herein, such increase to be implemented immediately. Only the Court can change the  
22 Native Safe Yield.

23 **18.5.10 Change in Production Rights in Response to Change in Native**  
24 **Safe Yield.** In the event the Court changes the Native Safe Yield pursuant to Paragraph 18.5.9,  
25 the increase or decrease will be allocated among the Producers in the agreed percentages listed in  
26 Exhibits 3 and 4, except that the Federal Reserved Water Right of the United States is not subject  
27 to any increase or decrease.

1                   **18.5.11           Review of Calculation of Imported Water Return Flow**  
2 **Percentages.** Ten (10) Years following the end of the Rampdown, in the seventeenth (17th)  
3 Year, or any time thereafter, the Watermaster Engineer may recommend to the Court an increase  
4 or decrease of Imported Water Return Flow percentages. The Watermaster Engineer shall initiate  
5 no recommendation to change Imported Water Return Flow percentages prior to end of the  
6 seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its report to the  
7 Court that Imported Water Return Flow percentages for the Basin may need to be revised based  
8 on the best available science, the Court shall conduct a hearing regarding the recommendations  
9 and may order a change in Imported Water Return Flow percentages. Watermaster shall give  
10 notice of the hearing pursuant to Paragraph 20.6. The Imported Water Return Flow percentages  
11 set forth in Paragraph 5.2 shall remain in effect unless revised by Court order according to this  
12 Paragraph. If the Court approves a reduction in the Imported Water Return Flow percentages,  
13 such reduction shall be implemented over a seven (7) Year period. Only the Court can change the  
14 Imported Water Return Flow percentages.

15                   **18.5.12           Production Reports.** The Watermaster Engineer shall require each  
16 Producer, other than unmetered Small Pumper Class Members, to file an annual Production report  
17 with the Watermaster. Producers shall prepare the Production reports in a form prescribed by the  
18 rules and regulations. The Production reports shall state the total Production for the reporting  
19 Party, including Production per well, rounded off to the nearest tenth of an acre foot for each  
20 reporting period. The Production reports shall include such additional information and supporting  
21 documentation as the rules and regulations may reasonably require.

22                   **18.5.13           New Production Application Procedure.** The Watermaster  
23 Engineer shall determine whether a Party or Person seeking to commence New Production has  
24 established the reasonableness of the New Production in the context of all other uses of  
25 Groundwater in the Basin at the time of the application, including whether all of the Native Safe  
26 Yield is then currently being used reasonably and beneficially. Considering common law water  
27 rights and priorities, the mandate of certainty in Article X, section 2, and all other relevant  
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1 factors, the Watermaster Engineer has authority to recommend that the application for New  
2 Production be denied, or approved on condition of payment of a Replacement Water Assessment.  
3 The Watermaster Engineer shall consider, investigate and recommend to the Watermaster  
4 whether an application to commence New Production of Groundwater may be approved as  
5 follows:

6 **18.5.13.1** All Parties or Person(s) seeking approval from the  
7 Watermaster to commence New Production of Groundwater shall submit a written application to  
8 the Watermaster Engineer which shall include the following:

9 **18.5.13.1.1** Payment of an application fee sufficient to recover  
10 all costs of application review, field investigation, reporting, and hearing, and other associated  
11 costs, incurred by the Watermaster and Watermaster Engineer in processing the application for  
12 New Production;

13 **18.5.13.1.2** Written summary describing the proposed quantity,  
14 sources of supply, season of use, Purpose of Use, place of use, manner of delivery, and other  
15 pertinent information regarding the New Production;

16 **18.5.13.1.3** Maps identifying the location of the proposed New  
17 Production, including Basin Subarea;

18 **18.5.13.1.4** Copy of any water well permits, specifications and  
19 well-log reports, pump specifications and testing results, and water meter specifications  
20 associated with the New Production;

21 **18.5.13.1.5** Written confirmation that the applicant has obtained  
22 all applicable Federal, State, County, and local land use entitlements and other permits necessary  
23 to commence the New Production;

24 **18.5.13.1.6** Written confirmation that the applicant has complied  
25 with all applicable Federal, State, County, and local laws, rules and regulations, including but not  
26 limited to, the California Environmental Quality Act (Public Resources Code §§ 21000, et. seq.);

**18.5.13.1.7** Preparation of a water conservation plan, approved and stamped by a California licensed and registered professional civil engineer, demonstrating that the New Production will be designed, constructed and implemented consistent with California best water management practices.

**18.5.13.1.8** Preparation of an analysis of the economic impact of the New Production on the Basin and other Producers in the Subarea of the Basin;

**18.5.13.1.9** Preparation of an analysis of the physical impact of the New Production on the Basin and other Producers in the Subarea of the Basin;

**18.5.13.1.10** A written statement, signed by a California licensed and registered professional civil engineer, determining that the New Production will not cause Material Injury;

**18.5.13.1.11** Written confirmation that the applicant agrees to pay the applicable Replacement Water Assessment for any New Production.

**18.5.13.1.12** Other pertinent information which the Watermaster Engineer may require.

**18.5.13.2 Finding of No Material Injury.** The Watermaster Engineer shall not make recommendation for approval of an application to commence New Production of Groundwater unless the Watermaster Engineer finds, after considering all the facts and circumstances including any requirement that the applicant pay a Replacement Water Assessment required by this Judgment or determined by the Watermaster Engineer to be required under the circumstances, that such New Production will not cause Material Injury. If the New Production is limited to domestic use for one single-family household, the Watermaster Engineer has the authority to determine the New Production to be *de minimis* and waive payment of a Replacement Water Assessment; *provided*, the right to Produce such *de minimis* Groundwater is not transferable, and shall not alter the Production Rights decreed in this Judgment.

**18.5.13.3 New Production.** No Party or Person shall commence New Production of Groundwater from the Basin absent recommendation by the Watermaster Engineer and approval by the Watermaster.

**18.5.13.4 Court Review.** Court review of a Watermaster decision on a New Production application shall be pursuant to Paragraph 20.3.

**18.5.14 Storage Agreements.** The Watermaster shall adopt uniformly applicable rules for Storage Agreements. The Watermaster Engineer shall calculate additions, extractions and losses of water stored under Storage Agreements and maintain an Annual account of all such water. Accounting done by the Watermaster Engineer under this Paragraph shall be considered ministerial.

**18.5.15 Diversion of Storm Flow.** No Party may undertake or cause the construction of any project within the Watershed of the Basin that will reduce the amount of storm flows that would otherwise enter the Basin and contribute to the Native Safe Yield, without prior notification to the Watermaster Engineer. The Watermaster Engineer may seek an injunction or to otherwise impose restrictions or limitations on such project in order to prevent reduction to Native Safe Yield. The Party sought to be enjoined or otherwise restricted or limited is entitled to notice and an opportunity for the Party to respond prior to the imposition of any restriction or limitation. Any Person may take emergency action as may be necessary to protect the physical safety of its residents and personnel and its structures from flooding. Any such action shall be done in a manner that will minimize any reduction in the quantity of Storm Flows.

**18.5.16 Data, Estimates and Procedures.** The Watermaster Engineer shall rely on and use the best available science, records and data to support the implementation of this Judgment. Where actual records of data are not available, the Watermaster Engineer shall rely on and use sound scientific and engineering estimates. The Watermaster Engineer may use preliminary records of measurements, and, if revisions are subsequently made, may reflect such revisions in subsequent accounting.

1                   **18.5.17        Filing of Annual Report.** The Watermaster Engineer shall prepare  
2 an Annual Report for filing with the Court not later than April 1 of each Year, beginning April 1  
3 following the first full Year after entry of this Judgment. Prior to filing the Annual Report with  
4 the Court, Watermaster shall notify all Parties that a draft of the Annual Report is available for  
5 review by the Parties. Watermaster shall provide notice to all Parties of a public hearing to  
6 receive comments and recommendations for changes in the Annual Report. The public hearing  
7 shall be conducted pursuant to rules and regulations promulgated by the Watermaster. The notice  
8 of public hearing may include such summary of the draft Annual Report as Watermaster may  
9 deem appropriate. Watermaster shall distribute the Annual Report to any Parties requesting  
10 copies.

11                   **18.5.18        Annual Report to Court.** The Annual Report shall include an  
12 Annual fiscal report of the preceding Year's operation; details regarding the operation of each of  
13 the Subareas; an audit of all Assessments and expenditures; and a review of Watermaster  
14 activities. The Annual Report shall include a compilation of at least the following:

- 15                   **18.5.18.1        Replacement Obligations;**
- 16                   **18.5.18.2        Hydrologic Data Collection;**
- 17                   **18.5.18.3        Purchase and Recharge of Imported Water;**
- 18                   **18.5.18.4        Notice List;**
- 19                   **18.5.18.5        New Production Applications**
- 20                   **18.5.18.6        Rules and Regulations;**
- 21                   **18.5.18.7        Measuring Devices, etc;**
- 22                   **18.5.18.8        Storage Agreements;**
- 23                   **18.5.18.9        Annual Administrative Budget;**
- 24                   **18.5.18.10       Transfers;**
- 25                   **18.5.18.11       Production Reports;**
- 26                   **18.5.18.12       Prior Year Report;**
- 27                   **18.5.18.13       Amount of Stored Water owned by each Party;**

- 1                   **18.5.18.14**        Amount of Stored Imported Water owned by each Party;  
2                   **18.5.18.15**        Amount of unused Imported Water Return Flows owned by  
3 each Party;  
4                   **18.5.18.16**        Amount of Carry Over Water owned by each Party;  
5                   **18.5.18.17**        All changes in use.

6           **18.6**        **Recommendations of the Watermaster Engineer.** Unless otherwise  
7 determined pursuant to Paragraph 18.1.2.2, all recommendations of the Watermaster Engineer  
8 must be approved by unanimous vote of all members of the Watermaster. If there is not  
9 unanimous vote among Watermaster members, Watermaster Engineer recommendations must be  
10 presented to the Court for action and implementation.

11           **18.7**        **Interim Approvals by the Court.** Until the Court approves rules and  
12 regulations proposed by the Watermaster, the Court, upon noticed motion, may take or approve  
13 any actions that the Watermaster or the Watermaster Engineer otherwise would be authorized to  
14 take or approve under this Judgment.

15           **19.**        **ADVISORY COMMITTEE**

16           **19.1**        **Authorization.** The Producers are authorized and directed to cause a  
17 committee of Producer representatives to be organized and to act as an Advisory Committee.

18           **19.2**        **Compensation.** The Advisory Committee members shall serve without  
19 compensation.

20           **19.3**        **Powers and Functions.** The Advisory Committee shall act in an advisory  
21 capacity only and shall have the duty to study, review, and make recommendations on all  
22 discretionary determinations by Watermaster. Parties shall only provide input to the Watermaster  
23 through the Advisory Committee.

24           **19.4**        **Advisory Committee Meetings.** The Advisory Committee shall 1) meet  
25 on a regular basis; 2) review Watermaster's activities pursuant to this Judgment on at least a  
26 semi-annual basis; and 3) receive and make advisory recommendations to Watermaster.  
27 Advisory Committee Meetings shall be open to all members of the public. Edwards Air Force  
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1 Base and the State of California shall be ex officio members of the committee. The United States  
2 may also appoint a DoD Liaison to the Watermaster pursuant to Joint Ethics Regulation 3-201.

3 **19.5 Subarea Advisory Management Committees.** Subarea Advisory  
4 Management Committees will meet on a regular basis and at least semi-annually with the  
5 Watermaster Engineer to review Watermaster activities pursuant to this Judgment and to submit  
6 advisory recommendations.

7 **19.5.1 Authorization.** The Producers in each of the five Management  
8 Subareas are hereby authorized and directed to cause committees of Producer representatives to  
9 be organized and to act as Subarea Management Advisory Committees.

10 **19.5.2 Composition and Election.** Each Management Subarea  
11 Management Advisory Committee shall consist of five (5) Persons who shall be called  
12 Management Advisors. In the election of Management Advisors, every Party shall be entitled to  
13 one vote for every acre-foot of Production Right for that Party in that particular subarea. Parties  
14 may cumulate their votes and give one candidate a number of votes equal to the number of  
15 advisors to be elected, multiplied by the number of votes to which the Party is normally entitled,  
16 or distribute the Party's votes on the same principle among as many candidates as the Party thinks  
17 fit. In any election of advisors, the candidates receiving the highest number of affirmative votes  
18 of the Parties are elected. Elections shall be held upon entry of this Judgment and thereafter  
19 every third Year. In the event a vacancy arises, a temporary advisor shall be appointed by  
20 unanimous decision of the other four advisors to continue in office until the next scheduled  
21 election. Rules and regulations regarding organization, meetings and other activities shall be at  
22 the discretion of the individual Subarea Advisory Committees, except that all meetings of the  
23 committees shall be open to the public.

24 **19.5.3 Compensation.** The Subarea Management Advisory  
25 Committee shall serve without compensation.

26 **19.5.4 Powers and Functions.** The Subarea Management Advisory  
27 Committee for each subarea shall act in an advisory capacity only and shall have the duty to  
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study, review and make recommendations on all discretionary determinations made or to be made hereunder by Watermaster Engineer which may affect that subarea.

**20. MISCELLANEOUS PROVISIONS.**

**20.1 Water Quality.** Nothing in this Judgment shall be interpreted as relieving any Party of its responsibilities to comply with State or Federal laws for the protection of water quality or the provisions of any permits, standards, requirements, or orders promulgated thereunder.

**20.2 Actions Not Subject to CEQA Regulation.** Nothing in this Judgment or the Physical Solution, or in the implementation thereof, or the decisions of the Watermaster acting under the authority of this Judgment shall be deemed a "project" subject to the California Environmental Quality Act (CEQA). See e.g., *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, and *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534. Neither the Watermaster, the Watermaster Engineer, the Advisory Committee, any Subarea Management Committee, nor any other Board or committee formed pursuant to the Physical Solution and under the authority of this Judgment shall be deemed a "public agency" subject to CEQA. (See Public Resources Code section 21063.)

**20.3 Court Review of Watermaster Actions.** Any action, decision, rule, regulation, or procedure of Watermaster or the Watermaster Engineer pursuant to this Judgment shall be subject to review by the Court on its own motion or on timely motion by any Party as follows:

**20.3.1 Effective Date of Watermaster Action.** Any order, decision or action of Watermaster or Watermaster Engineer pursuant to this Judgment on noticed specific agenda items shall be deemed to have occurred on the date of the order, decision or action.

**20.3.2 Notice of Motion.** Any Party may move the Court for review of an action or decision pursuant to this Judgment by way of a noticed motion. The motion shall be served pursuant to Paragraph 20.7 of this Judgment. The moving Party shall ensure that the Watermaster is served with the motion under that Paragraph 20.7 or, if electronic service of the

1 Watermaster is not possible, by overnight mail with prepaid next-day delivery. Unless ordered by  
2 the Court, any such petition shall not operate to stay the effect of any action or decision which is  
3 challenged.

4 **20.3.3 Time for Motion.** A Party shall file a motion to review any action  
5 or decision within ninety (90) days after such action or decision, except that motions to review  
6 assessments hereunder shall be filed within thirty (30) days of Watermaster mailing notice of the  
7 assessment.

8 **20.3.4 De Novo Nature of Proceeding.** Upon filing of a motion to review  
9 a decision or action, the Watermaster shall notify the Parties of a date for a hearing at which time  
10 the Court shall take evidence and hear argument. The Court's review shall be *de novo* and the  
11 Watermaster's decision or action shall have no evidentiary weight in such proceeding.

12 **20.3.5 Decision.** The decision of the Court in such proceeding shall be an  
13 appealable supplemental order in this case. When the Court's decision is final, it shall be binding  
14 upon Watermaster and the Parties.

15 **20.4 Multiple Production Rights.** A Party simultaneously may be a member  
16 of the Small Pumper Class and hold an Overlying Production Right by virtue of owning land  
17 other than the parcel(s) meeting the Small Pumper Class definition. The Small Pumper Class  
18 definition shall be construed in accordance with Paragraph 3.5.44 and 3.5.45.

19 **20.5 Payment of Assessments.** Payment of assessments levied by Watermaster  
20 hereunder shall be made pursuant to the time schedule developed by the Watermaster,  
21 notwithstanding any motion for review of Watermaster actions, decisions, rules or procedures,  
22 including review of assessments implemented by the Watermaster.

23 **20.6 Designation of Address for Notice and Service.** Each Party shall  
24 designate a name and address to be used for purposes of all subsequent notices and service herein,  
25 either by its endorsement on this Judgment or by a separate designation to be filed within thirty  
26 (30) days after judgment has been entered. A Party may change its designation by filing a written  
27 notice of such change with Watermaster. A Party that desires to be relieved of receiving notices  
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1 of Watermaster activity may file a waiver of notice in a form to be provided by Watermaster. At  
2 all times, Watermaster shall maintain a current list of Parties to whom notices are to be sent and  
3 their addresses for purpose of service. Watermaster shall also maintain a full current list of said  
4 names and addresses of all Parties or their successors, as filed herein. Watermaster shall make  
5 copies of such lists available to any requesting Person. If no designation is made, a Party's  
6 designee shall be deemed to be, in order of priority: (1) the Party's attorney of record; (2) if the  
7 Party does not have an attorney of record, the Party itself at the address on the Watermaster list;  
8 (3) for Small Pumper Class Members, after this Judgment is final, the individual Small Pumper  
9 Class Members at the service address maintained by the Watermaster.

10 **20.7** **Service of Documents**. Unless otherwise ordered by the Court, delivery to  
11 or service to any Party by the Court or any Party of any document required to be served upon or  
12 delivered to a Party pursuant to this Judgment shall be deemed made if made by e-filing on the  
13 Court's website at [www.scefiling.org](http://www.scefiling.org). All Parties agree to waive service by mail if they receive  
14 notifications via electronic filing at the above identified website.

15 **20.8** **No Abandonment of Rights**. In the interest of the Basin and its water  
16 supply, and the principle of reasonable and beneficial use, no Party shall be encouraged to  
17 Produce and use more water in any Year than is reasonably required. Failure to Produce all of the  
18 Groundwater to which a Party is entitled shall not, in and of itself, be deemed or constitute an  
19 abandonment of such Party's right, in whole or in part, except as specified in Paragraph 15.

20 **20.9** **Intervention After Judgment**. Any Person who is not a Party or  
21 successor to a Party and who proposes to Produce Groundwater from the Basin, to store water in  
22 the Basin, to acquire a Production Right or to otherwise take actions that may affect the Basin's  
23 Groundwater is required to seek to become a Party subject to this Judgment through a noticed  
24 motion to intervene in this Judgment prior to commencing Production. Prior to filing such a  
25 motion, a proposed intervenor shall consult with the Watermaster Engineer and seek the  
26 Watermaster's stipulation to the proposed intervention. A proposed intervenor's failure to consult  
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1 with the Watermaster Engineer may be grounds for denying the intervention motion. Thereafter,  
2 if approved by the Court, such intervenor shall be a Party bound by this Judgment.

3           **20.10           Judgment Binding on Successors, etc.** Subject to specific provisions  
4 hereinbefore contained, this Judgment applies to and is binding upon, and inures to the benefit of  
5 the Parties to this Action and all their respective heirs, successors-in-interest and assigns.

6           **20.11           Costs.** Except subject to any existing court orders, each Party shall bear its  
7 own costs and attorneys fees arising from the Action.

8           **20.12           Headings; Paragraph References.** Captions and headings appearing in  
9 this Judgment are inserted solely as reference aids for ease and convenience; they shall not be  
10 deemed to define or limit the scope or substance of the provisions they introduce, nor shall they  
11 be used in construing the intent or effect of such provisions.

12           **20.13           No Third Party Beneficiaries.** There are no intended third party  
13 beneficiaries of any right or obligation of the Parties.

14           **20.14           Severability.** Except as specifically provided herein, the provisions of this  
15 Judgment are not severable.

16           **20.15           Cooperation; Further Acts.** The Parties shall fully cooperate with one  
17 another, and shall take any additional acts or sign any additional documents as may be necessary,  
18 appropriate or convenient to attain the purposes of this Judgment.

19           **20.16           Exhibits and Other Writings.** Any and all exhibits, documents,  
20 instruments, certificates or other writings attached hereto or required or provided for by this  
21 Judgment, if any, shall be part of this Judgment and shall be considered set forth in full at each  
22 reference thereto in this Judgment.

23  
24           \_\_\_\_\_  
Dated:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# EXHIBIT J

ELG

BEST BEST & KRIEGER LLP  
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JEFFREY V. DUNN, Bar No. 131926  
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LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF KERN - METROPOLITAN DIVISION

S- 500-CV 254348

LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40,

Plaintiff,

vs.

DIAMOND FARMING COMPANY;  
BOLTHOUSE PROPERTIES, INC.;  
CITY OF LANCASTER;  
CITY OF LOS ANGELES;  
CITY OF PALMDALE;  
LITTLEROCK CREEK IRRIGATION  
DISTRICT;  
PALMDALE WATER DISTRICT;  
PALM RANCH IRRIGATION  
DISTRICT;  
QUARTZ HILL WATER DISTRICT;  
and DOES 1 through 25,000 inclusive;

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND  
ADJUDICATION OF WATER RIGHTS

1 Plaintiff Los Angeles County Waterworks District No. 40 alleges:

2  
3 **INTRODUCTION**  
4

5 1. This action seeks a judicial determination of all rights to ground water within the  
6 Antelope Valley Groundwater Basin. The adjudication is necessary to protect and conserve the  
7 vital water groundwater supply of the Antelope Valley that is vital to the health, safety and  
8 welfare of tens of thousands of persons and entities in communities who depend upon water  
9 deliveries from Los Angeles County Waterworks District No. 40, Antelope Valley (the  
10 "District"). For these reasons, the District files this complaint to promote and protect the general  
11 public welfare in the Antelope Valley; to protect the District's rights to pump and deliver water to  
12 the public; to protect the Antelope Valley from a loss of the public groundwater supply, to  
13 prevent degradation of the quality of the public groundwater supply; and to prevent land  
14 subsidence and higher costs to the public for water.  
15

16 2. The District is a public agency governed by the Los Angeles County Board of  
17 Supervisors and lawfully organized to, among other things, provide water to the public in a large  
18 portion of the Antelope Valley. District customers must have a reliable and safe groundwater  
19 supply for domestic and business needs. To provide water to the public, the District has drilled  
20 and equipped wells to pump groundwater. The District has also constructed, maintained and  
21 operated a waterworks delivery system to supply the groundwater to the public. Without an  
22 adequate and safe groundwater supply, Antelope Valley residents and businesses in the Antelope  
23 Valley would likely not have enough water.  
24

25 3. The District has appropriative and prescriptive rights to Basin groundwater as the  
26 District has pumped water from the Basin since at least 1919. Since that time, the District has  
27 pumped water from the Antelope Valley Basin and/or stored water in the Antelope Valley Basin  
28 by reasonable extraction means and has used the Antelope Valley Basin and/or its water for

1 reasonable and beneficial purposes, and has done so under a claim of right in an actual, open,  
2 notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner for a period of  
3 time of at least five years and before filing this complaint.  
4

5 4. Due to the shortage of water in the Basin, the District has purchased State Water  
6 Project water from the Antelope Valley-East Kern Water Agency in addition to pumping  
7 groundwater. The State Water Project water originates in northern California and would not  
8 reach the Basin but for the District's purchases. District customers pay millions of dollars each  
9 year for State Water Project water. The District purchases approximately 30,000 acre feet of  
10 Project water each year and delivers the purchased Project water to the public through the  
11 District's waterworks systems.  
12

13 5. The District depends on the Basin for pumping of approximately 20,000 acre feet  
14 of water each year. District customers use Project water for a variety of uses and thus a portion of  
15 the Project water percolates into the Basin and commingles with the Basin's water from natural  
16 sources. The District's purchase and delivery of Project water augments the natural supply of  
17 groundwater in the Basin. Without the substantial investment of the District in purchasing the  
18 State Water Project water, the District would need to pump 50,000 acre feet of groundwater each  
19 year.  
20

21 6. By storing Project water or other imported water in the Basin, the District could  
22 recover the stored water during times of drought, water supply emergencies, or other water  
23 shortages to ensure a safe and reliable supply of water to the public. The District is pursuing  
24 approvals to allow for the construction and operation of injection wells or other means by which  
25 State Water Project water or other water imported from outside the Basin may be injected or  
26 placed for storage in the Basin.  
27

28 7. To provide water to the public, the District has and claims the following rights,



1 each of which is paramount and superior to any overlying rights or other water rights, if any,  
2 claimed by any defendant!

3  
4 A. The right to pump groundwater from the Antelope Valley Groundwater  
5 Basin in an annual amount equal to the highest volume of groundwater extracted by the District in  
6 any year preceding entry of judgment in this action according to proof, but not less than 18,944  
7 acre feet;

8  
9 B. The right to pump or authorize others to extract from the Antelope Valley  
10 Groundwater Basin a volume of water equal in quantity to that volume of water previously  
11 purchased by the District from the Antelope Valley-East Kern Water Agency and which has  
12 augmented the supply of water in the Basin in any year preceding entry of judgment in this action  
13 according to proof, but not less than 18,944 acre feet;

14  
15 C. The right to pump or authorize others to extract from the Antelope Valley  
16 Groundwater Basin a volume of water equal in quantity to that volume of water purchased in the  
17 future by the District from the Antelope Valley-East Kern Water Agency which augments the  
18 supply of water in the Basin; and

19  
20 D. The right to pump or authorize others to extract from the Antelope Valley  
21 Basin a volume of water equal in quantity to that volume of water injected into the Basin or  
22 placed within the Basin by the District or on its behalf.

**THE ANTELOPE VALLEY GROUNDWATER BASIN IS AND HAS BEEN IN A STATE  
OF OVERDRAFT**

8. The Antelope Valley Groundwater Basin is located in Los Angeles and Kern counties. The Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of Los Angeles. The Basin encompasses about 940 square miles and generally includes the communities of Lancaster, Palmdale and Rosamond. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains.

9. For over a century courts in California have used the groundwater basin concept to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined boundaries in a lateral direction and a definable bottom.

10. Before there was groundwater pumping, natural water recharge to the Basin was in balance with water discharged from the Basin and water levels generally remained constant and in a state of long-term equilibrium. In or about 1915 there was significant pumping, primarily for agricultural purposes. Over time the rise of agricultural pumping destroyed the groundwater level equilibrium and caused a, long-term decline in groundwater levels and groundwater storage in the Basin.

11. There has never been a limit on groundwater pumping in the Basin. As a result of this lack of groundwater control and management over the past eighty years, the Basin has lost an estimated eight million acre feet of water. This loss of groundwater caused chronic declines in groundwater levels and land subsidence.

12. Land subsidence is the sinking of the Earth's surface due to subsurface movement of earth materials and is primarily caused by groundwater pumping. The District is informed and believes and upon that basis alleges that as much as six feet of subsidence has occurred in

1 portions of the Basin. The negative effects of land subsidence observed in the Basin include loss  
2 of groundwater storage space, cracks and fissures at the land surface and damage to real property.

3  
4 13. Land subsidence, loss of groundwater storage, and declining groundwater levels  
5 injure the public welfare and threaten the communities that depend upon the Basin water. Land  
6 subsidence and chronic declines in groundwater levels continue because of unlimited  
7 groundwater pumping in the Basin.

8  
9 14. Although agricultural pumping decreased for a limited time when groundwater  
10 levels became too low for agriculture to pump water from the Basin, agricultural pumping has  
11 increased in the past decade. During the same time, continued urbanization in and around the  
12 cities of Palmdale and Lancaster has increased the public's need for water. Existing pumping  
13 causes damage and injury to the Basin including land subsidence. Land subsidence exists and  
14 will increase unless the court establishes a safe yield for the Basin and limits pumping to the  
15 Basin's safe yield.

16  
17 15. The District is informed and believes and upon that basis alleges the Basin is and  
18 has been in an overdraft condition for more than five (5) consecutive years and before the filing  
19 of the complaint in Riverside County Superior Court Case No. 344436 entitled *Diamond Farming*  
20 *Company vs. City of Lancaster*, and before the filing of this complaint. During said time periods,  
21 total annual demands upon the Basin have exceeded and continue to exceed the supply of water  
22 from natural sources. Consequently, there is and has been a progressive and chronic decline in  
23 Basin water levels and the available natural supply is being and has been chronically depleted.  
24 Unless limited by order and judgment of the court, potable Basin water will be exhausted and  
25 land subsidence will continue.

26  
27 16. Each defendant has, and is now, pumping, appropriating and diverting water from  
28 the natural supply of the Basin, and/or claims some interest in the Basin water. The District is

1 informed and believes and upon that basis alleges that the combined extraction of water by  
2 defendants exceeds the annual production of water from the Antelope Valley Basin, and that each  
3 defendant claims a right to take water and threatens to increase its taking of water without regard  
4 to the rights of the District. Defendants' pumping reduces Basin water tables and contributes to  
5 the deficiency of the Basin water supply as a whole. The deficiency results in a shortage of water  
6 to the public who depend upon the District to supply water from the Basin. Defendants continued  
7 and increasing extraction of Basin water has resulted in, and will result in, a diminution, reduction  
8 and impairment of the Basin water supply; causes land subsidence; and has and will deprive the  
9 District of its rights to provide water for the public's health, welfare and benefit.

10  
11 17. The District is informed and believes and thereon alleges there are conflicting  
12 claims of rights to the Basin and/or its water.

13  
14 18. The District is informed and believes and thereon alleges that defendants who own  
15 real property in the Basin claim an overlying right to pump Basin water. The overlying right is  
16 limited to the native safe yield of the Basin. The District alleges that because subsidence is an  
17 undesirable result and is occurring in the Basin, defendants are and have been pumping more than  
18 the Basin's safe yield.

19  
20 PARTIES

21  
22 19. The District is informed and believes, and on that basis alleges, that Diamond  
23 Farming Company is a California corporation that owns real property within Kern County and  
24 pumps groundwater from the Basin.

25  
26 20. The District is informed and believes, and on that basis alleges, that Bolthouse  
27 Properties, Inc. is a California corporation that owns real property within Kern County and pumps  
28 groundwater from the Basin.



1           21.     The District is informed and believes, and on that basis alleges, that the City of  
2     Lancaster is a municipal corporation that provides groundwater from the Basin located in Kern  
3     and Los Angeles Counties.

4  
5           22.     The District is informed and believes, and on that basis alleges, that the City of  
6     Los Angeles is a municipal corporation that owns real property within Los Angeles County and  
7     pumps groundwater from the Basin located in Kern and Los Angeles Counties.

8  
9           23.     The District is informed and believes, and on that basis alleges, that the City of  
10    Palmdale is a municipal corporation that receives water from the Basin located in Kern and Los  
11    Angeles Counties.

12  
13          24.     The District is informed and believes, and on that basis alleges, that the Littlerock  
14    Creek Irrigation District is a public agency that pumps groundwater from the Basin located in  
15    Kern and Los Angeles Counties.

16  
17          25.     The District is informed and believes, and on that basis alleges, that the Palmdale  
18    Water District is a public agency that pumps groundwater from the Basin located in Kern and Los  
19    Angeles Counties.

20  
21          26.     The District is informed and believes, and on that basis alleges, that the Palm  
22    Ranch Irrigation District is a public agency that pumps groundwater from the Basin located in  
23    Kern and Los Angeles Counties.

24  
25          27.     The District is informed and believes, and on that basis alleges, that the Quartz  
26    Hill Water District is a public agency that pumps groundwater from the Basin located in Kern and  
27    Los Angeles Counties.

(For Declaratory Relief – Prescriptive Rights – Against all Defendants Except Public Entity Defendants)

29. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 28, inclusive.

30. For over fifty years, the California Supreme Court has recognized prescriptive water rights for public entities. The District alleges that it has continuously and for more than five years and before the date of this action pumped water from the Basin for reasonable and beneficial purposes and has done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The District further alleges that defendants have had actual and/or constructive notice of District's pumping either of which is sufficient to establish District's prescriptive right.

31. The District contends that defendants' rights to pump Basin water are subordinate to the prescriptive right of the District and to the general welfare of the citizens, inhabitants and customers serviced by Los Angeles County Waterworks District No. 40, Antelope Valley.

1           32.     An actual controversy has arisen between the District and defendants. The District  
2 alleges, on information and belief, that defendants' dispute the contentions of the District as  
3 described in the immediately preceding paragraph.

4  
5           33.     The District seeks a judicial determination as to the correctness of its contentions  
6 and an *inter se* finding as to the priority and amount of Basin water to which the District and each  
7 defendant are entitled to pump from the Basin.

8  
9  
10                               SECOND CAUSE OF ACTION

11  
12                           (For Declaratory Relief – Appropriative Rights – Against all Defendants)

13  
14           34.     The District alleges and incorporates by reference herein allegations in paragraphs  
15 1 through 33, inclusive.

16  
17           35.     The District alleges that in addition to, or alternatively to, its prescriptive rights, it  
18 has appropriative rights to pump water from the Basin. Appropriative rights attach to surplus  
19 water from the Basin. There is surplus water in the Basin when the amount of water being  
20 extracted from it is less than the maximum that can be withdrawn without adverse effects on the  
21 Basin's long-term supply.

22  
23           36.     Surplus water exists when the pumping from the Basin is less than the safe yield.  
24 Safe yield is the maximum quantity of water which can be withdrawn annually from a  
25 groundwater Basin under a given set of conditions without causing an undesirable result.  
26 Undesirable result generally refers to a gradual lowering of the groundwater levels in the Basin,  
27 but also includes subsidence.

1 37. Overlying pumpers are only entitled to make reasonable and beneficial use of the  
2 native safe yield.

3  
4 38. An actual controversy has arisen between the District and defendants. The District  
5 alleges, on information and belief, that defendants seek to prevent District from pumping surplus  
6 water.

7  
8 39. The District seeks a judicial determination as to the quantity of safe yield, the  
9 quantity of surplus water available, the correlative overlying rights of defendants to the safe yield  
10 and an *inter se* determination of the rights of overlying, appropriative and prescriptive pumpers.

11  
12 **THIRD CAUSE OF ACTION**

13 (For Declaratory Relief – Physical Solution – Against all Defendants)

14  
15 40. The District alleges and incorporates by reference herein allegations in paragraphs  
16 1 through 39, inclusive.

17  
18 41. Upon information and belief, the District alleges that defendants claim an interest  
19 or rights to Basin water and further claim they can increase their pumping without regard to the  
20 rights of the District. Unless restrained by order of the court, defendants will continue to take  
21 increasing amounts of Basin water to the great and irreparable damage and injury to the District  
22 and to the Basin. The damage and injury to the Basin cannot be compensated for in money  
23 damages.

24  
25 42. By reason of the large and increasing amounts of Basin water extracted by  
26 defendants as alleged above, the amount of Basin water available to the District has been reduced.  
27 Unless defendants and each of them are enjoined and restrained, the aforementioned conditions  
28 will continue and will become more severe; and there will be further depletion of the Basin



1 groundwater supply which will further permanently damage the Basin's ability to supply water to  
2 the public.

3  
4 43. Pursuant to California law it is the duty of the trial court to consider a "physical  
5 solution" to water rights disputes. A physical solution is a common sense approach to resolving  
6 water rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties  
7 through augmenting the water supply or other practical measures. The physical solution is a  
8 practical way of fulfilling the mandate of Article X, section 2 of the California Constitution that  
9 the water resources of the State be put to use to the fullest extent of which they are capable.

10  
11 44. To prevent irreparable injury to the Basin, it is necessary that the court determine,  
12 impose and retain continuing jurisdiction to enforce a physical solution upon the parties who  
13 pump water from the Basin. The solution to the Basin problems may include, but is not limited  
14 to, a monetary assessment, and metering and assessments upon Basin water extraction to pay for  
15 the purchase, delivery of supplemental supply of water to the Basin, and the court appointment of  
16 a watermaster.

17  
18 **FOURTH CAUSE OF ACTION**

19 (For Declaratory Relief – Municipal Priority – Against all Defendants)  
20

21 45. The District alleges and incorporates by reference herein allegations in paragraphs  
22 1 through 44, inclusive.

23  
24 46. The District has the right to pump water from the Basin not only to meet existing  
25 public needs for water, but also to take increased amounts of Basin water as necessary to meet  
26 future public needs. The District's rights to Basin water exist not only as a result of the priority  
27 and extent of the District's appropriative and prescriptive rights, but exist as a matter of law and  
28 public policy of the State of California: "It is hereby declared to be the established policy of this

1 State that the use of water for domestic purposes is the highest use of water and that the next  
2 highest use is for irrigation." (*Water Code* §106.)  
3

4 47. *Water Code* Section 106.5 provides: "It is hereby declared to be the established  
5 policy of this State that the right of a municipality to acquire and hold rights to the use of water  
6 should be protected to the fullest extent necessary for existing and future uses. . . ."

7  
8 48. Under *Water Code* sections 106 and 106.5, the District has a prior and paramount  
9 right to Basin water as against all non-municipal uses.  
10

11 49. An actual controversy has arisen between the District and defendants. The District  
12 alleges, on information and belief, that defendants dispute the District's contentions as described  
13 in the paragraphs 46 through 48, inclusive. The District is informed and believes and on that  
14 basis alleges that the groundwater pumped by a majority of the defendants is used for irrigation  
15 purposes.  
16

17 50. The District seeks a judicial determination as to the correctness of its contentions  
18 and to the amount of Basin water to which the parties are entitled to pump from the Basin. The  
19 District also seeks a declaration that it has the right to pump water from the Basin to meet its  
20 reasonable present and future needs, and that such rights are prior and paramount to the rights, if  
21 any, of defendants to the use of Basin water for irrigation purposes.  
22

23 **FIFTH CAUSE OF ACTION**

24 (Declaratory Relief -- Storage of Imported Water in The Basin -- Against all Defendants)  
25

26 51. The District alleges and incorporates by reference herein allegations in paragraphs  
27 1 through 50, inclusive.  
28

1           52.     The District purchases and uses water from the State Water Project. The Project  
2 water is not native to the Basin and the imported Project water decreases the District's pumping  
3 from the Basin. This imported water would not otherwise have been brought to the Basin but for  
4 the District purchase and delivery. The District pays a substantial cost for this imported water  
5 supply which cost is an annual amount subject to cost increases over time.

6  
7           53.     The District alleges that there is available space in the Basin in which to store  
8 imported water.

9  
10          54.     As an importer of Project water, the District has the right to store imported Project  
11 water in the Basin and the District has the sole right to pump or otherwise use its stored imported  
12 Project water. The rights, if any, of defendants are limited to the native supply of the Basin and  
13 to their own imported water, and defendants' rights, if any, do not extend to groundwater derived  
14 from any water imported into the Basin by the District.

15  
16          55.     An actual controversy has arisen between the District and defendants. The District  
17 alleges, on information and belief, that defendants' dispute the District's contentions described in  
18 paragraphs 52 through 54, inclusive.

19  
20          56.     The District seeks a judicial determination as to the correctness of its contentions,  
21 that the District can store and recapture its imported Project water in the Basin, and that the  
22 District has the sole right to pump or otherwise use such stored Project water.

23  
24                   **SIXTH CAUSE OF ACTION**

25                   (Declaratory Relief – Recapture of Return Flows

26                   From Imported Water Stored in The Basin – Against all Defendants)

27  
28          57.     The District alleges and incorporates by reference herein allegations in paragraphs

1 through 56, inclusive.

58. A portion of the water that the District imports and uses and continues to import and use from outside the Basin returns or enters and will continue to return or enter the Basin and are commonly known as "return flows." These return flows augment the Basin's water supply.

59. The District alleges that there is available space in the Basin to store return flows from the water imported by the District.

60. The District has the sole right to recapture return flows attributable to the water it imports or is imported on the District's behalf. The rights, if any, of defendants are limited to the Basin's native supply and/or to their imported water, and do not extend to groundwater attributable to the District's return flows.

61. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, that defendants' dispute the contentions of the District as described in paragraphs 58 through 60, inclusive.

62. The District seeks a judicial determination as to the correctness of its contentions and that the District has the sole right to recapture its imported return flows in the Basin at the present and into the future.

#### SEVENTH CAUSE OF ACTION

(Unreasonable Use of Water - Against all Defendants Except Public Entity Defendants)

63. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 62, inclusive.



65. The District is informed and believes and on that basis alleges that the use of water by some defendants for irrigation purposes is unreasonable in the arid Antelope Valley and constitutes waste, unreasonable use or an unreasonable method of diversion or use within the meaning of Article X, Section 2 of the California Constitution, and is thereby unlawful.

66. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, the defendants' dispute the District's contentions in paragraphs 64 through 65, inclusive.

67. The District seeks a judicial declaration that defendants have no rights to unreasonable use, unreasonable methods of use, or waste of water, and their rights, if any, should be determined *inter se* on the reasonable use of water in the arid Antelope Valley rather than upon the amount of water actually used.

### EIGHTH CAUSE OF ACTION

(Unreasonable Use of Water - Against Defendants Diamond Farming and  
Bolthouse Properties, Inc.)

68. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 67, inclusive.

69. Article X, Section 2 of the California Constitution is the cardinal principle of

1 California water law, superior to any priorities and requires that water use not be unreasonable or  
2 wasteful. Reasonable use of water depends on the facts and circumstances of each case.  
3

4 70. The District is informed and believes and on that basis alleges that there were and  
5 are overdraft conditions in the Basin before defendants Diamond Farming and Bolthouse  
6 Properties, Inc., began pumping Basin water. For their own private profit and in harm to the  
7 public's need for a secure supply of Basin water, Defendants Diamond Farming and Bolthouse  
8 Properties, Inc., have increased their pumping so that they collectively take more Basin water  
9 than any other single user of Basin water - despite existing Basin overdraft conditions including  
10 land subsidence.  
11

12 71. Defendants Diamond Farming and Bolthouse Properties, Inc., recently commenced  
13 additional, excessive pumping of Basin water for their private profit that causes harm to existing  
14 agricultural users of Basin water and to the entities supplying water to the public all of whom  
15 depend upon a safe and secure Basin water supply. Given the water overdraft conditions in the  
16 Basin, the excessive uses of Basin water by defendants Diamond Farming and Bolthouse  
17 Properties, Inc., require an unreasonable amount of Basin water in the arid Antelope Valley and  
18 threaten established communities and agricultural users that were and are already dependent upon  
19 Basin water.  
20

21 72. The District is informed and believes and on that basis alleges that the recently  
22 commenced use of Basin water by defendants Diamond Farming and Bolthouse Properties, Inc.,  
23 is unreasonable in the arid Antelope Valley and constitutes waste, unreasonable use or an  
24 unreasonable method of diversion or use within the meaning of Article X, Section 2 of the  
25 California Constitution, and is injurious to the public and thereby unlawful.  
26

27 73. An actual controversy has arisen between the District and defendants Diamond  
28 Farming and Bolthouse Properties, Inc. The District alleges, on information and belief, the

defendants' dispute the District's contentions in paragraphs 69 through 72, inclusive.

74. The District seeks a judicial declaration that defendants Diamond Farming and Bolthouse Properties, Inc., have no right to take Basin water in any way that harms the public, creates a risk of overdraft conditions in the Basin, constitutes unreasonable methods of use, or waste of water; and their rights, if any, should be determined *inter se* on the previously-existing public and agricultural needs and uses of Basin water in the arid Antelope Valley.

**PRAYER FOR RELIEF**

WHEREFORE, Los Angeles County Waterworks District No. 40, Antelope Valley prays for judgment as follows:

1. Judicial declarations consistent with the District's contentions in paragraphs 31, 35-39, 40-44, 46-50, 52-56, 58-62, 64-67, and 69-74, above;

2. For preliminary and permanent injunctions which prohibit defendants, and each of them, from taking, wasting or failing to conserve water from the Antelope Valley Groundwater Basin in any manner which interferes with the rights of the Los Angeles Waterworks District No. 40, Antelope Valley to take water from or store water in the Basin to meet its reasonable present and future needs;

3. For prejudgment interest as permitted law;

//

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//

//

1 4. For attorney, appraisal and expert witness fees and costs incurred in this action;  
2 and

3  
4 5. Such other relief as the court deems just and proper.

5  
6 Dated: November 30, 2004

BEST BEST & KRIEGER LLP

7  
8 By: 

9 ERIC L. GARNER  
10 JEFFREY W. DUNN  
11 Attorneys for Plaintiff  
12 LOS ANGELES COUNTY  
13 WATERWORKS DISTRICT NO. 40  
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15  
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28



**BEST BEST & KRIEGER LLP**

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FILE No. 26345.00001

November 30, 2004

**VIA FEDEX**

Kern County Superior Court  
1215 Truxtun Avenue  
Bakersfield, California 93301-4698

Attention: Clerk, Civil Filing

Re: Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Company, et al.

Dear Clerk of the Court:

Enclosed please find an original plus two (2) copies of the following documents in regard to the above-referenced matter:


- 1) Civil Case Cover Sheet;
- 2) Summons; and
- 3) Complaint For Declaratory And Injunctive Relief And Adjudication of Water Rights.

Please issue the Summons and file the Complaint. Please note that **plaintiff is exempt from filing fees pursuant to Government Code Section 6103**. Finally, if you would kindly return the issued Summons and a conformed copy of the Complaint, using the enclosed, postage-paid envelope provided for this purpose, it would be greatly appreciated.

Clerk of the Superior Court  
November 30, 2004  
Page 2

Thank you for your assistance in this regard. Should you have any questions or comments, please do not hesitate to contact this office.

Sincerely,

  
Kerry V. Keefe  
Assistant to Jeffrey V. Dunn  
of BEST BEST & KRIEGER LLP

KVK:kvk

Enclosures

# EXHIBIT K

1  
2  
3  
4  
5  
6  
7  
8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF LOS ANGELES  
10

11 **ANTELOPE VALLEY GROUNDWATER**  
12 **CASES**

13 Included Consolidated Actions:

14 Los Angeles County Waterworks District No.  
15 40 v. Diamond Farming Co.  
Superior Court of California  
County of Los Angeles, Case No. BC 325 201

16 Los Angeles County Waterworks District No.  
17 40 v. Diamond Farming Co.  
Superior Court of California, County of Kern,  
18 Case No. S-1500-CV0254-348

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

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

24 Richard A. Wood v. Los Angeles County  
25 Waterworks District No. 40  
Superior Court of California, County of Los  
26 Angeles, Case No. BC 391-869

Judicial Council Coordination  
Proceeding No. 4408

Lead Case No. BC 325201

**STATEMENT OF DECISION RE  
PHASE III TRIAL**

Judge: Honorable Jack Komar

1 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,  
2 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,  
3 Quartz Hill Water District, California Water Service Company, Rosamond Community Service  
4 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services  
5 District, North Edwards Water District (collectively, the "Public Water Suppliers")<sup>1</sup> brought an  
6 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley Adjudication Area  
7 groundwater aquifer ("Basin") was in a state of overdraft and required judicial intervention to  
8 provide for water resource management within the Basin to prevent depletion of the aquifer and  
9 damage to the Basin ("Basin").

10 Several of the cross-defendant parties (collectively, the "Landowner Group") also sought  
11 declaratory relief in their various independent (now coordinated and consolidated) actions.

12 The first issues to be decided in the declaratory relief cause of action are overdraft and  
13 safe yield. The remaining causes of action and issues are to be tried in a subsequent phase or  
14 phases.

15 This Phase Three trial commenced on January 4, 2011 and continued thereafter on various  
16 days based upon the needs of the parties and the Court's availability. Appearances of counsel are  
17 noted in the Court minutes.

18 Upon conclusion of the evidence, the Court offered counsel the opportunity to provide  
19 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the  
20 Court heard oral argument and the matter was ordered submitted.

21 The Public Water Suppliers (and others) have alleged that the Basin is in a condition of  
22 overdraft and have requested that the Court determine a safe yield and consider imposing a  
23 physical solution or other remedy to prevent further Basin depletion and degradation.

24 Several parties, in opposition to the requests of the Public Water Suppliers, have  
25 contended that while there may have been overdraft in the past, currently, the Basin has recovered

26 <sup>1</sup> The United States and City of Los Angeles, though not public water suppliers in the Antelope Valley Adjudication  
27 Area, joined with the Public Water Suppliers. Rosamond Community Services District, though a public water  
28 supplier, did not join the Public Water Suppliers. Instead, Rosamond Community Services District joined the  
Landowner Group parties.

1 and is not in overdraft. These same parties contend that it is not possible to establish a single  
2 value for the Basin's safe yield; instead they have requested that the Court determine a range of  
3 values for safe yield.

4 The Court concludes that the Public Water Suppliers have the burden of proof and that the  
5 burden must be satisfied by a preponderance of the evidence. (Evid. Code section 115.) The  
6 Court finds that the Public Water Suppliers have met the burden of proof by a preponderance of  
7 the evidence as to the safe yield and overdraft of the Basin.

8 The law defines overdraft as groundwater extractions in excess of the "safe yield" of  
9 water from an aquifer, which over time will lead to a depletion of the water supply within a  
10 groundwater basin as well as other detrimental effects, if the imbalance between pumping and  
11 extraction continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 278;  
12 *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District*  
13 *v. City of Riverside* (1959) 173 Cal.App.2d 137.) "Safe yield" is the annual water extraction from  
14 the aquifer over time equal to the amount of water needed to recharge the aquifer and maintain it  
15 in equilibrium, plus any temporary surplus. (*City of Los Angeles v. City of San Fernando* (1975)  
16 14 Cal.3d 199, 278.) Temporary surplus is defined as that amount of water that may be pumped  
17 from an aquifer to make room to store future water that would otherwise be wasted and  
18 unavailable for use. (*Id.*, p. 278.)

19 A determination of safe yield and overdraft requires the expert opinions of engineers,  
20 hydrologists and geologists.<sup>2</sup> Experts in the field of hydrogeology routinely base their opinions  
21 and conclusions concerning overdraft on evidence of long-term lowering of groundwater levels,  
22 loss of groundwater storage, declining water quality, seawater intrusion (not an issue in this case),  
23 land subsidence, and the like. Experts also conduct a sophisticated analysis of precipitation and  
24 its runoff, stream flow, and infiltration into the aquifer, including such things as  
25 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge  
26 including return flows from imported water), as well as the nature and quantity of extractions

27  
28 <sup>2</sup> All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an "estimate"  
as, *inter alia*, "[a] rough calculation, as of size" or "[a] judgment based on one's impressions; an opinion."



1 from the Basin and return flows therefrom.

2 Generally, neither overdraft nor safe yield can be determined by looking at a groundwater  
3 basin in a single year but must be determined by evaluating the basin conditions over a sufficient  
4 period of time to determine whether pumping rates have or will lead to eventual permanent  
5 lowering of the water level in the aquifer and ultimately depletion of the water supply or other  
6 harm. Recharge must equal discharge over the long term. (*City of Los Angeles v. City of San*  
7 *Fernando, supra*, 14 Cal.3d at pp. 278-279.)

8 The location of the Antelope Valley Adjudication Area boundaries was decided in the  
9 Phase I and II trials. The Court defined the boundaries of the Basin's aquifer based upon  
10 evidence of hydraulic connectivity within the aquifer. If there was no hydraulic connectivity with  
11 the aquifer, an area was excluded from the adjudication. The degree of hydraulic connectivity  
12 varies from area to area within the Antelope Valley Adjudication Area. Some areas seemingly  
13 have fairly small or nominal hydro-conductivity but must be included in this phase of the  
14 adjudication. Pumping in those parts of the Basin may be shown to have *de minimis* effect on  
15 other parts of the Basin while pumping in other areas within the Basin appears to have very large  
16 impacts on adjacent parts of the Basin. All areas were included within the Adjudication Area  
17 because they all have some level of hydraulic connectivity, some more and some less. How to  
18 deal with those differences is ultimately a basin management decision that is well beyond the  
19 scope of this phase of trial.

### 20 21 Overdraft

22 The preponderance of the evidence presented establishes that the Basin is in a state of  
23 overdraft. Reliable estimates of the long-term extractions from the Basin have exceeded reliable  
24 estimates of the Basin's recharge by significant margins, and empirical evidence of overdraft in  
25 the Basin corroborates that conclusion. The Basin has sustained a significant loss of groundwater  
26 storage since 1951. While pumping in recent years has reduced and moderated the margin  
27 between pumping and recharge as cultural conditions have changed and precipitation has  
28 increased with the appearance of "wetter" parts of the historical cycle, pumping in some areas of

1 the aquifer is continuing to cause harm to the basin. The evidence is persuasive that current  
2 extractions continue to exceed recharge and therefore that the Basin continues to be in a state of  
3 overdraft, although by a much reduced amount. Since 1951<sup>3</sup> there is evidence of substantial  
4 pumping (principally agricultural in the early years of the period), with continuous lowering of  
5 water levels and subsidence extending to the present time, with intervals of only slight rises in  
6 water levels in some areas.

7 In the areas of increased pumping, in particular in the Palmdale and Lancaster areas, there  
8 is a continual lowering of water levels such that it may have a serious effect on water rights in  
9 other areas, causing cones of depression, altering natural water flow gradients, causing the  
10 lowering of water levels in adjacent areas, and causing subsidence and loss of aquifer storage  
11 capacity. Given population growth, and land use changes, the Antelope Valley is at risk of an  
12 even more serious continuing overdraft in the future.

13 While the lowering of current water levels has slowed, and water levels in some wells in  
14 some areas have risen in recent years, significant areas within the Basin continue to show  
15 declining levels, some slightly so, but many show a material lowering of water levels. Overall,  
16 water levels and storage in the Basin are declining.

17 Thus, the Antelope Valley Adjudication Area has been in a state of overdraft for more  
18 than 50 years, and based on estimates of extraction and recharge, corroborated by physical  
19 evidence of conditions in the Basin as a whole including loss of groundwater in storage, land  
20 subsidence and changes in the amount and direction of groundwater flow to Edwards Air Force  
21 Base. While the annual amount of overdraft has lessened in recent years with decreased pumping  
22 and increased precipitation and recharge, the effects of overdraft remain and are in danger of  
23 being exacerbated with increased pumping and the prospective cyclical precipitation fluctuations  
24 shown by the historical record. The physical evidence establishes that there was significant  
25 subsidence occurring throughout the Antelope Valley Adjudication Area ranging from two to six  
26 feet or more in certain areas caused by such pumping and that measurable water levels fell in a  
27 substantial part of the Valley. While some of the ongoing subsidence may be attributable to

28 <sup>3</sup> Precipitation and well records prior to that year are too intermittent to be relied upon.



1 residual subsidence (from earlier periods of shortfall) a preponderance of the evidence establishes  
2 that ongoing and continued subsidence is caused, in part, by ongoing groundwater extractions in  
3 excess of the Basin's safe yield.

#### 4 5 Safe Yield

6 A safe yield calculation is necessary to manage a basin and create a physical solution to a  
7 potential or actual continuing overdraft. A determination of safe yield requires an initial  
8 determination of average annual natural or native recharge to the aquifer from all sources. The  
9 only sources of natural or native recharge for the Antelope Valley are precipitation from the  
10 surrounding mountains that recharges the Basin and it is therefore necessary to ascertain average  
11 annual precipitation. The calculation of annual average precipitation can only be properly  
12 determined by using a baseline study period that covers precipitation in periods of drought and  
13 periods of abundant precipitation over a sufficient period of time that a reliable estimate of  
14 average future recharge based on precipitation can be made.

15 One Landowner Group expert selected two shorter base periods (the total time span of  
16 which was considerably less than the 50 year period used by the Public Water Suppliers' experts  
17 which the Court believes are more credible), each having different estimated average natural  
18 recharge based upon different precipitation averages from each base period. If the purpose of  
19 selecting a base period is to determine average recharge over time based on precipitation,  
20 choosing two consecutive periods of time with two different average numbers would not serve  
21 that purpose and would preclude estimating a single safe yield. A base period that calculates  
22 average precipitation over a representative period of time permits reliable predictions about future  
23 natural recharge based on regular recurring precipitation cycles. A period of precipitation  
24 fluctuations from 1951 to 2005 satisfies that standard. Shorter periods do not and the Court does  
25 not find those shorter base periods to produce accurate results. The Court accepts the base period  
26 selected by the Public Water Supplier experts as the more credible and accurate representation of  
27 long-term conditions in the Basin.

28 The pumping extractions are not seriously in dispute by any of the experts who testified.

1 All seem to agree that pumping currently is estimated to range from 130,000 to 150,000 acre feet  
2 a year. The major area of dispute between the parties is the average annual natural recharge,  
3 which also involves disputes concerning return flows, the amount of native vegetation water  
4 needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag time,  
5 bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the Basin,  
6 including artificial recharge-water introduced into the Basin from external sources are not in  
7 dispute.

8 Evidence established that during the entire historical period presented, population  
9 increased within the Valley and water use changed in a variety of ways. There has been a shift in  
10 some areas to urban uses and away from agriculture although in recent years agricultural pumping  
11 has also increased. The nature of agricultural water duties has changed as well. The type of  
12 irrigation used by farmers has become more efficient and less water is needed per acre (depending  
13 on the crops grown) with more efficient uses of water. But there has also been an increase as well  
14 as a change in the nature of the type of agriculture in the Valley in material quantities in recent  
15 years. Other such changes may occur and it is important to both current and future generations to  
16 ensure that the water resources within the Basin are managed prudently.

17 The Court heard from a very large number of experts, some of whom have provided  
18 opinion testimony about what constitutes safe yield. All the experts testifying acknowledged that  
19 changes in the selection of a base study period, lag time, agricultural water duties  
20 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration  
21 return flows, playa evaporation relating to run off and bedrock infiltration, chloride  
22 measurements, satellite imaging, and agricultural and municipal pumping estimates, among;  
23 others, would affect the ultimate opinion of natural recharge and return flows including return  
24 flows from State Water Project water.

25 The opinions of all the experts are estimates, based upon their professional opinion. All of  
26 the opinions were critiqued by other experts who often had different opinions. The Court  
27 recognizes the imprecision of the various estimates and the fact that an estimate by definition is  
28 imprecise. But because estimates lack precision does not mean that the Court cannot rely upon

1 such estimates. The scientific community relies upon such estimates in the field of hydrogeology  
2 and the Court must do the same.

3 Reasonable experts can differ as to reasonable estimates of natural recharge and virtually  
4 all other components of water budgets, computations of change of storage, and the like, all the  
5 while using the same formulae and scientific principles to reach their conclusion. For example,  
6 all the experts could agree on the definition of "Darcy's Law" and the physics principle of  
7 "conservation of mass" but still reach different conclusions.

8 Some of the experts opined that the Basin was not in overdraft and that recharge was in  
9 excess of or in balance with extractions so that there was a surplus in the Basin. One Landowner  
10 Group expert opined that loss of storage was merely space for temporary storage. The evidence  
11 presented and observable conditions in the valley are inconsistent with those conclusions. If there  
12 were a surplus, even in the shortened base periods used by the Landowner Group experts, there  
13 would not be land subsidence, nor declining water levels. The Basin's physical conditions are  
14 inconsistent with those Landowner Group expert estimates that there is and has been a surplus of  
15 water in the Basin and the Court finds these opinions unreliable.

16 Selecting a safe yield number for an aquifer the size of the Antelope Valley is made  
17 difficult because its size and its geologic complexity. As reflected above, hydraulic connectivity  
18 varies considerably between various parts of the Basin. Hydraulic connectivity between some  
19 portions of the Basin and other portions is so slight as to be almost (apparently) nonexistent.  
20 Pumping in those areas may have little or no effect on other areas of the Basin. The Basin is not  
21 like a bathtub where lowering and raising of water levels is equal in all parts of the "tub."

22 Therefore, different areas of the Basin may require different levels of pumping in order to  
23 maintain equilibrium. No attempt has been made in this phase of trial to define geological  
24 differences in the Basin that would justify different pumping regimes for different parts of  
25 Antelope Valley as a result of the decision in Phase Two regarding hydraulic connectivity.

26 Weighing the various opinions, however, the Court finds by a preponderance of the  
27 evidence that setting a total safe yield at a conservative 110,000 acre feet per year will permit  
28 management of the Basin in such a way as to preserve the rights of all parties in accordance with



1 the Constitution and laws of the State of California. Some Basin areas receive more recharge  
2 than others and pumping requirements vary. These differences require management decisions  
3 that respect the differences in both the geology and the cultural needs of the diverse parts of the  
4 valley. However, the amount of hydro-conductivity between Basin areas was beyond the scope  
5 of the Phase III trial.

6 Out of the total safe yield of 110,000 acre feet annually, the Court finds, by a  
7 preponderance of the evidence, the native safe yield is 82,000 acre feet per year and the  
8 supplemental safe yield is 28,000 acre feet annually. The native safe yield is the amount of  
9 precipitation that recharges the Basin. The native safe yield is the total of the long-term average  
10 annual natural recharge to the Basin in the amount of 60,000 acre feet, and the long-term average  
11 annual return flows attributable to pumping the native recharge in the amount of 22,000 acre feet.

12 Supplemental safe yield is the amount of imported water (i.e., State Water Project water)  
13 that recharges the Basin, plus the return flows from such water after it is pumped and re-applied  
14 to municipal and industrial or agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court  
15 finds that the supplemental safe yield of the Basin is 28,000 acre feet annually, based on  
16 estimated return flow percentages of 28.1% for municipal and industrial use, and 25% for  
17 agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court finds that all subsequent  
18 pumping of return flows are subject to these respective percentages as shown by Scalmanini  
19 Exhibit 95.

20 The Court makes the findings herein based on a preponderance of the evidence presented  
21 by the Public Water Suppliers, the City of Los Angeles and the United States. The Court finds  
22 that the opinion testimony and evidence presented by the Public Water Suppliers<sup>4</sup>, the City of Los  
23 Angeles and the United States to be credible and that the opinion testimony and evidence  
24 presented by the Landowner Group parties to not be as credible as to the safe yield and overdraft  
25 issues.

26 It should not be assumed that the safe yield management number may not change as

27 <sup>4</sup> As previously noted, Rosamond Community Services District is a public water producer but it did not align itself  
28 with the Public Water Producers. Instead, Rosamond Community Services District and the City of Lancaster aligned  
themselves and supported the Landowner Group parties.

1 climate circumstances and pumping may change, or as the empirical evidence based on  
2 experience in managing the Basin suggests it is either too high or too low, that is why the Court  
3 will retain jurisdiction over any physical solution to the Basin's overdraft  
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5 Dated: \_\_\_\_\_

Hon. Jack Komar  
Judge of the Superior Court

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**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 June 6, 2011, I served the within document(s):

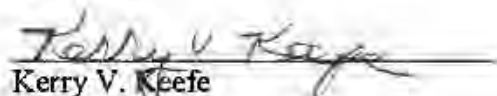
**STATEMENT OF DECISION RE PHASE III TRIAL**

- ☒ 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 June 6, 2011, at Irvine, California.

  
Kerry V. Keefe

# EXHIBIT L

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Attorneys for Plaintiff

**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.: BC391869

**RICHARD WOOD'S OBJECTION TO  
ADMISSION INTO EVIDENCE OF  
JOSEPH SCALAMININI EXHIBITS  
AND JOINDER**



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1 Richard Wood files this objection regarding the admission into evidence of  
2 exhibits used during the testimony of Joseph Scalamanini, should any party seek to admit  
3 them.

4 An expert may state the matters on which he or she relied, but may not testify to  
5 the details of those matters if they are otherwise inadmissible. (*People v. Coleman*  
6 (1985) 38 Cal.3d 69, 92; *Furtado v. Montebello Unified School District* (1962) 206  
7 Cal.2d 72, 79. “Likewise, while an expert may state on direct examination he or she  
8 relied on information contained in certain reports, the expert may not testify as to the  
9 contents of such reports.” (*Wegner et al., Civil Trials and Evidence* (Rutter 2010) §  
10 8:761; *Continental Airlines v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388,  
11 416; *Grimshaw v. Ford Motor Co.* (1981) Cal.App.3d 757, 788.) **Exhibits 20, 23, 24, 26**  
12 **to 28, 33 to 45, 59 to 63 to 65, 71 to 77, 83, 84, 95, 97, 98, and 101** all violate these  
13 evidentiary rules. Mr. Scalaminini has chosen to conduct essentially no field work or  
14 first-hand data gathering; instead, his testimony is almost entirely dependent on data  
15 gathered by third parties, the reliability of which cannot be verified, or tested through  
16 cross examination. While he may rely on hearsay information in forming his opinions,  
17 this underlying data and the conclusions of third parties cannot come into evidence.

18 Many of Mr. Scalaminini’s exhibits are entirely hearsay, and not subject to any  
19 exception to the rule. **Exhibits 4 through 11, 13 and 14** are each objectionable on these  
20 grounds. The testimony of the witness failed to establish that the various quoted sources  
21 are actually accurate, i.e. that the texts and authors cited actually said what they are  
22 asserted to have said. Furthermore, these exhibits constitute improper expert testimony  
23 on the law. It is the Court’s job to establish the legal definition of safe yield and  
24 overdraft, not the expert witnesses.

**Exhibits 16 and 17** are irrelevant because the question of subsidence in the San Joaquin and San Fernando basins has no bearing on these proceedings. The exhibits also lack foundation.

**Exhibits 18 and 19** should not be admitted because no foundation has been established that these pictures are in fact in the Antelope Valley.

**Exhibit 101**, the “summary expert report,” cannot be admitted into evidence as for all of the foregoing reasons. Nearly every single page of this exhibit contains hearsay. This report is replete with data for which no foundation has been established.

Richard Wood also joins in any objections to the direct or redirect testimony of Mr. Scalaminini and the admissibility of his exhibits made by any other parties.

DATED: February 13, 2011

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

By:     //s// Michael D. McLachlan      
Michael D. McLachlan  
Attorneys for Plaintiff

1 PROOF OF SERVICE

2 I am a resident of the State of California and over the age of eighteen years, and  
3 not a party to the within action. My business address is 10490 Santa Monica Boulevard,  
4 Los Angeles, CA, 90025. On the date set forth below, I served the within document(s)  
5 by posting the document(s) listed below to the Santa Clara County Superior Court  
6 website in regard to the Antelope Valley Groundwater matter: **RICHARD WOOD'S**  
7 **OBJECTION TO ADMISSION INTO EVIDENCE OF JOSEPH SCALAMININI**  
8 **EXHIBITS AND JOINDER**

9  
10 I declare under penalty of perjury under the laws of the State of California that the  
11 above is true and correct. Executed on February 13, 2011 at Los Angeles, California.  
12

13 //s// Michael D. McLachlan  
14 Michael D. McLachlan  
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# EXHIBIT M

**Exhibit M to the Declaration of Jeffrey V. Dunn**

	<b>Summary of Bills</b>	<b>Reference to Billing Entries</b>
1.	Mr. McLachlan and Mr. O'Leary spent at least <u>13.7</u> hours on the landowner complaint.	See, e.g., the following billing entries: 5/4/2013 (0.2); 5/14/2013 (2.8); 5/21/2013 (1.1); 6/7/2013 (0.1); 6/15/2013 (0.1); 6/17/2013 (0.4); 6/18/2013 (0.1); 6/26/2013 (0.2); 7/1/2013 (0.1); 7/2/2013 (0.4); 7/11/2013 (0.2); 7/12/2013 (0.7); 8/1/2013 (0.1) and 5/17/2013 (2.2); 5/21/2013 (0.2); /2/2013 (1.0); 7/29/2013 (3.5); 9/5/2013 (0.2).
2.	Mr. McLachlan spent at least <u>145</u> hours on work regarding settlement with non-stipulating landowners, including Tapia, Robar, Leisure Lake, Eyherabide and the subsequent prove-up and participation in liaison settlement committee with non-stipulating landowners (including copious entries subsequent to settlement with PWS).	See, e.g., the following billing entries: 7/23/2014 (0.1); 7/30/2014 (7.5); 8/12/2014 (0.4); 8/14/2014 (0.7); 8/15/2014 (0.6); 8/19/2014 (0.1); 8/26/2014 (0.6); 9/3/2014 (0.4); 9/4/2014 (0.1); 9/8/2014 (0.2); 9/10/2014 (0.5); 9/18/2014 (0.1); 9/19/2014 (0.1); 9/26/2014 (0.1); 10/14/2014 (0.3); 10/22/2014 (0.2); 10/31/2014 (0.2); 11/4/2014 (0.4); 11/11/2014 (0.1); 12/2/2014 (0.1); 12/17/2014 (0.5); 12/23/2014 (0.4); 1/7/2015 (0.2); 1/8/2015 (0.1); 2/19/2015 (0.4); 2/25/2015 (1.0); 2/26/2015 (0.1); 3/3/2015 (0.1); 3/13/2015 (1.3); 3/25/2015 (0.3); 3/26/2015 (0.1); 4/6/2015 (0.2); 4/7/2015 (0.3); 4/24/2015 (0.2); 5/11/2015 (0.3); 5/12/2015 (0.2); 5/17/2015 (0.2); 5/26/2015 (0.1); 5/28/2015 (0.4); 5/29/2015 (4.1); 6/1/2015 (0.5); 6/2/2015 (5.4); 6/3/2015 (8.6); 6/4/2015 (1.0); 6/5/2015 (1.3); 6/7/2015 (2.0); 6/8/2015 (0.8); 6/9/2015 (1.4); 6/10/2015 (1.3); 6/11/2015 (2.2); 6/12/2015 (0.1); 6/13/2015 (2.8); 6/15/2015 (0.3); 6/18/2015 (0.7); 6/23/2015 (1.6); 6/24/2015 (0.9); 6/25/2015 (0.8); 6/26/2015 (1.0); 6/29/2015 (2.4); 6/30/2015 (0.8); 7/8/2015 (1.0); 7/9/2015 (0.2); 7/24/2015 (0.3); 7/26/2015 (0.2); 7/28/2015 (0.3); 7/29/2015 (1.4); 7/30/2015 (0.2); 8/1/2015 (0.3); 8/12/2015 (0.4); 8/19/2015 (2.3); 8/20/2015 (1.9); 8/21/2015 (2.6); 8/24/2015 (0.2); 8/26/2015 (1.7); 8/27/2015 (0.8); 8/28/2015 (2.7); 8/31/2015 (0.5); 9/1/2015 (0.4); 9/3/2015 (0.3); 9/8/2015 (0.2); 9/9/2015 (1.1); 9/16/2015 (1.0); 9/17/2015 (1.0); 9/18/2015 (0.5); 9/23/2015 (0.3); 9/24/2015 (0.2); 9/26/2015 (0.9); 9/28/2015 (0.1); 10/1/2015 (0.2); 10/5/2015 (0.1); 10/6/2015 (0.1); 10/8/2015 (0.1); 10/12/2015 (0.4); 10/13/2015 (0.1); 10/15/2015 (0.2); 10/16/2015 (0.2); 10/19/2015 (0.5); 10/20/2015 (0.7); 10/21/2015 (1.1); 10/22/2015 (0.1); 10/26/2015 (0.2); 10/27/2015 (0.3); 10/28/2015 (0.8); 10/30/2015 (4.7); 11/2/2015 (2.1); 11/5/2015 (0.5); 11/9/2015 (3.7); 11/12/2015 (0.3); 11/18/2015 (0.1); 12/1/2015 (0.4); 12/2/2015 (0.4); 12/3/2015 (0.6); 12/4/2015 (0.6); 12/5/2015 (0.2); 12/10/2015 (0.2); 12/11/2015 (0.2); 12/15/2015 (0.1); 12/16/2015 (0.2); 12/18/2015 (0.2); 12/24/2015 (0.1); 12/28/2015 (0.1); 12/29/2015 (0.7); 12/30/2015 (0.7); 1/7/2016 (0.2); 1/8/2016

		(2.0); 1/12/2016 (1.6); 1/21/2016 (0.5); 1/22/2015 (1.2); 1/26/2015 (0.8) and 9/24/2015 (4.6 [paralegal time]).
3.	Mr. McLachlan and Mr. Oleary spent at least <u>46</u> hours on work concerning Phelan, including copious entries for work performed after settling with Phelan.	See, e.g., the following billing entries: 11/17/2008 (0.3); 11/26/2008 (0.1); 1/23/2009 (1.3); 7/27/2009 (0.2); 11/13/2010 (0.1); 12/10/2010 (0.3); 3/13/2011 (0.1); 4/23/2011 (0.2); 12/23/2012 (7.1); 2/5/2013 (0.6); 2/13/2013 (0.1); 8/16/2013 (0.5); 2/26/2014 (0.1); 2/28/2013 (0.2); 4/2/2013 (0.2); 4/23/2013 (0.1); 8/15/2013 (0.1); 8/19/2013 (0.4); 10/1/2013 (0.1); 2/7/2014 (2.0); 2/13/2014 (0.2); 2/24/2014 (0.2); 2/25/2014 (0.6); 4/4/2014 (1.3); 4/9/2014 (0.2); 4/10/2014 (0.3); 4/15/2014 (0.2); 4/16/2014 (0.4); 4/17/2014 (0.1); 4/24/2014 (0.3); 4/25/2014 (0.1); 8/7/2014 (.1); 8/8/2014 (0.1); 8/25/2014 (0.1); 8/28/2014 (0.1); 9/4/2014 (0.2); 9/24/2014 (0.1); 9/25/2014 (0.2); 9/30/2014 (0.2); 10/1/2014 (1.4); 10/2/2014 (0.1); 10/6/2014 (0.6); 10/7/2014 (0.5); 10/9/2014 (0.1); 10/12/2014 (0.2); 10/22/2014 (0.4); 10/24/2014 (0.6); 10/30/2014 (0.2); 10/31/2014 (0.5); 11/4/2014 (0.3); 11/10/2014 (0.1); 11/12/2014 (0.6); 11/17/2014 (0.1); 11/20/2014 (0.7); 11/21/2014 (0.2); 12/6/2014 (0.1); 1/29/2015 (0.6); 2/4/2015 (0.1); 2/9/2015 (0.5); 2/10/2015 (0.1); 2/11/2015 (0.1); 3/13/2015 (0.6); 3/16/2015 (0.2); 3/19/2015 (1.1); 3/24/2015 (0.2); 4/3/2015 (0.1); 5/15/2015 (0.2); 6/5/2015 (0.1); 8/2/2015 (0.9); 8/17/2015 (1.2); 8/20/2015 (0.2); 8/21/2015 (0.6); 8/24/2015 (1.0); 8/25/2015 (11.9); 8/31/2015 (0.6); 11/5/2015 (0.3); 12/14/2015 (0.3); and 1/25/2016 (0.2)
4.	Mr. McLachlan spent at least <u>66</u> hours on non-PWS discovery work.	This entry is likely incomplete as Mr. McLachlan's entries are rife with discovery review without noting the party to which it refers. See, e.g., billing entries for 11/21/2008 (0.1); 11/24/2008 (0.4); 6/2/2008 (0.2); 7/6/2009 (0.3); 7/10/2009 (0.3); 6/4/2009 (0.6); 5/18/2009 (0.4); 3/4/2009 (0.4); 3/6/2009 (0.2); 3/10/09 (0.5); 3/12/09 (0.2); 12/8/2010 (0.4); 1/11/11 (0.2); 12/28/12 (7.8); 1/12/2013 (4.8); 1/13/2013 (1.8); 1/19/2013 (2.6); 2/5/2013 (0.7); 2/25/13 (0.2); 9/25/2013 (0.2); 10/15/2013 (0.2); 10/24/2013 (0.2); 12/9/2013 (1.6); 12/11/2013 (0.7); 12/12/ 2013 (0.2); 1/15/2014 (1.5); 1/16/2014 (0.5); 2/25/2014 (1.8); 3/27/2014 (2.8); 3/30/2014 (1.0); 5/16/2014 (0.8); 11/17/2014 (0.5); 12/2/2014 (1.0); 12/16/2014 (0.2); 12/22/2014 (0.5); 12/23/2014 (1.8); 12/24/2014 (0.2); 12/31/2014 (0.7); 1/7/2014 (0.8); 1/8/2014 (4.5); 1/19/2015 (1.2); 4/20/2015 (0.6); 6/7/2015 (0.2); 6/9/2015 (1.8); 6/12/2015 (1.3); 6/15/2015 (0.8); 6/17/2015 (0.1); 6/18/2015 (1.3); 6/29/2015 (0.9); 7/1/12015 (0.3); 7/20/2015 (0.7); 9/9/2015 (0.1); 1/15/2016 (0.4); 1/19/2015 (0.8).

5.	Mr. McLachlan and Mr. O’Leary spent at least <u>37</u> hours on work related to the Ritter Trust claims.	See, e.g., billing entries for 3/26/2010 (0.3); 8/21/2015 (0.1); 10/30/2015 (2.3); 10/31/2015 (0.2); 11/1/2015 (4.0); 11/2/2015 (10.3); 11/3/2015 (0.1); 11/4/2015 (0.8); 11/9/2015 (1.3); 11/10/2015 (0.8); 12/10/2015 (0.4); 12/16/2015 (0.9); 12/17/2015 (0.2); 1/15/2016 (1.3); 1/19/2016 (2.7); 1/20/2016 (1.3); 1/21/2016 (1.4); 1/22/2016 (1.3); 1/23/2016 (0.3); 1/26/2016 (0.7); and 5/28/2013 (0.2); 1/15/2016 (1.0); 1/25/2016 (0.6); 1/26/2016 (1.8); 4/22/2015 (0.4); 4/23/2015 (0.7); 5/5/2015 (0.4); 5/29/2015 (0.2); 6/7/2015.
6.	Mr. McLachlan spent <i>at least 42</i> hours (and likely countless undiscernible others due to bill vagueness) on work concerning the Willis Class.	See, e.g., the following billing entries: 2/4/2008 (0.9); 9/20/2008 (0.2); 5/6/2007 (0.2); 11/5/2009 (0.3); 10/16/2009 (0.5); 6/16/2009 (0.3); 6/22/2011 (0.2); 6/30/2009 (0.3); 5/6/2009 (0.2); 11/18/2010 (4.5); 10/27/2010 (0.2); 9/30/2010 (1.7); 7/8/2010 (0.4); 7/16/2010 (1.2); 7/17/2010 (0.5); 7/19/2010 (2.2); 7/26/2010 (0.3); 6/15/2010 (0.4); 3/26/2010 (0.1); 3/14/2011 (1.4); 3/15/2011 (1.2); 9/4/2013 (0.7); 12/20/2013 (0.5); 1/2/2014 (2.7); 2/23/2014 (1.9); 2/24/2014 (0.2); 4/9/2014 (0.3); 4/15/2014 (0.4); 7/22/2014 (0.2); 7/31/2014 (0.6); 11/10/2014 (1.1); 1/7/2015 (0.8); 1/8/2015 (4.5); 1/20/2015 (1.4); 1/24/2015 (0.5); 3/5/2015 (0.8); 3/6/2015 (0.3); 3/12/2015 (1.8); 3/13/2015 (0.9); 3/16/2015 (0.6); 3/19/2015 (1.3); 5/11/2015 (0.4); 12/10/2015 (0.1); 12/30/2015 (0.1); 1/8/2016 (0.1); 1/9/2016 (1.6); 1/18/2016 (0.7); 1/20/2016 (0.4); 1/21/2016 (0.4); 1/23/2016 (0.1); 1/26/2016 (0.1).
7.	Mr. O’Leary spent at least <u>24</u> hours on work concerning Willis Class.	See, e.g., billing entries for <sup>1</sup> : 11/5/2009 (0.3); 9/16/2010 (0.9); 11/19/2010 (1.3); 2/25/2011 (0.4); 3/9/2011 (0.9); 7/10/2015 (1.2); 7/17/2015 (4.5); 7/24/2015 (0.6); 7/27/2015 (2.2); 8/4/2014 (3.8); 8/20/2015 (1.1); 8/21/2014 (0.6); 8/25/2015 (1.8); 9/1/2015 (0.2); 9/2/2015 (0.9); 9/15/2015 (2.2); 1/24/2016 (1.3).
8.	Mr. McLachlan and Mr. O’Leary spent at least <u>206</u> hours on work concerning the partial settlement (i.e., NOT with respect to the PWS).	See, e.g., billing entries for 8/16/2013 (0.5); 8/19/2013 (0.8); 8/23/2013 (0.1); 8/26/2013 (1.2); 8/28/2013 (0.7); 8/30/2013 (1.0); 8/31/2013 (0.2); 9/1/2013 (1.5); 9/2/2013 (0.9); 9/12/2013 (0.2); 9/13/2013 (1.9); 9/26/2013 (0.6); 9/30/2013 (0.8); 10/1/2013 (0.5); 10/2/2013 (0.7); 10/3/2013 (2.8); 10/4/2013 (8.3); 10/5/2013 (4.8); 10/6/2013 (14.8); 10/7/2013 (12.1); 10/8/2013 (4.6); 10/9/2013 (4.2); 10/10/2013 (1.8); 10/11/2013 (0.3); 10/18/2013 (1.2); 10/21/2013 (3.0); 10/22/2013 (0.6); 10/25/2013 (7.2); 11/4/2013 (0.3); 11/7/2013 (0.5); 11/9/2013 (0.8); 11/11/2013 (0.7); 11/12/2013 (0.8); 11/13/2013 (2.0); 11/14/2013 (11.2); 11/15/2013 (4.4); 11/16/2013 (4.5); 11/17/2013 (7.9); 11/18/2013 (0.6); 11/19/2013 (0.5); 11/20/2013 (0.5); 11/21/2013 (4.6); 11/22/2013 (5.8); 11/23/2013 (1.2);



		11/25/2013 (4.0); 11/26/2013 (0.2); 11/27/2013 (1.5); 11/29/2013 (2.1); 12/2/2013 (3.2); 12/3/2013 (7.4); 12/5/2013 (0.6); 12/6/2013 (0.5); 12/10/2013 (4.5); 12/11/2013 (6.0); 12/13/2013 (0.9); 12/14/2013 (0.5); 12/16/2013 (0.7); 12/27/2013 (8.4); 12/28/2013 (4.7); 12/30/2013 (8.1); 12/31/2013 (10.8); 1/1/2014 (7.1); 1/5/2014 (0.6); 1/6/2014 (0.4); 1/7/2014 (4.7); 1/8/2014 (1.3); 1/9/2014 (1.0) and 10/4/2013 (0.9); 10/7/2013 (0.7); 12/3/2013 (2.7); 12/23/2013 (2.6); 12/30/2013 (0.6); 1/7/2014 (0.4); 1/14/2014 (0.3).
9.	Mr. O'Leary spent at least <u>6</u> hours working on unspecified landowner issues.	See, e.g., billing entries for 11/11/2008 (5.5); 5/30/2009 (0.3); 8/9/2012 (0.4)
10.	Mr. McLachlan spent many hours contacting the Court's clerk, Ms. Rowena Walker.	See, e.g., billing entries for: 10/23/2008 (0.1); 1/6/2009 (0.1); 3/11/2009 (0.1); 5/13/2009 (0.1); 5/14/2009 (0.1); 6/8/2009 (0.1); 6/15/2009 (0.1); 6/25/2009 (0.1); 8/19/2009 (0.1); 9/30/2009 (0.1); 12/15/2009 (0.1); 12/29/2010 (0.2); 7/13/2010 (0.5); 7/14/2010 (0.1); 7/15/2010 (0.2); 7/26/2010 (0.1); 9/23/2010 (0.1); 10/4/2010 (0.1); 10/5/2010 (0.1); 12/30/2010 (0.1); 2/2/2011 (0.1); 4/23/2011 (0.1); 4/25/2011 (0.1); 4/26/2011 (0.1); 4/29/2011 (0.2); 5/27/2011 (0.1); 6/14/2011 (0.1); 6/22/2011 (0.1); 6/28/2011 (0.1); 8/9/2011 (0.1); 1/16/2012 (0.3); 1/17/2012 (0.2); 2/28/2012 (0.1); 2/29/2012 (0.1); 3/2/2012 (0.1); 5/31/2012 (0.1); 6/4/2012 (0.1); 12/3/2012 (0.1); 12/17/2012 (0.3); 2/12/2013 (0.1); 2/21/2013 (0.1); 3/6/2013 (0.1); 4/22/2013 (0.1); 6/6/2013 (0.1); 6/21/2013 (0.1); 6/27/2013 (0.1); 7/9/2013 (0.1); 7/11/2013 (0.1); 7/12/2013 (0.1); 8/15/2013 (0.1); 8/22/2013 (0.1); 9/6/2013 (0.1); 9/11/2013 (0.1); 10/3/2013 (0.3); 10/4/2013 (0.1); 10/5/2013 (0.2); 10/7/2013 (0.1); 10/8/2013 (0.2); 10/10/2013 (0.1); 10/15/2013 (0.1); 10/16/2013 (0.1); 10/17/2013 (0.1); 10/29/2013 (0.2); 11/25/2013 (0.2); 11/27/2013 (0.1); 12/2/2013 (0.1); 12/7/2013 (0.1); 1/3/2014 (0.1); 1/6/2014 (0.2); 1/9/2014 (0.3); 1/14/2014 (0.2); 1/17/2014 (0.1); 1/22/2014 (0.1); 1/26/2014 (0.1); 1/27/2014 (0.2); 1/28/2014 (0.1); 3/4/2014 (0.1); 4/17/2014 (0.1); 8/14/2014 (0.1); 9/2/2014 (0.1); 9/19/2014 (0.1); 11/10/2014 (0.3); 11/13/2014 (0.6); 1/23/2015 (0.1); 2/26/2015 (0.1); 3/4/2015 (0.1); 3/17/2015 (0.1); 8/26/2015 (0.1); 9/1/2015 (0.1).

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# EXHIBIT N

# PWS-516

**RESOLUTION NO. R-14-11 (9/23/2014)**

**BE IT RESOLVED** by the Board of Directors of Antelope Valley-East Kern Water Agency that the Rules and Regulations for Distribution of Water be amended, by amending Section 12. WATER RATES AND CHARGES, effective January 1, 2015 as follows:

**WATER RATES**

Page 1

**ANTELOPE VALLEY-EAST KERN WATER AGENCY  
WHOLESALE WATER RATES AND CHARGES  
EFFECTIVE JANUARY 1, 2015**

**12. WATER RATES AND CHARGES**

**(a)**

**FOR MUNICIPAL AND INDUSTRIAL WATER DELIVERED TO CONSUMERS  
UNDER TERMS OF WATER SERVICE AGREEMENTS**

<u>Year</u>	<u>Treated Water Delivery Charge</u> <sup>†</sup> \$/AF	<u>Untreated Water Delivery Charge</u> \$/AF
2015	451.00 (225.50/mo. min.)	310.00 (155.00/mo. min.)

<sup>†</sup> Summer/Winter Rate option removed for 2015 Treated Water Rate.

**WATER RATES**

Page 2

(a-1)

**FOR TREATMENT & DELIVERY OF  
PALMDALE WATER DISTRICT ALLOCATION**

<u>Year</u>	<u>Treated Water Delivery Charge</u> \$/AF
2015 <sup>1</sup>	483.00 (241.50/mo. min.)

(a-2)

**FOR TREATMENT AND DELIVERY OF  
MOJAVE WATER AGENCY ALLOCATION**

<u>Year</u>	<u>Treated Water Delivery Charge</u> \$/AF	<u>Treated Water Capacity Charge <sup>2</sup></u> \$/AF	<u>Rebate to Mojave WA <sup>3</sup></u> \$/AF
2015	1,088.00	180.93	414.00

<sup>1</sup> Estimated 2015 State Variable: \$192.00/AF. Actual charges subject to specific terms of Agreement.

<sup>2</sup> Rate to be calculated regularly based on CPI Index as per Agreement.

<sup>3</sup> Estimated Rate Shown. Actual Rate to be Determined Prior to January 1, 2015.

**WATER RATES**

Page 3

(a-3)

**FOR MUNICIPAL & INDUSTRIAL WATER  
DELIVERED TO MAIN BASE AT EDWARDS AFB**

<u>Year</u>	<u>Treated Water Delivery &amp; Capacity Charge <sup>1</sup></u> \$/AF
2015	987.00

(a-4)

**FOR MUNICIPAL & INDUSTRIAL WATER  
DELIVERED TO PHILLIPS LAB AT EDWARDS AFB**

<u>Year</u>	<u>Treated Water Delivery Charge <sup>1</sup></u> \$/AF
2015	1,030.00

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<sup>1</sup> Estimate rate shown. Actual charges subject to specific terms of agreement.

**WATER RATES**

Page 4

(b)

**FOR AGRICULTURAL WATER DELIVERED TO CONSUMER**  
**UNDER TERMS OF WATER SERVICE AGREEMENTS**  
**FROM THE CALIFORNIA AQUEDUCT THROUGH CONSUMER-OWNED FACILITIES**

<u>Year</u>	<u>Water Availability</u> <u>Charge</u> \$/AF	<u>Untreated Water</u> <u>Delivery</u> <u>Charge</u> \$/AF
2015	150.00	300.00

(b-1)

**FOR AGRICULTURAL WATER DELIVERED TO CONSUMER**  
**UNDER TERMS OF WATER SERVICE AGREEMENTS**  
**FROM AGENCY-OWNED FACILITIES**

<u>Year</u>	<u>Water Availability</u> <u>Charge</u> \$/AF	<u>Treated Water</u> <u>Delivery Charge</u> \$/AF	<u>Untreated Water</u> <u>Delivery Charge</u> \$/AF
2015	122.00	437.00 (218.50/mo. min.)	304.00 (152.00/mo. min.)

## **WATER RATES**

Page 5

(c-2)

**GROUNDWATER BANKING/STORAGE**  
**PRICE FOR UNTREATED WATER TO BE STORED IN THE**  
**ANTELOPE VALLEY FOR USE WITHIN AVEK BOUNDARIES**  
**BY DIRECT OR IN-DIRECT (IN-LIEU) RECHARGE**  
**Effective April 1, 2014 – March 31, 2015**

<b><u>Year</u></b> <sup>1</sup>	<b><u>Untreated Water</u></b> <b><u>Delivery Charge</u></b> <sup>2</sup> \$/AF
2015	260.00

(c-3)

**GROUNDWATER BANKING/STORAGE**  
**PRICE FOR TREATED WATER TO BE STORED**  
**IN THE ANTELOPE VALLEY**  
**BY DIRECT RECHARGE, INCLUDING AQUIFER STORAGE & RECOVERY (ASR)**

<b><u>Year</u></b>	<b><u>Treated Water</u></b> <b><u>Delivery Charge</u></b> <sup>4</sup> \$/AF
2015 Winter Season <sup>3</sup>	386.00

<sup>1</sup> The Groundwater Banking / Storage Rate will be in effect from April 1, 2014 through March 31, 2015. The next annual rate will be set by March 2015.

<sup>2</sup> Water Rate to be based on the variable rate charges indicated to AVEK on the January Department of Water Resources (DWR) invoice, including Variable O & M Power, Variable Transportation, and Off-Aqueduct, plus an overhead factor to be determined by the AVEK Board annually.

<sup>3</sup> Winter Season: January – May, October – December. The 12 (c-3) ASR Rate is available only during the winter period.

<sup>4</sup> Water Rate to be set at \$65.00/AcFt less than the Section 12(a) Treated Water Rate. As shown: The Treated Water Rate = \$451.00/AcFt, therefore the 12 (c-3) ASR Rate is: \$451.00 - \$65.00 = \$386.00/AcFt.



(c-4)

**FOR DRY-YEAR WATER PURCHASE PROGRAM**  
**WATER DELIVERY TO CONSUMER UNDER TERMS OF AGREEMENT**

<u>Year</u>	<u>Water Delivery Charge <sup>1</sup> \$/AF</u>
2015	800.00

<sup>1</sup> Estimate rate shown. Actual charges subject to specific terms of agreement.

# EXHIBIT O

**COPY**

3/13/07

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COUNTY WATERWORKS DISTRICT NO. 40

[See Next Page For Additional Counsel]

**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

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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk

By A.E. LaFleur-Clayton Deputy

Judicial Council Coordination No. 4408

**CLASS ACTION**

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

[Code Civ. Proc., § 382]

**[PROPOSED] FIRST-AMENDED CROSS-  
COMPLAINT OF PUBLIC WATER  
SUPPLIERS FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND  
ADJUDICATION OF WATER RIGHTS**

**[PROPOSED] FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS**

0973

JA 160310

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1 Cross-Complainants California Water Service Company, City of Lancaster, City of  
2 Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40,  
3 Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District  
4 and Quartz Hill Water District (collectively, the "Public Water Suppliers") allege:

### 5 INTRODUCTION

6  
7 1. This cross-complaint seeks a judicial determination of rights to all water within the  
8 adjudication area of the Antelope Valley Groundwater Basin as determined by the Court's Orders  
9 in this case (the "Basin"). An adjudication is necessary to protect and conserve the limited water  
10 supply that is vital to the public health, safety and welfare of all persons and entities that depend  
11 upon water from the Public Water Suppliers. For these reasons, the Public Water Suppliers file  
12 this cross-complaint to promote the general public welfare in the Antelope Valley; protect the  
13 Public Water Suppliers' rights to pump groundwater and provide water to the public; protect the  
14 Antelope Valley from a loss of the public's water supply; prevent degradation of the quality of  
15 the public groundwater supply; stop land subsidence; and avoid higher water costs to the public.

### 16 CROSS-COMPLAINANTS

17  
18 2. California Water Service Company is a California corporation which extracts  
19 groundwater from the Basin to serve customers within the Basin.

20  
21 3. The City of Lancaster is a municipal corporation located in the County of Los  
22 Angeles, and which produces and receives water for reasonable and beneficial uses, including  
23 overlying uses. The City of Lancaster further provides ministerial services to mutual water  
24 companies that produce groundwater from the Basin.

25  
26 4. The City of Palmdale is a municipal corporation in the County of Los Angeles.  
27 The City of Palmdale receives water from the Basin.



1           5.     Littlerock Creek Irrigation District is a public agency which extracts groundwater  
2 from the Basin to serve customers within the Basin.

3  
4           6.     Los Angeles County Waterworks District No. 40 is a public agency governed by  
5 the Los Angeles County Board of Supervisors. District 40 has been lawfully organized to  
6 perform numerous functions, including providing Basin groundwater to the public in a large  
7 portion of the Antelope Valley. To this end, District 40 has constructed, maintained and operated  
8 a public waterworks system to supply water to the public.

9  
10          7.     Palmdale Water District is an irrigation district organized and operating under  
11 Division 11 of the California Water Code. Palmdale Water District extracts groundwater from  
12 the Basin for delivery to customers.

13  
14          8.     Palm Ranch Irrigation District Palm Ranch Irrigation District is a public agency  
15 which extracts groundwater from the Basin to serve customers within the Basin.

16  
17          9.     Rosamond Community Services District provides water to more than 3,500  
18 residents of Kern County for domestic uses, fire protection, and irrigation. Rosamond has drilled  
19 and equipped wells to pump groundwater from the Basin. Rosamond has constructed, maintained  
20 and operated a public waterworks system to supply water to the public.

21  
22          10.    Quartz Hill Water District is a county water district organized and operating under  
23 Division 12 of the California Water Code. Quartz Hill extracts groundwater from the Lancaster  
24 Sub-basin of the Antelope Valley Groundwater Basin for delivery to customers.

25  
26                   **CROSS-DEFENDANTS**

27          11.    The following persons and/or entities are the owners of, and/or are beneficial  
28 interest holders in real property within the geographic boundaries of the Basin. These persons



LOW OFFERED BY  
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1 Kagon as Trustee for the Kagon Trust, Jack D. Kahlo, Cheng Lin Kang, Herbert Katz, Herbert  
2 Katz as Trustee for the Katz Family Trust, Marianne Katz, Lilian S. Kauffman, Lilian S.  
3 Kaufman as Trustee for the Kaufman Family Trust, Kazuko Yoshimatsu, Barbara L. Keys,  
4 Barbara L. Keys as Trustee of the Barbara L. Keys Family Trust, Billy H. Kim, Illy King, Illy  
5 King as Trustee of the Illy King Family Trust, Kootenai Properties, Inc., Kutu Investment Co.,  
6 Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee  
7 of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Pares A. Lahoud, Eva Lai, Paul Lai, Ying  
8 Wah Lam, Land Business Corporation, Richard E. Landfield, Richard E. Landfield as Trustee of  
9 the Richard E. Landfield Trust, Lawrence Charles Trust, William Lewis, Mary Lewis, Pei Chi  
10 Lin, Man C. Lo, Shiung Ru Lo, Lyman C. Miles, Lyman C. Miles as Trustee for the Miles Family  
11 Trust, Malloy Family Partners LP, Mission Bell Ranch Development, Barry S. Munz, Kathleen  
12 M. Munz, Terry A. Munz, M.R. Nasir, Souad R. Nasir, Eugene B. Nebeker, Simin C. Neman,  
13 Henry Ngo, Frank T. Nguyen, Juanita R. Nichols, Oliver Nichols, Oliver Nichols as Trustee of  
14 the Nichols Family Trust, Owl Properties, Inc., Palmdale Hills Property LLC, Norman L.  
15 Poulsen, Marilyn J. Prewoznik, Marilyn J. Prewoznik as Trustee of the Marilyn J. Prewoznik  
16 Trust, Elias Qarmout, Victoria Rahimi, R and M Ranch, Inc., Patricia A. Recht, Veronika Reinelt,  
17 Reinelt Rosenloecher Corp. PSP, Patricia J. Riggins, Patricia J. Riggins as Trustee of the Riggins  
18 Family Trust, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family  
19 Trust, Roman Catholic Archbishop of Los Angeles, Romo Lake Los Angeles Partnership,  
20 Rosemount Equities LLC Series, Royal Investors Group, Royal Western Properties LLC, Oscar  
21 Rudnick, Rebecca Rudnick, Santa Monica Mountains Conservancy, Marygrace H. Santoro,  
22 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, San Yu Enterprises,  
23 Inc., Daniel Saparzadeh, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the  
24 Stathatos Family Trust, Seven Star United LLC, Mark H. Shafron, Robert L. Shafron, Kamran S.  
25 Shakib, Donna L. Simpson, Gareth L. Simpson, Gareth L. Simpson as Trustee of the Simpson  
26 Family Trust, Soaring Vista Properties, Inc., State of California, George C. Stevens, Jr., George  
27 C. Stevens, Jr. as Trustee of the George C. Stevens, Jr. Trust, George L. Stimson, Jr., George L.  
28 Stimson, Jr. as Trustee of the George L. Stimson, Jr. Trust, Tejon Ranch, Mark E. Thompson A P



1 C Profit Sharing Plan, Tierra Bonita Ranch Company, Tiong D. Tiu, Beverly J. Tobias, Beverly J.  
2 Tobias as Trustee of the Tobias Family Trust, Jung N. Tom, Wilma D. Trueblood, Wilma D.  
3 Trueblood as Trustee of the Trueblood Family Trust, Unison Investment Co., LLC, Delmar D.  
4 Van Dam, Gertrude J. Van Dam, Keith E. Wales, E C Wheeler LLC, William Bolthouse Farms,  
5 Inc., Alex Wodchis, Elizabeth Wong, Mary Wong, Mike M. Wu, Mike M. Wu as Trustee of the  
6 Wu Family Trust, State of California 50<sup>th</sup> District and Agricultural Association, and U.S. Borax,  
7 Inc.

8  
9 12. The Public Water Suppliers are informed and believe, and thereon allege, that  
10 cross-defendant Roes 1 through 100,000 are the owners, lessees or other persons or entities  
11 holding or claiming to hold ownership or possessory interests in real property within the  
12 boundaries of the Basin; extract water from the Basin; claim some right, title or interest to water  
13 located within the Basin; or that they have or assert claims adverse to the Public Water Suppliers'  
14 rights and claims. The Public Water Suppliers are presently unaware of the true names and  
15 capacities of the Roe cross-defendants, and therefore sue those cross-defendants by fictitious  
16 names. The Public Water Suppliers will seek leave to amend this cross-complaint to add names  
17 and capacities when they are ascertained.

#### 18 19 CLASS ACTION ALLEGATIONS

20 13. The Public Water Suppliers bring this action against all persons similarly situated.  
21 The class will be composed of all owners of land within the adjudication area that is not within  
22 the service area of a public entity, public utility, or mutual water company. The persons in this  
23 class are so numerous, consisting of approximately 65,000 parcels, that the joinder of all such  
24 persons is impracticable and that the disposition of their claims in a class action rather than in  
25 individual actions will benefit the parties and the court.

26  
27 14. There is a well-defined community of interests in the questions of law and fact  
28 affecting the defendant class members in that they each allege an identical overlying right to take

1 native groundwater from a common supply for their reasonable and beneficial use. As they each  
2 seek a common right, they have predominantly common issues of fact and law. Additionally,  
3 each class member will have common defenses against competing water rights including a claim  
4 by the United States that it has a Federal Reserved right. These questions of law and fact  
5 predominate over questions that affect only the individual class members. The claims and  
6 defenses of the class members and the class representative are typical of those of the class and the  
7 class representative will fairly and adequately represent the interests of the class.

8  
9 **THE UNITED STATES IS A NECESSARY PARTY TO THIS ACTION**

10 15. This is an action to comprehensively adjudicate the rights of all claimants to the  
11 use of a source of water located entirely within California, i.e., the Basin, and for the ongoing  
12 administration of all such claimants' rights.

13  
14 16. The Public Water Suppliers are informed and believe, and on that basis allege, that  
15 the United States claims rights to the Basin water subject to adjudication in this action by virtue  
16 of owning real property overlying the Basin, including Edwards Air Force Base.

17  
18 17. For the reasons expressed in this cross-complaint, the United States is a necessary  
19 party to this action pursuant to the McCarran Amendment, 43 U.S.C. § 666.

20  
21 18. Under the McCarran Amendment, the United States, as a necessary party to this  
22 action, is deemed to have waived any right to plead that the laws of California are not applicable,  
23 or that the United States is not subject to such laws by virtue of its sovereignty.

24  
25 19. Under the McCarran Amendment, the United States, as a necessary party to this  
26 action, is subject to the judgments, orders and decrees of this Court.

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**HISTORY OF THE ANTELOPE VALLEY GROUNDWATER BASIN**

20. For over a century, California courts have used the concept of a groundwater basin to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined lateral and vertical boundaries.

21. The Antelope Valley Groundwater Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of the City of Los Angeles. The Basin encompasses about 1,000 square miles in both Los Angeles and Kern Counties, and is separated from the northern part of the Antelope Valley by faults and low-lying hills. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains. The Basin generally includes the communities of Lancaster, Palmdale and Rosamond as well as Edwards Air Force Base.

22. Various investigators have studied the Antelope Valley and some have divided the Basin into "sub-basins." According to the Public Water Suppliers' information and belief, to the extent the Antelope Valley is composed of such "sub-basins," they are sufficiently hydrologically connected to justify treating them as a single source of water for purposes of adjudicating the parties' water rights.

23. Before public and private entities began pumping water from the Basin, its natural water recharge balanced with water discharged from the Basin. Its water levels generally remained in a state of long-term equilibrium. In approximately 1915, however, agricultural uses began to pump groundwater and since then, greatly increased agricultural pumping has upset the Basin's groundwater equilibrium causing a continuous decline in the Basin's groundwater storage.

24. Although private agricultural entities temporarily curtailed their pumping activities when groundwater levels were extremely low, agricultural pumping has increased overall during

1 the past decade. During the same time, urbanization of the Antelope Valley has resulted in  
2 increased public demand for water.

3  
4 25. Groundwater pumping in the Basin has never been subject to any limits. This lack  
5 of groundwater management caused the Basin to lose an estimated eight million acre feet of water  
6 over the past eighty years.

7  
8 26. Uncontrolled pumping caused repeated instances of land subsidence. It is the  
9 sinking of the Earth's surface due to subsurface movement of earth materials and is primarily  
10 caused by groundwater pumping. The Public Water Suppliers are informed and believe, and  
11 thereupon allege, that portions of the Basin have subsided as much as six feet because of  
12 chronically low groundwater levels caused by unlimited pumping. The harmful effects of land  
13 subsidence observed in the Basin include loss of groundwater storage space, cracks and fissures  
14 on the ground's surface, and damage to real property. Land subsidence problems continue and  
15 will continue because of unlimited pumping.

16  
17 27. The declining groundwater levels, diminished groundwater storage, and land  
18 subsidence damage the Basin, injure the public welfare, and threaten communities that depend  
19 upon the Basin as a reliable source of water. These damaging effects will continue, and likely  
20 worsen until the court establishes a safe yield for the Basin and limits pumping to the safe yield.

21  
22 **PUBLIC WATER SUPPLIERS SUPPLEMENT AND COMMINGLE THEIR**  
23 **SUPPLEMENTAL SUPPLY OF WATER WITH BASIN WATER**

24 28. Due to the shortage of water in the Basin, certain Public Water Suppliers purchase  
25 State Water Project water from the Antelope Valley-East Kern Water Agency. State Project  
26 water originates in northern California and would not reach the Basin absent the Public Water  
27 Suppliers purchases.



29. Public Water Suppliers purchase State Project water each year. They deliver the State Project water to their customers through waterworks systems. The Public Water Suppliers' customers use the State Project water for irrigation, domestic, municipal and industrial uses. After the Public Water Suppliers' customers use the water, some of the imported State Project water commingles with other percolating groundwater in the Basin. In this way, State Project water augments the natural supply of Basin water.

30. Public Water Suppliers depend on the Basin as their source of water. But for the Public Water Suppliers' substantial investment in State Project water, they would need to pump additional groundwater each year. By storing State Project water or other imported water in the Basin, Public Water Suppliers can recover the stored water during times of drought, water supply emergencies, or other water shortages to ensure a safe and reliable supply of water to the public.

**THE BASIN HAS BEEN IN A STATE OF OVER-DRAFT FOR OVER FIVE YEARS**

31. The Public Water Suppliers are informed and believe, and upon that basis allege, that the Basin is and has been in an overdraft condition for more than five (5) consecutive years before the filing of this cross-complaint. During these time periods, the total annual demand on the Basin has exceeded the supply of water from natural sources. Consequently, there is and has been a progressive and chronic decline in Basin water levels and the available natural supply is being and has been chronically depleted. Based on the present trends, demand on the Basin will continue to exceed supply. Until limited by order and judgment of the court, potable Basin water will be exhausted and land subsidence will continue.

32. Upon information and belief, the cross-defendants have, and continue to pump, appropriate and divert water from the natural supply of the Basin, and/or claim some interest in the Basin water. The Public Water Suppliers are informed and believe, and upon that basis allege, that cross-defendants' combined extraction of water exceeds the Basin's safe yield.

1           33.    Upon information and belief, each cross-defendant claims a right to take water and  
2 threatens to increase its taking of water without regard to the Public Water Suppliers' rights.  
3 Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the  
4 Basin water supply as a whole. The deficiency creates a public water shortage.

5  
6           34.    Cross-defendants' continued and increasing extraction of Basin water has resulted  
7 in, and will result in a diminution, reduction and impairment of the Basin's water supply, and land  
8 subsidence.

9  
10          35.    Cross-defendants' continued and increasing extraction of Basin water has and will  
11 deprive the Public Water Suppliers of their rights to provide water for the public health, welfare  
12 and benefit.

13  
14           **THERE IS A DISPUTE AMONG THE PARTIES REGARDING THE EXTENT AND**  
15           **PRIORITY OF THEIR RESPECTIVE WATER RIGHTS**

16          36.    The Public Water Suppliers are informed and believe, and thereon allege, there are  
17 conflicting claims of rights to the Basin and/or its water.

18  
19          37.    The Public Water Suppliers are informed and believe, and thereon allege, that  
20 cross-defendants who own real property in the Basin claim an overlying right to pump Basin  
21 water. The overlying right is limited to the native safe yield of the Basin. The Public Water  
22 Suppliers allege that, because subsidence is occurring in the Basin, cross-defendants have been  
23 pumping, and continue to pump water in amounts greater than the Basin's safe yield.

24  
25          38.    The Public Water Suppliers are informed and believe, and thereon allege, they  
26 have appropriative and prescriptive rights to groundwater in the Antelope Valley Basin. The  
27 Public Water Suppliers are informed and believe, and thereon allege, they and/or their  
28 predecessors-in-interest, have pumped water from the Antelope Valley Basin for more than five

1 years prior to the filing of this cross-complaint.

2  
3 39. The Public Water Suppliers have pumped water from, and/or stored water in the  
4 Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its  
5 water for reasonable and beneficial purposes; and they have done so under a claim of right in an  
6 actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner  
7 for a period of time of at least five years and before filing this cross-complaint.

8  
9 40. To provide water to the public, the Public Water Suppliers have and claim the  
10 following rights:

11  
12 (A) The right to pump groundwater from the Antelope Valley Groundwater  
13 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the  
14 Public Water Suppliers in any year preceding entry of judgment in this action;

15 (B) The right to pump or authorize others to extract from the Antelope Valley  
16 Groundwater Basin an amount of water equal in quantity to that amount of water previously  
17 purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water  
18 Agency; and which has augmented the supply of water in the Basin in any year preceding entry of  
19 judgment in this action.

20 (C) The right to pump or authorize others to extract from the Antelope Valley  
21 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the  
22 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency  
23 which augments the supply of water in the Basin; and

24 (D) The right to pump or authorize others to extract from the Antelope Valley  
25 Basin an amount of water equal in quantity to that volume of water injected into the Basin or  
26 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)**

41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.

43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.

44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.

45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.



**SECOND CAUSE OF ACTION**

**(Declaratory Relief – Appropriative Rights – Against All Cross-Defendants)**

46. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive rights, they have appropriative rights to pump water from the Basin.

48. Appropriative rights attach to surplus water from the Basin.

49. Surplus water exists when the pumping from the Basin is less than the safe yield. It is the maximum quantity of water which can be withdrawn annually from a groundwater Basin under a given set of conditions without causing an undesirable result. "Undesirable results" generally refer to gradual lowering of the groundwater levels in the Basin, but also includes subsidence.

50. Persons and/or entities with overlying rights to water in the Basin are only entitled to make reasonable and beneficial use of the Basin's native safe yield.

51. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. The Public Water Suppliers allege, on information and belief, that all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping surplus water.

52. The Public Water Suppliers seek a judicial determination as to the Basin's safe yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-defendant to the safe yield and a determination of the rights of persons an/or entities with

overlying, appropriative and prescriptive rights to pump water from the Basin.

### THIRD CAUSE OF ACTION

#### **(Declaratory Relief – Physical Solution – Against All Cross-defendants)**

53. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

54. Upon information and belief, the Public Water Suppliers allege that cross-defendants, and each of them, claim an interest or right to Basin water, and further claim they can increase their pumping without regard to the rights of the Public Water Suppliers. Unless restrained by order of the court, cross-defendants will continue to take increasing amounts of water from the Basin, causing great and irreparable damage and injury to the Public Water Suppliers and to the Basin. Money damages cannot compensate for the damage and injury to the Basin.

55. The amount of Basin water available to the Public Water Suppliers has been reduced because cross-defendants have extracted, and continue to extract increasingly large amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater supply will be further depleted, thus reducing the amount of Basin water available to the public.

56. California law makes it the duty of the trial court to consider a "physical solution" to water rights disputes. A physical solution is a common-sense approach to resolving water rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through augmenting the water supply or other practical measures. The physical solution is a practical way of fulfilling the mandate of the California Constitution (Article X, section 2) that the water resources of the State be put to use to the fullest extent of which they are capable.



62. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute the contentions in Paragraphs 1 through 43, inclusive, of this cross-complaint. The Public Water Suppliers are informed and believe, and on that basis allege, that the majority of the cross-defendants pump groundwater from the Basin for agricultural purposes.

63. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions and to the amount of water the parties may pump from the Basin. The Public Water Suppliers also seek a declaration of their right to pump water from the Basin to meet their reasonable present and future needs, and that such rights are prior and paramount to the rights, if any, of cross-defendants to use Basin water for irrigation purposes.

#### **FIFTH CAUSE OF ACTION**

##### **(Declaratory Relief – Storage Of Imported Water – Against All Cross-defendants)**

64. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

65. The Public Water Suppliers purchase and use water from the State Water Project. State Project water is not native to the Basin. Importing State Project water decreases the Public Water Suppliers' need to pump water from the Basin. The Public Water Suppliers' purchase and delivery of State Project water is the reason it has been brought to the Basin. The Public Water Suppliers pay a substantial annual cost to import State Project water; this amount is subject to periodic increases.

66. The Public Water Suppliers allege there is underground space available in the Basin for storing imported State Project water.



67. As importers of State Project water, the Public Water Suppliers have the right to store imported State Project water underground in the Basin, and also have the sole right to pump or otherwise use such stored State Project water. The rights of cross-defendants, if any, are limited to the native supply of the Basin and to their own imported water. Cross-defendants' rights, if any, do not extend to water imported into the Basin by the Public Water Suppliers.

68. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute their contentions in Paragraphs 1 through 39, of this cross-complaint.

69. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions that they may store imported State Project water in the Basin, recapture such imported State Project water, and that they have the sole right to pump or otherwise use such imported State Project water.

#### **SIXTH CAUSE OF ACTION**

##### **(Declaratory Relief – Recapture Of Return Flows**

##### **From Imported Water Stored in The Basin – Against All Cross-defendants)**

70. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

71. Some of the State Project water typically returns and/or enters the Basin, and will continue to do so. This water is commonly known as "return flows." These return flows further augment the Basin's water supply.

72. The Public Water Suppliers allege there is underground space available in the Basin to store return flows from imported State Project water.

73. The Public Water Suppliers have the sole right to recapture return flows attributable to their State Project water, or such water imported on their behalf. The rights of cross-defendants, if any, are limited to the Basin's native supply and/or to their imported water, and do not extend to groundwater attributable to the Public Water Suppliers' return flows.

74. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute their contentions in Paragraphs 1 through 43 of this cross-complaint.

75. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions, and that they have the sole right to recapture return flows in the Basin, both at present and in the future.

#### **SEVENTH CAUSE OF ACTION**

##### **(Unreasonable Use Of Water - Against All Cross-Defendants Except Public Entity Cross-Defendants)**

76. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

77. The California Constitution (Article X, Section 2) provides the cardinal principle of California water law, superior to any water rights priorities and requires that water use not be unreasonable or wasteful. The reasonable use of water depends on the facts and circumstances of each case; what may be reasonable in areas of abundant water may be unreasonable in an area of scarcity; and, what is a beneficial use at one time may become a waste of water at a later time.

78. The Public Water Suppliers are informed and believe, and on that basis allege, that some cross-defendants' use of water is unreasonable in the arid Antelope Valley and therefore

1 constitutes waste, unreasonable use or an unreasonable method of diversion or use within the  
2 meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.

3  
4 79. An actual controversy has arisen between the Public Water Suppliers and cross-  
5 defendants. The Public Water Suppliers allege, on information and belief, that the cross-  
6 defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.

7  
8 80. The Public Water Suppliers seek a judicial declaration that cross-defendants have  
9 no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-  
10 defendants' rights, if any, must be determined based on the reasonable use of water in the  
11 Antelope Valley rather than upon the amount of water actually used.

12  
13 **EIGHTH CAUSE OF ACTION**

14 **(Declaratory Relief Re Boundaries Of Basin)**

15 91. The Public Water Suppliers re-allege and incorporate by reference each and all of  
16 the preceding paragraphs as though fully set forth herein.

17 92. An actual controversy has arisen between the Public Water Suppliers and cross-  
18 defendants, and each of them, regarding the actual physical dimensions and description of the  
19 Basin for purposes of determining the parties rights to water located therein. The Public Water  
20 Suppliers allege, on information and belief, that cross-defendants dispute the Public Water  
21 Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint.

22 93. The Public Water Suppliers seek a judicial determination as to the correctness of  
23 their contentions and a finding as to the actual physical dimensions and description of the Basin.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the Public Water Suppliers pray for judgment as follows:

26  
27 1. Judicial declarations consistent with the Public Water Suppliers' contentions in the  
28

1 First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in this cross-  
2 complaint;

3  
4 2. For preliminary and permanent injunctions which prohibit cross-defendants, and  
5 each of them, from taking, wasting or failing to conserve water from the Basin in any manner  
6 which interferes with the rights of the Public Water Suppliers to take water from or store water in  
7 the Basin to meet their reasonable present and future needs;

8  
9 3. For prejudgment interest as permitted by law;

10  
11 4. For attorney, appraisal and expert witness fees and costs incurred in this action;  
12 and

13  
14 5. Such other relief as the court deems just and proper.

15 Dated: January 10, 2007

BEST BEST & KRIEGER LLP

16  
17 By 

18 **JEFFREY V. DUNN**  
19 **STEFANIE D. HEDLUND**  
20 Attorneys for Cross-Complainants  
21 ROSAMOND COMMUNITY SERVICES  
22 DISTRICT and LOS ANGELES  
23 COUNTY WATERWORKS DISTRICT  
24 NO. 40

25  
26  
27  
28 ORANGE32819.1



**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 March 13, 2007, I served the within document(s):

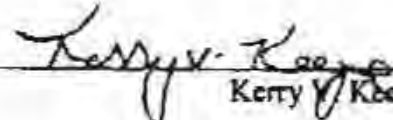
**FIRST-AMENDED CROSS COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS**

- ☒ 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 March 13, 2007, at Irvine, California.

  
Kerry V. Keefe

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF SANTA CLARA

Antelope Valley Groundwater Cases (JCCP 4408)

Plaintiff,

vs.

Defendant.

AND RELATED ACTIONS

Antelope Valley Groundwater Cases

Lead Case No. 1-05-CV-049053

Judge Jack Komer

PROOF OF SERVICE

Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Tue. March 13, 2007 at 2:40 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Tue. March 13, 2007 at 2:40 PM PDT

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Dated: March 13, 2007

For WWW.SCEFILING.ORG

Andy Jamieson

1 THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING SYSTEM - WWW.SCEFILING.ORG

2 Electronic Proof of Service  
Page 2

3 Document(s) submitted by Jeffrey Dunn of Best Best & Krieger LLP on Tue, March 13, 2007 at 2:40 PM PDT

4 1. 1st Amended Cross Complaint: First-Amended Cross-Complaint of Public Water Suppliers For Declaratory And Injunctive  
Relief And Adjudication of Water Rights

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

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

Defendant.

**PROOF OF SERVICE**  
**Electronic Proof of Service**

## AND RELATED ACTIONS

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Tue. March 15, 2016 at 4:29 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Tue. March 15, 2016 at 4:29 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

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

correct. Executed on March 15, 2016 at Oakland, California.

Dated: March 15, 2016

For WWW.SCEFILING.ORG

Andy Jamieson

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING SYSTEM - WWW.SCEFILING.ORG

Electronic Proof of Service  
Page 2

Document(s) submitted by Jeffrey Dunn of Best Best & Krieger, LLP on Tue. March 15, 2016 at 4:29 PM PDT

1. Decl in Support: DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF DISTRICT 40'S OPPOSITION TO WOODS CLASS' MOTION FOR ATTORNEY FEES, COSTS AND INCENTIVE AWARD

# **Exhibit O**

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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

**REPLY BRIEF IN SUPPORT OF  
MOTION FOR AWARD OF  
ATTORNEY FEES, COSTS AND  
INCENTIVE AWARD**

**[filed concurrently with Second  
Supplemental Declaration of  
Michael D. McLachlan.]**

Location: Dept. TBA  
Santa Clara Superior Court  
191 N. First Street  
San Jose, California  
Date: April 1, 2016  
Time: 1:30 p.m.



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 The Small Pumper Class (the “Class”) played a crucial role this this action. It  
4 secured permanent domestic pumping rights for over 4,100 residents of the Antelope  
5 Valley. It allowed the federal government—the Valley’s largest landowner—to  
6 participate in the groundwater basin’s management plan. And it spearheaded the  
7 efforts to get all claims resolved, either by way of agreement or proof. Plaintiff now  
8 seeks approval of an award of attorneys’ fees at a lodestar of \$3,348,160, with a  
9 multiplier of 2.5, and costs of \$76,639.48. (Supp. McLachlan Decl., ¶ 4.) Plaintiff also  
10 seeks an incentive award in the form of a more complete water right of 5 acre-feet per  
11 year or, alternatively, a monetary payment of \$25,000.

12 The Public Water Suppliers (“PWS”) contest the fee claim. They do this despite  
13 having previously acknowledged, in writing to the Court, that “the Class will benefit  
14 substantially” by way of the settlement. And they do this despite agreeing in the  
15 Stipulation for Judgment and Physical Solution to pay all reasonable fees and costs  
16 incurred by the Small Pumper class. The opposition arguments all fail. California law  
17 requires that class counsel be awarded “full and fair” compensation, not just for their  
18 time but for the contingent risk and delay that goes along with over eight years of  
19 heavily contested litigation. The case law on point is overwhelming. (See FN 13, supra.)

20 **II. THE ACTUAL HISTORY OF THE SMALL PUMPER CLASS.**

21 The PWS spend the first six pages of their brief detailing all of the work they did  
22 in this litigation – facts not relevant to this Motion – and recasting the Small Pumper  
23 Class as unnecessary, non-beneficial, and unsuccessful. The fact that Los Angeles  
24 County Waterworks District No. 40 (“D40”) and some of the other PWS did significant  
25 work in this coordinated litigation is not in dispute, nor is it germane to this Motion  
26 beyond the well-established fact that after supporting the formation of the Classes, the  
27 PWS fought the Classes tooth and nail for seven years.

1           **A.     The PWS Cross-Complaint Initiates a Comprehensive**  
2           **Adjudication and Asserts Claims Against the Class Members.**

3           In 1999 two sets of large agricultural interests filed suit against D40 and other  
4           PWS. For six years, the matter was litigated. On October 17, 2005, the PWS filed their  
5           first Doe Amendments, naming the United States and Edwards Air Force Base [D.E. 9.]  
6           On January 18, 2006, the PWS filed their Cross-complaint, which expressly named the  
7           United States and a number of other new parties. [D.E. 134.]

8           On January 10, 2007, the PWS filed their First Amended Cross-Complaint, which  
9           included 100,000 Roe Defendants, many thousands of which would be identified over  
10          the succeeding years. This First Amended Cross-Complaint included, for the first time,  
11          class allegations against approximately 65,000 landowners in the area of adjudication  
12          (the “AVAA”). This cross-complaint also asserted that PWS were intending to create a  
13          comprehensive adjudication and that the United States was a “necessary party to this  
14          action.” (Dunn. Decl., Ex. O (“First Amended Cross-Complaint”), 8:9-26 [D.E. 422].)  
15          The First Cause of Action in this cross-complaint was a prescription claim against all  
16          overlying landowners, including Class members. It also contained claims for a  
17          “municipal priority,” physical solution, and “unreasonable use of water,” among others,  
18          all of which were asserted against every private landowner. (*Id.*) This filing made clear  
19          that the PWS were pursuing claims hostile to the rights of the Class members, and until  
20          the 2015 settlement, the PWS did not surrender these adverse claims.

21           **B.     The PWS’ Failed Attempt to Certify a Defense Class.**

22           On the same day they filed the First Amended Cross-Complaint, the PWS filed a  
23           Motion for Class Certification, seeking to certify a defense class of “over 65,000”  
24           landowner parcels. [D.E. 420, 5:7-8.] That motion stated that “[t]he individual  
25           litigation cost for each parcel would be unduly burdensome . . .” (*Id.* at 5:10-11.) In that  
26           motion, the PWS sought to have the State of California as the representative for this  
27           defense class (*id.* at 14.), which the State of California opposed. [D.E. 461.] The State  
28           did “not have funds for extensive litigation.” (Dingman Decl., ¶ 7 [D.E. 460].)  
          Notwithstanding this, and in the face of opposition from the United States and many

1 other parties, the PWS continued to vigorously advocate for the formation of Classes.

2 The fundamental problem facing the PWS was the inability to find a  
3 representative for the defense class they proposed. Numerous hearings occurred in  
4 2007 without a resolution to this problem, which persisted well into 2008. (McLachlan  
5 Second Supp. Decl. (“2<sup>nd</sup> Supp. Decl.”) Ex. 13 (Hearing Transcript, March 12, 2007) 9:6-  
6 10:15; Ex. 14 (Hearing Transcript, April 16, 2007), 38:25-39:26; Ex. 16 (Hearing  
7 Transcript, May 21, 2007), 19:26-21:20; Ex. 15 (Hearing Transcript, August 11, 2008),  
8 43:12-44:15.) It was acknowledged by all that the case could not be litigated without the  
9 Class mechanism. (2<sup>nd</sup> Supp. Decl., ¶ 7, Ex. 16 28:17-28, 41:3-12.)

10 **C. The Plaintiff Classes Solve the Jurisdictional Problems.**

11 Shortly after the PWS filed their class complaint, Rebecca Willis filed her class  
12 action. [D.E. 445.] The PWS quickly acknowledged that a plaintiff class represented  
13 by Willis was a far superior way to proceed:

14 MR. DUNN: . . . The other part of the problem is if we are in fact looking at the  
15 Zlotnick slash Willis class action complaint as a mechanism for bringing in all of  
16 these parties, then it does in fact, I would have to concede, it takes the county and  
17 my client out of the position of sort of suing them . . .

18 So if the Court is sort of heading in that direction, of sort of looking at the  
19 existing Willis cross – class action complaint, as being sort of the mechanism as  
20 opposed to, say, the one that has been filed by the public water suppliers, **then**  
21 **that procedurally puts us in probably a slightly better – or maybe**  
22 **significantly better situation.**

23 (Ex. 14 (Hearing Transcript, April 16, 2007), 8:21-10:1 (emphasis added).)

24 Early in 2007, the Court and counsel acknowledged the conflict of interest  
25 between the dormant landowners and the small pumpers, and the need for separate  
26 counsel. (Ex. 16 (Hearing Transcript, May 21, 2007), 29:16-28.)

27 The Willis Class was certified on September 11, 2007, with the support of the  
28 PWS. [D.E. 841 & 802.] It took another full year until a Small Pumper class  
representative and counsel appeared and the Small Pumper Class was certified. [D.E.  
1865.] As with the Willis Class, the PWS supported the certification of the Small  
Pumper Class. [D.E. 1519, 4:2.] The only modest opposition the PWS made was to

1 request that the size of the Small Pumper Class be larger. (*Id.* at 6:6-15.)

2       The PWS were fully aware that they would be exposed to attorneys' fees at the  
3 outset, and that the Classes were brought as essentially defensive cases to defeat the  
4 PWS' prescription claims. (Ex. 15, 41:13-20.) If the Classes were not critical to this  
5 litigation – as the PWS now argue to be the case – then why would they so vigorously  
6 support the formation of the classes? The obvious answer is that it would have cost the  
7 PWS a lot of money to prosecute this comprehensive adjudication, assuming that was  
8 even possible without the Classes. If the cost of personally serving 65,000 parties is  
9 assumed to be only \$100 on average per person, the PWS would have spent  
10 \$6,500,000; if it were \$200, the cost would have been \$13,000,000 (assuming could  
11 even be done). (2<sup>nd</sup> Supp. Decl., ¶ 8.) This of course ignores the added litigation cost  
12 and time spent dealing with thousands of litigants. For example, if each of the known  
13 3,172 Small Pumper Class parcel owners took 15 minutes to establish their cases,  
14 including pumping and self-help, nearly 800 hours of trial time would be consumed.  
15 This would have consumed the better part of year in trial, and the PWS would have  
16 spent millions of dollars in attorneys' fees.

17       Beyond the procedural value, the Small Pumper Class played a critical  
18 substantive role in the litigation at all stages. For example, as the PWS admit, “the  
19 physical solution . . . could not have occurred without evidence of the parties respective  
20 groundwater pumping . . .” (D40 Opp., 3:15-16.) With regard to the Small Pumper  
21 Class, Class counsel spent a massive amount of time tackling this problem over many  
22 years, including extensive litigation with the PWS over the Court-appointed expert.

23       **D. For Years, The PWS Intentionally Chose to Perpetuate this**  
24       **Litigation in Favor of Pursing Their Prescription Claims**

25       Throughout their briefs, the PWS state or imply that all or most of the latter  
26 portions of the Small Pumper Class litigation was not necessary, and that Class Counsel  
27 somehow over-worked and over-billed the case for many years. What actually occurred  
28 is that the non-settling PWS defendants intentionally chose not to settle with the Class  
for many years, and instead persisted to litigate their adverse claims.

1 After the failed settlement hearing on June 16, 2011, at the Court's  
2 encouragement, counsel for D40 and Class counsel agreed to revise the settlement  
3 agreement in accord with the Court's reservations, and resubmit it. (2<sup>nd</sup> Supp. Decl., ¶  
4 9.)<sup>1</sup> Class counsel revised the agreement accordingly, but D40 changed its mind and  
5 refused to settle (in contrast to several other PWS who continued to prefer settlement).  
6 (*Id.*, ¶ 10.)

7 In the Spring of 2013, Class counsel had discussions with counsel for D40 in  
8 Court about a settlement, including using a class complaint against the landowners as  
9 leverage. D40 agreed to proceed. (*Id.* at ¶ 11.) The AV Materials case was filed on May  
10 23, 2013. That day, Class Counsel emailed all PWS to advise them of the settlement  
11 plans. (*Ibid.*, Ex. 18, p. 1) Counsel for BBK continued to express interest in the  
12 settlement plan. (*Ibid.*, Ex. 18, p. 2.) On June 18, Mr. Wellen reneged on D40's  
13 agreement to settle. (*Id.*, Ex. 18, p. 5.) On June 26, Class Counsel wrote to all the other  
14 PWS counsel on settlement, which correspondence also including a discussion of legal  
15 fees. (*Id.* at ¶ 12, Ex. 18, p. 6.) By August 15, the following had agreed to settle: Quartz  
16 Hill; Rosamond CSD; Palmdale Water District; Phelan; and the City of Lancaster. In an  
17 e-mail of that same day, Class Counsel again warned of future fee exposure. (Ex. 18,  
18 p.8.) On August 19, Cal Water agreed to settle. (*Id.* at ¶ 12, Ex. 18, p. 9.)

19 On October 17, Quartz Hill took the matter to their Board (after the preliminary  
20 approval motion was filed), and voted to pull out under pressure from D40. (*Id.* at ¶ 13,  
21 Ex. 18, p. 12.) On October 23, 2013, after the motion for preliminary approval had been  
22

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23 <sup>1</sup> None of the documents relevant to this section are identified as settlement  
24 communications, and some in fact are expressly identified not being settlement  
25 communications. In this circumstance, where not offered to prove liability, Courts can  
26 consider informal settlement communications made outside of mediation. (*Meister v.*  
27 *Regents of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 452; *Lofton v. Wells Fargo Home*  
28 *Mortgage* (2014) 230 Cal.App.4th 1050, 1069 (Evid. Code section 1152 does not bar use  
of documents for purposes other than to prove liability); *Robertson v. Fleetwood Travel*  
*Trailers of Cal., Inc.* (2006) 144 Cal.App.4th 785, 823 n.25 (same); *A.D. v. State of Cal.*  
*Highway Partrol* (9<sup>th</sup> Cir. 2012) 712 F.3d 446, 460-61 (settlement offers may be  
considered as evidence of the plaintiff's success in considering award of fees).)

1 filed, Cal Water pulled out via a formal notice filed with the Court. (*Id.* at ¶ 13.)

2 And so, all of the non-setting PWS defendants had multiple and continuing  
3 opportunities to settle, yet chose instead to litigate against the Class.<sup>2</sup> They should not  
4 now be heard to complain about the costs of their decisions – certainly not if the strong  
5 public policies favoring settlement are to be honored.

6 **III. AN AWARD OF FEES AND COSTS IS PROPER UNDER C.C.P § 1021.5**

7 **A. The Small Pumper Class Enforced An Important Right Affecting**  
8 **the Public Interest.**

9 The PWS argue that the Class did not enforce an important right affecting public  
10 policy. As a threshold matter, in their argument on the three pertinent factors, the PWS  
11 ignore the fact that the analysis is not separate but rather, overlapping and interrelated.  
12 For example, the Supreme Court has held that the larger the class of persons affected,  
13 the less important the fundamental right must be. (*Press v. Lucky Store, Inc.* (1983) 34  
14 Cal.3d 311, 320-21 (3,000 people obtaining access to one.) The reverse is also true.  
15 (*Ibid.*)

16 Setting aside the rights cited in the Motion, which the PWS ignore, it is difficult to  
17 imagine a right – excluding perhaps of personal freedom from imprisonment or free  
18 speech – more important than the right to access water. The Court can certainly take  
19 notice of the scientific fact that humans cannot survive without water, and that this right  
20 is so important that it takes up an entire section of the California Constitution (Section  
21 X).<sup>3</sup> The Small Pumper Class vindicated and preserved their own rights to access

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22  
23  
24 <sup>2</sup> The adversity of D40 to settlement ultimately caused a small group of parties to  
25 meet privately for settlement for many months. These efforts produced the global  
26 Judgment and Physical Solution that would later be approved by the Court. (2<sup>nd</sup> Supp.  
27 Decl., ¶ 15.)

28 <sup>3</sup> The public policy is embodied, in part, at Article 10, Sec. 2:

“It is hereby declared that because of the conditions prevailing in this State the  
general welfare requires that the water resources of the State be put to beneficial  
use to the fullest extent of which they are capable, and that the waste or  
unreasonable use or unreasonable method of use of water be prevented, and that

1 groundwater, in perpetuity, and more broadly, vindicated the state mandate and public  
2 policy that water resources not be wasted, i.e. as the Court has observed, without the  
3 Small Pumper Class, it would not have been possible to conduct a comprehensive  
4 adjudication and to impose a global physical solution that will, according to the experts,  
5 preserve the groundwater basin for generations to come.

6 Plaintiff could cite a hundred or more cases awarding attorneys' fees that involve  
7 public rights which any reasonable person would agree are of lesser import and  
8 magnitude than those at issue here. Because the Court has previously ruled favorably on  
9 this element, Plaintiff will just cite a few analogous cases. In *Environmental Protection*  
10 *Information Center v. Dept. of Forestry*, the Court held that the creation of a "single,  
11 integrated [sustained yield plan]" for logging was an important right. ((2010) 190  
12 Ca.App.4<sup>th</sup> 217, 233-34.) There are many CEQA cases with similar, but less widespread  
13 impacts as the instant action. (See, e.g., *Center For Biological Diversity v. County of*  
14 *San Bernardino* (2010) 185 Cal.App.4<sup>th</sup> 866, 895 (enforcing air quality and water supply  
15 is important right); *RiverWatch v. County of San Diego* (2009) 175 Cal.App.4<sup>th</sup> 768, 782  
16 ("With drought a persistent threat in California," forcing the County to secure a water  
17 supply involves an important right).)

18 The Class itself achieved its primary goal: preventing the PWS from taking its  
19 water through prescription. Certainly, it is in the larger interest of all public citizens to  
20 vindicate the right from having one's property interest invaded by the government  
21 (principles that are reflected in both the state and federal Constitutions). (*Pacific Legal*  
22 *Foundation v. Cal. Coastal Comm'n* (1982) 33 Cal.3<sup>rd</sup> 158, 167 ("we have no doubt that  
23 the right to be free from the deprivation of private property interests in an arbitrary  
24 manner may rise to the level of an "important right affecting public interest").)

25  
26  
27 the conservation of such waters is to be exercised with a view to the reasonable  
28 and beneficial use thereof in the interest of the people  
and for the public welfare. . . ."



One important thing that the PWS ignore in all of their 1021.5 arguments is the very broad spectrum of rights and interests that can form the basis of a successful 1021.5 action. Such rights can be Constitutional, statutory, or common law – as is the case with the Class’ self-help rights against the PWS prescription claims (among other rights endowed upon overlying landowners by the courts). (*Woodland Hills Residents Ass’n v. City Council* (1979) 23 Cal.3d 917, 925; *Notrica v. State Compensation Ins. Fund* (1999) 70 Cal.App.4<sup>th</sup> 911, 954 (fees awarded for enforcing common law rights to easement).)

**B. The Small Pumper Class Conferred A Significant Benefit on the General Public or a Large Class of Persons.**

The PWS next claim that the Class did not obtain a benefit for the general public or a large number of people. (D40 Opp., 9:1-18.) The PWS, who encouraged the formation of the Classes so they could achieve a comprehensive adjudication, seem to base their position on this issue depending on which way the wind blows on any given day. In 2011, the PWS argued to the Court on a settlement involving substantially identical terms that “the Class will benefit substantially.” (Mot. For Prelim. Approval of Class Settlement, 7:16-17 (May 2, 2011) [D.E. 4422] (each class member may pump up to 3 acre-feet per year).) Today, the Class did not benefit.

Among the many fantastic statements D40 offers is that “[t] the physical solution would have occurred regardless of the Wood Class Counsel’s participation in these proceedings . . . .” (D40 Opp., 9:16-18.) D40 suggests that, in absence of the Class, the Court somehow would have obtained McCarran jurisdiction over the United States,<sup>4</sup> would have determined the rights of over 4,100 small pumpers representing the vast majority of groundwater wells in the AVAA, and that the Judgment and Physical

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<sup>4</sup> As noted in the Motion and the Declaration of David Zlotnick, this case sat ‘dead in the water’ for over a year because the PWS could not certify a defense class, and refused to otherwise spend the many millions of dollars required to personally serve more than 65,000 landowners who eventually became members of the Willis and Small Pumper Classes. There can be no dispute that without the classes, there would be no comprehensive adjudication, and certainly no jurisdiction over the United States. The value of a physical solution in absence of the Classes is highly dubious.

1 Solution – initially developed in large part by Class Counsel with the express exclusion  
2 of D40 (2<sup>nd</sup> Supp. Decl., ¶ 15) – would have somehow occurred after D40 spent years  
3 trying to kill settlement efforts. (2<sup>nd</sup> Supp. Decl., ¶ 15.) To the contrary, the benefits  
4 conferred on the general public, the class members, and even the PWS themselves, are  
5 enormous.

6 The benefit to the public has been addressed by this Court in formal orders  
7 (Dunn Decl., Ex. B, 5:25-6:5; McLachlan Decl., Ex. 4, 1:20-22), and in the Motion, so  
8 Plaintiff will not address that further. In addition, a benefit to only the Class members  
9 would be *is* sufficient to establish a benefit to “a large number of people.” The record  
10 reflects that there are over 4,100 members of the Class – a large number of people under  
11 any definition. (*Monterey/Santa Cruz County Bldg. & Constr. Council v. Cypress*  
12 *Marina Heights LP* (2011) 191 Cal.App.4<sup>th</sup> 1500, 1523 (“hundreds of construction  
13 workers is a ‘large class of persons.’”); *Robinson v. City of Chowchilla* (2011) 202  
14 Cal.App.4<sup>th</sup> 382, 396 (1400 police chiefs is a large class of persons); *Press v. Lucky*  
15 *Stores, Inc.* (1983) 34 Cal.3d. 311, 321 n.10 (action affecting 3,000 persons).)

16 **C. The Necessity and Financial Burden of Private Enforcement**  
17 **Supports a Fee Award.**

18 The PWS cite valid law on this issue, but then ignore it by analyzing the benefits  
19 improperly. First, they attempt to monetize water rights that the Class Members, by  
20 Court Order, cannot transfer or sell. While the rights have substantial value, this is not a  
21 situation where the class action created a common fund.

22 Second, the PWS analysis of the classwide benefit is misplaced. The PWS view  
23 the Class as if it were an individual or some organization from which Class Counsel  
24 could collect attorneys’ fees. (D40 Opp., 11:10-19.) The Class is not a legal entity, and  
25 the absent Class members are not parties to the lawsuit. (*Luckey v. Superior Court*  
26 (2014) 228 Cal.App.4<sup>th</sup> 81, 99.) While the Court may obtain jurisdiction over the absent  
27 class members to adjudicate their rights, not even that is certain at the outset of any  
28 class litigation because an order certifying the class must be secured.

1 The cases define the burden as that of the “individual” plaintiff. Indeed, the legal  
2 test itself is specifically structured as such:

3 ‘An award on the ‘private attorney general’ theory is appropriate when the cost of  
4 the claimant’s legal victory transcends **his personal interest**, that is when the  
5 necessity of pursuing the lawsuit placed a burden on the plaintiff ‘**out of  
proportion to his individual stake** in the matter.’

6 (*Conservatorship of Whitley* (2010) 50 Cal.5<sup>th</sup> 1206, 1215 (emphasis added).) California  
7 Courts are careful to distinguish between individuals and entities when assessing this  
8 element. In *Police Protective League*, the court noted that while a union could afford to  
9 bring the litigation on behalf of its members, the individual members themselves could  
10 not afford to do so. (*Los Angeles Police Protective League v. City of Los Angeles* (1986)  
11 188 Cal.App.3d 1, 29.) Further, the PWS have not cited any cases suggesting that the  
12 Court should conduct this analysis on a classwide basis.

13 In short, the question is whether the burden on Richard Wood was out of  
14 proportion to the benefits he received. Clearly, with potential legal fees ranging in  
15 excess of \$7 million dollars (and still climbing with the appeals), the value of Richard  
16 Wood’s property in its entirety is eclipsed many times over. Further, whatever  
17 monetary value could be assigned to Richard Wood’s individual benefit, or that of the  
18 Class for that matter, must be substantially discounted due to the probability of success  
19 at the outset. (*Whitley* at 1215.) And, the balancing of the individual benefits with the  
20 costs in not proportional; it must reflect the magnitude of the public benefits:

21 Accordingly, it will be more important to offer the bounty of a court-awarded fee  
22 than where the public benefits are less significant. Thus, the courts should be  
23 willing to authorize fees on a lesser showing of need than they might where the  
24 public benefits are less dramatic. **This means the court sometimes should  
award fees even in situations where the litigant's own expected  
benefits exceed its actual costs by a substantial margin.**

25 (*Police Protective League*, 188 Cal.App.3d at 10 (emphasis added).) As noted below, the  
26 rather massive public benefits accrued from the Small Pumper Class would require an  
27 individual benefit substantially in excess of the costs of pursuing this action. For these  
28 reasons, this third element is satisfied.

1           **D.     The PWS Did Initiate an Action That Compromised the Rights of**  
2           **a Large Group of Persons – The Class.**

3           It is undisputed that the PWS asserted numerous claims adverse to the interests  
4           of the more than 4,100 Class Members, including prescriptive rights. The PWS  
5           maintained those claims, and actively litigated against the interests of the Class until  
6           they released those adverse claims by settlement in 2015. Had the Class not been  
7           formed to defend against these adverse claims, the right of the Class Members would  
8           have been adversely impacted by prescription, and potentially worse outcomes. Any  
9           such adverse impact to the rights of the Class could only have occurred under the PWS  
10          initiation – no other party filed claims against the Class or any of its members.

11           **E.     The Class Is a Prevailing Party.**

12          The Supreme Court has held that the definition of a “prevailing party” for  
13          purposes of fee-shifting statutes is pragmatic and flexible, depending more on the  
14          impact of the action than on the manner in which it is resolved. (*Graham v.*  
15          *DiamlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 565; *Folsom v. Butte County Ass’n of*  
16          *Gov’ts* (1982) 32 Cal.3d 668, 685 (if party has obtained some relief from “benchmark  
17          conditions” challenged in lawsuit and that relief is attributable in some way to the  
18          lawsuit, then the party is a prevailing party).) “It is settled that ‘plaintiffs may be  
19          considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on *any*  
20          *significant issue* in litigation which achieves *some of the benefit* the parties sought in  
21          bringing suit.’” (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4<sup>th</sup> 140, 153  
22          (emphasis original).)

23          The success the Class has achieved is discussed at length in this brief and the  
24          Motion. For purposes of this argument, the fact that Plaintiff and Class defeated the  
25          PWS’ prescription claims is more than sufficient to confer prevailing party status.

26           **IV.    THE COURT SHOULD APPROVE THE REQUESTED LODESTAR.**

27           **A.     The Requested Hourly Rate Is Within or Below Applicable**  
28           **Market Rates.**

          The PWS argues that Class counsel should not be compensated at market rates  
because they are not water lawyers. (Opp. 22:15-17.) The authority they cite does not

stand for the proposition that in evaluating an hourly rate, “similar work” means the specific subject matter at issue, e.g. water adjudications. “[R]ates are generally not limited to those charged or awarded in cases involving the same subject matter.” (Richard M. Pearl, *Cal. Attorney Fee Awards*, 3<sup>rd</sup> Ed. (CEB, 2016) § 9.106, *citing* (among more than twelve other cases) *Prison Legal News v. Schwarzenegger* (9<sup>th</sup> Cir. 2010) 608 F.3d 446, 454 (applicable comparison is to rates charged in relevant community for equally complex litigation); *see also* *Utility Reform Network v. PUC* (2008) 166 Cal.App.4<sup>th</sup> 522, 535 (in determining market rates for similar services, PUC may not limit rates to those awarded PUC practitioners); *Camacho v. Bridgeport Fin., Inc.* (9<sup>th</sup> Cir. 2008) 523 F.3d 973, 979 (consumer attorneys not limited to rates charged by or awarded to other consumer attorneys).<sup>5</sup>

To the contrary, California and Federal Courts look to the fees charged by attorneys of reasonably comparable experience, skill and expertise for cases requiring similar skills. (*Blum v. Stenson* (1984) 465 U.S. 886 (rates that prevail are for other types of equally complex litigation).) And, while D40 tries to minimize the extensive groundwater litigation experience of Mr. McLachlan (McLachlan Decl. ¶ 7), that experience should properly be considered as a factor supporting a higher rate. (*Building*

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<sup>5</sup> As has been demonstrated by the work performed by Class Counsel to date, what is far more important for Class counsel in this matter is experience and ability to litigate complex class actions matters, as that has been the bulk of the work performed. In any event, there is in fact no market for class action water lawyers – there is no evidence that any even existed (two may have been since created during this litigation). (Zlotnick Decl., ¶¶ 7-8 and McLachlan Decl. ¶¶ 44-45.)

While Mr. Dunn is not a water lawyer per se, he is an accomplished general land use litigator who himself litigates a wide variety of matters across a very broad spectrum. However, the litany of mistakes he and his co-counsel have made when trying to venture into the class action arena strongly suggests that it is far more important to have the class action and complex litigation experience than it is to have read a handful of water law cases. The failed attempt at pursuing a defense class action within the water suppliers’ the First Amended Cross-complaint is perhaps the most notable example. If the numerous misstatements of law and inapposite arguments contained in the Opposition brief to the instant motion are not intentional, then that brief provides further testament to the difficulty class litigation can pose to those unfamiliar with it.

1 *a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4<sup>th</sup> 852,  
2 870-71.) This extensive experience in groundwater litigation has been directly relevant  
3 and indeed has been essential to litigating this matter over a nearly five year period in  
4 which Class Counsel was deprived of a groundwater expert to consult with on technical  
5 hydrologic issues. (2<sup>nd</sup> Supp. Decl. ¶ 16.)

6 The PWS next argue, incorrectly, that the applicable legal market is the Antelope  
7 Valley.<sup>6</sup> “The determination of ‘market rate’ is generally based on the rates prevalent in  
8 the community where the court is located.” (Pearl, *Cal. Attorney Fee Awards* § 9.114,  
9 citing *MBNA Am. Bank v. Gorman* (2006) 147 Cal.App.4<sup>th</sup> Supp. 1, 13.) The Supreme  
10 Court has also affirmed the use of rates prevailing in the market where counsel’s office is  
11 located. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1096 (office in San  
12 Francisco, litigation in Los Angeles). In this case, the litigation has occurred in Los  
13 Angeles and the Bay Area, and hence the rates in those communities are relevant.<sup>7</sup>

14 The PWS submit no viable evidence to rebut Plaintiff’s substantial evidence of  
15 market rates. They merely attempt to advance the rates of *some* of their own counsel –  
16 notably omitting Mr. Dunn’s rates. (Lemieux Opp., 8:16-24.) “[B]ecause government  
17 and insurance defense counsel generally charge lower rates than plaintiffs’ attorneys for  
18 complex litigation, such attorneys’ rates reflect a different market . . .” (*Cal. Attorney*  
19 *Fee Awards, 3<sup>rd</sup> Ed.* § 9.121, citing 12 cases, including (*Building a Better Redondo*  
20 *Beach, infra*, 203 Cal.App.4<sup>th</sup> at 873 (“reliance on the rate [defendants] paid their own  
21 attorneys, however, is akin to the cost-based approach rejected by the Supreme Court in  
22  
23

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24  
25 <sup>6</sup> None of the PWS counsel are currently from the Antelope Valley, and indeed,  
26 none of the lawyers primarily litigating this case are officed in the AVAA – a rather small  
and remote legal market. All of the litigation occurred in Los Angeles or San Jose.

27 <sup>7</sup> Similarly, it is of no relevance that Ralph Kalfayan and David Zlotnick did not  
28 request market rates, and instead opted to pursue their own discounted hourly rates for  
the San Diego market (rates that are now five years out of date). (*PLCM Group, infra*,  
22 Cal.4<sup>th</sup> at 1098; *Nemecek and Cole v. Horn* (2012) 208 Cal.App.4<sup>th</sup> 641, 651.)

1 *Serrano IV.*”).) <sup>8</sup>

2 **B. The Bills Are Not Inflated.**

3 D40 spends several pages arguing that class counsel's bills are inflated. In actual  
4 fact, the bills understate the amount of time spent on behalf of the class. (See  
5 McLachlan Decl., ¶¶ 37-38; O'Leary Decl., ¶ 5.)

6 As is clear from the motion, McLachlan and O'Leary are not seeking fees for  
7 attorney time paid following the 2013 partial settlement. They received payment for  
8 approximately 34% of the hours they had put into the case prior to the partial settlement  
9 (at a reduced rate). Those hours are not part of the lodestar calculation in this motion.  
10 This motion only seeks compensation for unpaid time and unreimbursed costs.

11 **C. All Small Pumper Class Work Directly Related to Its Claims**  
12 **Against the Public Water Suppliers.**

13 All of Class counsel's time was incurred in obtaining and securing pumping  
14 rights, free from prescriptive claims, for the class. The complaint that counsel spent  
15 time on "other claims" is false. There were no other claims.

16 The class initially came into existence as a defense class intended to consolidate  
17 the claims of thousands of small pumpers. When that proved procedurally impossible,  
18 the Court and water districts involved themselves in locating counsel to represent a  
19

20  
21 <sup>8</sup> Among the various factors that can be considered in setting the hourly rate is  
22 the "undesirability of the case." (Pearl, *Cal. Attorney Fee Awards*, at § 10.48; *Camacho*  
23 *v. Bridgeport Fin., Inc.* (9<sup>th</sup> Cir. 2008) 523 F.3d 973, 982, n.1 (listing "the  
24 'undesirability' of the case" as relevant lodestar adjustment factor); *Horsford v. Board*  
25 *of Trustees* (2005) 132 Cal.App.4<sup>th</sup> 359, 399 (upward fee adjustment or lodestar  
26 enhancement).) Here, there is ample evidence of the undesirability of this case, as set  
27 forth in the Motion, this Reply, and the supporting declarations.

28 Ultimately, [t]he experienced trial judge is the best judge of the value of  
professional services rendered in his court." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)  
The Court's expressed view of Class Counsel's work has been consistently favorable over  
the years, e.g.: "I think that what you have done here is admirable. And it the – as far as  
I'm concerned, in the highest standards of the profession stepping forward . . .  
representing these people . . ." (McLachlan Decl., Ex. 8 (Hearing Transcript, April 24,  
2009) 21:22-26.)

1 plaintiff class that existed solely to defend against the prescriptive claims of the public  
2 water suppliers. Class counsel, once they were found, filed a complaint. The class  
3 complaint includes claims for monetary damages as a remedy for the taking of property  
4 rights, but under the Judgment, the water suppliers did not take any property rights  
5 from the class. Thus there is no monetary damage issue to try.

6 When the class reached a settlement with the public water suppliers in 2011, the  
7 Court rejected the settlement based on opposition from landowner parties to the effect  
8 that the class did not have evidence to support its claimed pumping volume. So the  
9 class filed a complaint against private landowners in order to create the potential for fee  
10 and/or damage claims against the landowners. The class did not pursue that complaint,  
11 but its purpose was to remove opposition to the class's settlement with the public water  
12 suppliers and thereby secure the class's pumping rights. (2<sup>nd</sup> Supp. Decl., ¶ 11.)

13 Similarly, class counsel's work litigating the claims of the non-stipulating parties  
14 in 2015 and 2016 was always and only intended to preserve the class's pumping rights  
15 under the Judgment and Physical Solution. The class's interest in Tapia, Robar, Ritter,  
16 and the other non-stipulators extends only so far as their claims might dilute the  
17 allocations provided in the Stipulation. Thus, all this work was done because, in  
18 counsels' professional judgment, it was necessary in order to protect the class's ability to  
19 pump water as they did before getting sucked into this action. In other words, all the  
20 work has been done to prevent prescriptive claims affecting the class's cumulative  
21 pumping. In this, class counsel was wholly successful and must be paid for that work.  
22 (*Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d 621, 639 ("Absent circumstances  
23 rendering the award unjust, fees recoverable under [Section 1021.5] ordinarily include  
24 compensation for all hours reasonably spent . . ."); *Center For Biological Diversity*, 185  
25 Cal.App.4<sup>th</sup> at 897 (same).)



1           However, even if some part of the work was unrelated to the class’s essential  
2 purpose, it would still be compensable on the fee motion. If services on the fee and  
3 nonfee claims are intertwined and cannot be segregated, a reduction for work on the  
4 nonfee claim is not required. (*Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4<sup>th</sup>  
5 1192, 1997.)

6           If the class were a paying private party who had the same litigation goals as the  
7 class did, all this time would clearly be compensable. The same analysis applies in a fee  
8 motion. Generally speaking, hours are reasonable if they were “reasonably expended in  
9 pursuit of the ultimate result achieved in the same manner that an attorney traditionally  
10 is compensated by a fee-paying client for all time reasonably expended on a matter.  
11 (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.) Put another way, “[t]he number of  
12 hours to be compensated is calculated by considering whether, in light of the  
13 circumstances, the time could reasonably have been billed to a private client.” (*Moreno*  
14 *v. City of Sacramento* (9<sup>th</sup> Cir. 2008) 534 F.3d 1106, 1111.)

15           **D. “Double Billing” Is a Misnomer. The Billed Work Is All**  
16           **Recoverable.**

17           Small Pumper class counsel staffed the case in the manner that made sense when  
18 tasks were performed. (McLachlan Decl., ¶¶ 36-41.) In some instances, both  
19 McLachlan and O’Leary both attended a deposition or court hearings. These decisions  
20 were justified when made. They are justified now. But even if they were not, the Court  
21 should not use hindsight to second guess these decisions.

22           By way of example, D40 – who itself always has two or three attorneys at every  
23 hearing – complains that both attorneys attended the March 8, 2010 CMC at which the  
24 Court ruled on a motion to disqualify the Lemieux & O’Neill firm (for representing  
25 parties on both sides of the public water suppliers’ cross-complaint) and the scope of the  
26 court-appointed expert work. This last issue bore directly on the ability of the Small  
27 Pumper class to participate in what the parties then believed would be determined in  
28 the Phase III trial. At that point in time, the disqualification motion had been pending

1 for almost a year. These were significant issues in which both McLachlan and O’Leary  
2 had done the underlying work.

3 As another example, D40 complains that both McLachlan and O’Leary attended  
4 the Phase III trial and the deposition of Joseph Scalmanini (which was done  
5 telephonically). The Court should recall that the Scalmanini deposition was taken to  
6 preserve his testimony for the Phase III trial due to his health problems (and, in fact, the  
7 deposition occurred during a break in the trial). It appeared that there would have been  
8 no opportunity to wait for the transcripts and review them before the trial  
9 recommenced. So both attorneys appeared at the deposition. (2<sup>nd</sup> Supp. Decl., ¶ 17.)  
10 And while the PWS find it material that the Small Pumper class participation at the  
11 Phase III trial was “minimal,” class counsel cannot guess at what may unfold at a trial in  
12 advance. They had to attend.

13 Similarly, the fact that both attorneys attended the Justice Robie mediation, or  
14 closing argument, or a hearing on objections to the Statement of Decision is all true.  
15 They did because the representation required it. California law allows for the use of  
16 multiple counsel when the demands of a case so warrant. (*Balsam v. Trancos, Inc.*  
17 (2012) 203 Cal.App.4<sup>th</sup> 1083.) Courts will not mechanically apply rules against  
18 duplication of effort to thwart legitimate and reasonable fee requests. For example, in  
19 *Citizens Against Rent Control v. Berkeley* (1986) 181 Cal.App.3d 213,234, the Court of  
20 Appeal approved fees for two attorneys who spent ten hours a day for three days  
21 preparing a third attorney for oral argument. In *Margolin v. Regional Planning*  
22 *Commission* (1982) 134 Cal.App.3d 99, 1007, the Court of Appeal found that some  
23 duplication of effort among multiple attorneys was justified “considering the importance  
24 of preparation for trial.” Having two attorneys appear at trial is reasonable. (See  
25 *Horsford*, 132 Cal.App.4<sup>th</sup> at 396.)

26 McLachlan and O’Leary utilized a teamwork approach based on workload,  
27 scheduling, anticipated class issues, and the like. Counsel should not be penalized for  
28 this approach.

1           **E.      The Post-Settlement Work Is Recoverable.**

2           D40 argues that “Wood Class cannot recover any fees for work performed after  
3 the March 4, 2015 settlement, which his (sic) interests became aligned with the Public  
4 Water Suppliers.” (Opp., p. 21:23-24.) Then, in an exercise of Soviet-style revisionism,  
5 D40 goes on to argue that since the settlement is “nearly identical” to the 2011  
6 settlement (that the Court rejected), no work done since 2011 should be compensable.

7           The short response to this is to point out that in the Stipulation for Judgment and  
8 Physical Solution, the Public Water Suppliers agreed to pay all reasonable fees and costs  
9 for the Wood class through “the date of the final judgment.” (Exhibit 19, ¶ 11.) The  
10 “final judgment” is, obviously, not the date of the 2011 settlement that the Court  
11 rejected, or the date of the 2015 settlement when D40 thinks interests became aligned.  
12 It is the date of the final judgment.

13           The long response is that following the Court’s rejection of the 2011 settlement,  
14 various public water suppliers disengaged from any settlement discussions. (2<sup>nd</sup> Supp.  
15 Decl., ¶¶ 9-14.) The Small Pumper class needed evidence to support its water usage,  
16 which led to the Court appointing Timothy Thompson (which appointment led to years  
17 of law-and-motion practice to get the scope of work approved and paid). Mr. Thompson  
18 did not testify until August 3, 2015. The Court did not accept the evidence of Small  
19 Pumper water usage until after Mr. Thompson’s testimony. These events were absolute  
20 prerequisites to the current settlement and physical solution.

21           Counsel find it breathtaking that D40 would argue—in apparent seriousness—  
22 that the Small Pumper class’s work was accomplished by 2011 when D40 itself did not  
23 participate in the partial settlement in 2013. Class counsel could not have stopped  
24 working in 2011 without abandoning the case (which the Court would not have  
25 tolerated). Class counsel could not have stopped working in 2013 (which also would not  
26 have been tolerated). The idea that the thousands of hours of work performed for the  
27 class’s benefit after the Court rejected the 2011 settlement should be considered pro  
28 bono is offensive. At all times prior to entry of the final judgment, the Small Pumper

1 class stood to lose some or all of its cumulative pumping rights. Thus, the class required  
2 vigorous representation.

3 **F. Mr. McLachlan Performed the Work for Which He Billed.**

4 As a threshold matter, in the context of a fee motion, attorney bills enjoy a  
5 presumption of credibility. (*Horsford*, 132 Cal.App.4<sup>th</sup> at 396.) Nevertheless, D40 takes  
6 exception to two of Mr. McLachlan’s billing entries, dated February 10, 2014 and  
7 February 18, 2014. The billing entries are correct. (2<sup>nd</sup> Supp. Decl., ¶ 19.)

8 D40 also claims that Mr. McLachlan misled the Court in 2013 by stating that the  
9 “there was no simultaneous negotiation of legal fees” in connection with the partial  
10 settlement. (Opp., 17:22-26.) In support of this (defamatory) claim, D40 cites to two  
11 emails, without attaching either.<sup>9</sup> No wonder. The emails make the point that by  
12 settling with the Small Pumper class, the public water suppliers would cut off their  
13 exposure to fees. The fees were not negotiated in connection with the partial settlement.  
14 (See Exhibit 18, p. 8.)

15 Continuing with the kitchen sink approach, D40 complains that McLachlan billed  
16 for work that it think he should not have done. This includes what it characterizes as  
17 “basic research,” and junior and clerical work. When one examines the specific time  
18 entries behind these complaints, they fall short.

19 D40’s complaint about “basic research” boils down to billing entries in which  
20 McLachlan researched rural residential use of water. This is not a basic issue of water  
21 law, but an issue that was (1) central to the Small Pumper class’s rights and (2) not  
22 covered in other adjudications because small pumpers have generally been excluded as  
23

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24  
25 <sup>9</sup> The PWS also ignore the fact that in asserting that Mr. McLachlan is  
26 perpetrating a fraud on the Court with regard to this issue, they are also accusing their  
27 PWS co-counsel, the actual eyewitness to the 2013 settlement negotiations, of perjury.  
28 Thomas Bunn, Douglas Evertz, and Wesley Milliband, all esteemed members of the bar,  
declared under oath: “I did not negotiate with the Wood Class (including its legal  
counsel) about the Wood Class’ attorneys’ fees or costs that are included within the  
Settlement Agreement until and after I came to agreement with the Wood Class on the

1 de minimis users. Counsel would have been derelict not to have researched this issue  
2 from all reasonably available sources.

3 The complaints about document review and clerical work are equally feeble. The  
4 case involved gigantic amounts of filings, all of which required some review and much of  
5 which required analysis. Some of the analysis resulted in the preparation of memos.  
6 The analysis and preparation of memos is not automatically work for a paralegal or  
7 junior attorney. In fact, class counsel had every incentive to work this case as efficiently  
8 as possible: every hour of work was work for which there would be no payment for an  
9 indefinite future period. (McLachlan Decl., ¶¶ 41, 51-58.) Similarly, every project  
10 farmed out to paralegals or clerical personnel was lost time for which counsel incurred  
11 costs with no current opportunity for reimbursement. The idea that class counsel  
12 overworked the case makes no sense.

13 The incredible amount of time and effort that has passed since the beginning of  
14 this case requires compensation at the full requested amount. (*Serrano IV, infra*, 32  
15 Cal.3d 621, 639 (“Absent circumstances rendering the award unjust, fees recoverable  
16 under [Section 1021.5] ordinarily include compensation for all hours reasonably spent . .  
17 .”); *Center For Biological Diversity*, 185 Cal.App.4<sup>th</sup> at 897 (same).)

### 18 **G. The Block Billing Argument Fails.**

19 D40 attempts to criticize the O’Leary bills as “block billed.” (Opp., p. 24:7.) D40  
20 provides no citation to any billing entry. This failure makes sense when one actually  
21 looks at the billing. They are not block billed. The overwhelming majority of the daily  
22 time entries involve a single task. Where there are multiple tasks, time entries are  
23 broken out by task.<sup>10</sup>

24  
25 substantive terms of the Settlement Agreement that do not relate to payment of the  
26 Wood Class’ attorneys’ fees and costs. (2nd Supp. Decl., Ex. 20.)

27 <sup>10</sup> The billing through October 2, 2013 has been previously reviewed by the Court  
28 in connection with the fees awarded following 2013 partial settlement (which, not  
incidentally, D40 unsuccessfully opposed. At least 75% of that opposition was cut-and-  
pasted into the current opposition). For the post-10/02/2013 entries, examples of task

1 Assuming for the sake of argument that D40 meant to limit its block billing  
2 argument to some pre-2013 billing entries (although it cited to none), the Court should  
3 recognize that block billing is “not a prohibited practice.” (*Farfaras v. Citizens Bank*  
4 *and Trust* (7<sup>th</sup> Cir. 2006) 433 F.3d 558, 569.) In fact, “In challenging attorney fees as  
5 excessive because too many hours of work are claimed, it is the burden on the  
6 challenging party to point to the specific items challenged, with a sufficient argument  
7 and citations to the evidence. General arguments that fees claimed are excessive,  
8 duplicative, or unrelated do not suffice.” (*Premier Medical Management Systems, Inc.*  
9 *v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4<sup>th</sup> 550, 564.) Here, the block  
10 billing argument in the opposition cites to no specific entries, is obviously not based on  
11 an actual review of the records, and contains only general arguments. Thus, it does not  
12 meet D40’s burden in challenging any of O’Leary’s bills.

13 **H. The Alleged Indigency Of The “Small Districts” Is Not Grounds**  
14 **To Reduce Prevailing Party Fees.**

15 The water districts represented by the Lemieux & O’Neill firm – newly re-  
16 branded as the “Small Districts” for the purpose of this Motion – plead poverty as a  
17 defense to this fee motion. They make this plea notwithstanding that they have paid  
18 their own attorneys \$3.1 million in the course of this case.<sup>11</sup> . They make this plea even  
19 though they chose to litigate the Small Pumper Class claims actively until the very end,  
20

21 billing occur on 02/18/2014; 04/02/2014; 04/03/2014; 06/10/2014; 11/03/2014;  
22 12/09/2014; 06/30/2014; 07/10/2014; 07/27/2014; 08/02/2014; 08/20/2014;  
23 08/21/2014; 01/06/2016; 01/14/2016; 01/15/2016; 01/18/2016; 01/21/2016;  
24 01/24/2016; 01/25/2016; and 01/26/2016. The remainder of the entries all related to a  
25 single task.

26 <sup>11</sup> Specifically, according to the Opposition, North Edwards Water District paid  
27 \$194,698 in attorney’s fees; Desert Lake Community Service District paid \$213,123;  
28 Palm Ranch Irrigation District paid \$426,213; Littlerock Creek Irrigation District paid  
\$435,459; and Quartz Hill Water District paid \$1,829,939. When allocated, these  
amounts far surpass each of these entities’ shares of fees at issue here. (*See* 2<sup>nd</sup> Supp.  
Decl., ¶ 21.) If a Government Code election is made for payment over ten years, the  
“Small Districts” each pay between \$1,800 and \$29,000 per year.

1 even though they had opportunities to settle with the Class well before 2015. And they  
2 make this plea notwithstanding that the physical solution allocates to them over 1,949  
3 acre-feet of water annually, which can be conservatively valued at \$31,000,000.

4 They largely base their argument on *Garcia v. Santana* (2009) 174 Cal.App.4<sup>th</sup>  
5 464, which does, in fact, stand for the proposition that the financial condition of a  
6 defendant is a consideration when awarding attorney's fees. But *Garcia* involved an  
7 indigent pro per litigant for whom fee waivers had been granted. Even there, the Court  
8 of Appeal reversed a trial court order awarding no fees based on the defendant's  
9 financial status. The Court balanced the need to provide access to the courts for parties  
10 of limited means against the Legislative intent behind fee shifting statutes. The Court  
11 expressed a concern that large fee awards could effectively deprive indigent pro per  
12 parties of court access. That concern is clearly not present here: public entities always  
13 have access to the courts (and never pay filing fees). There is no legitimate comparison  
14 between an indigent pro per private party (as in *Garcia*) and public entities that have  
15 spent over \$3 million on their attorneys. The argument that a fee award in favor of class  
16 counsel would somehow deprive the small water districts of access to the courts is a  
17 non-starter.

18 The small districts also cite, misleadingly, to *Connerly v. State Personnel Board*  
19 (2006) 37 Cal.4<sup>th</sup> 1169, for the proposition that "a fee award is only properly assessed  
20 against a defendant who had the power to provide the relief requested." *Connerly*  
21 involved a fee motion directed against an amicus curiae that defended an affirmative  
22 action program that the State itself refused to defend. The Supreme Court held that  
23 amicus parties generally did not have exposure to fees: "[in all prior cases] those found  
24 liable for section 1021.5 fees were either real parties in interest that had a direct interest  
25 in the litigation, the furtherance of which was generally at least partly responsible for  
26 the policy or practice that gave rise to the litigation, or were codefendants with a direct  
27 interest intertwined with that of the principal defendant." (*Connerly*, 37 Cal.4<sup>th</sup> at 1181.)  
28

1 Here, the small districts are directly intertwined with the large water districts;  
2 they all decided to pursue this litigation to the end. They clearly are and have always  
3 been directly interested in the outcome. Thus, they can, and should be, liable for fees.

4 Moreover, the small districts ignore the fact that the varying sizes of the water  
5 districts against whom the Small Pumper class is seeking fees was an issue specifically  
6 contemplated by the Stipulation for Entry of Judgment and Physical Solution. That  
7 stipulation gave the water districts the right of contribution against one another for the  
8 Small Pumper class fees:

9 11. The Public Water Suppliers and no other Parties to this Stipulation shall  
10 pay all reasonable Small Pumper Class attorneys' fees and costs through the date  
11 of the final Judgment in the Action, in an amount either pursuant to an  
12 agreement reached between the Public Water Suppliers and the Small Pumper  
13 Class or as determined by the Court. The Public Water Suppliers reserve the  
right to seek contribution for reasonable Small Pumper Class attorneys' fees and  
costs through the date of the final Judgment in this action from each other and  
Non-Stipulating Parties. . .

14 (2<sup>nd</sup> Supp. Decl., Ex. 19.)

15 At a basic level, the small districts would have the Court reward them for their  
16 own irresponsibility. Government Code section 970.8 requires local public entities to  
17 "include in its budget a provision to provide funds in an amount sufficient to pay all  
18 judgments in accordance with this article." Here, the small districts seem to have  
19 budgeted sufficiently to pay their attorneys (over \$3,000,000) but not to have followed  
20 the requirement of section 970.8. That failure should not be borne by class counsel,  
21 particularly since the districts have the ability to raise money from their ratepayers, or  
22 through a bond (see Gov't Code § 971). As the districts make blindingly clear in District  
23 40's opposition, they initiated this litigation and they decided to make it comprehensive.

24 Consider: the PWS made a decision to bring the United States into this  
25 adjudication, but that required that they comply with the McCarran Amendment and  
26 make this a comprehensive adjudication. There are many good reasons to pursue a  
27 comprehensive adjudication but there are also costs. One cost is that small domestic  
28 pumpers, who would prefer not to have their water rights adjudicated (and in other



1 cases, for example, the Mojave basin, were left out as *de minimis* users) required  
2 representation.<sup>12</sup> After many years of litigation, the small pumpers, have secured water  
3 rights that will allow them to continue their domestic pumping. This is a benefit to over  
4 3,100 Antelope Valley households that rely on individual groundwater pumps for their  
5 daily water. And bringing the basin into hydrological balance benefits not just them, but  
6 all residents of the Antelope Valley and, indeed, the entire State. That benefit, though,  
7 carries with it the cost of paying the lawyers who represented the class's interests over  
8 the past eight years.

9 **V. THIS CASE REQUIRES THE APPLICATION OF A MULTIPLIER.**

10 **A. California Law Requires a Positive Multiplier Here.**

11 Fee awards under section 1021.5 “should be fully compensatory,” and absent  
12 “circumstances rendering the award unjust, an . . . award should ordinarily include  
13 compensation for all the hours reasonably spent. “ (*Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup>  
14 1122, 1133.) Additionally, while the lodestar method is typically used by courts in  
15 section 1021.5 cases, “a contingent fee **must** be higher than a fee for the same legal  
16 services paid as they are performed.<sup>13</sup> The contingent fee compensates the lawyer not

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17  
18 <sup>12</sup> Class counsel would submit that individually naming, serving, and litigating the  
19 claims of over 4,100 class members would have been economically prohibitive, both for  
20 the public water suppliers and the class members. (Dunn Decl., Ex. B, 5:25-6:5.)

21 <sup>13</sup> Courts in California routinely approve fee multipliers in cases with contingent  
22 risk and delay, most often, against public agencies. An incomplete list: *Craft v. County*  
23 *of San Bernardino* (C.D.Cal. 2008) 624 F.Supp.2d 1113, 1125 (5.2 multiplier; public  
24 agency); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4<sup>th</sup> 495 (2.52  
25 multiplier); *Chavez v. Netflix* (2008) 162 Cal.App.4<sup>th</sup> 43 (2.5 multiplier); *City of*  
26 *Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (2.34 multiplier; public agency  
27 defendant); *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 584 (2.25  
28 multiplier; 1021.5); *Laffitte v. Robert Half Int'l* (2014) 231 Cal.App.4<sup>th</sup> 860, 881 (2.13  
multiplier); *Coalition for LA County Planning v. Board of Supervisors* (1977) 76  
Cal.App.3d 241 (2.1 multiplier; public agency; 1021.5); *Paulson v. City of San Diego*  
(S.D.Cal. 2007) 2007 U.S. Dist. Lexis 43587 \*14 (2.0 multiplier; public agency; 1021.5);  
*Crommie v. PUC* (N.D.Cal. 1994) 840 F.Supp. 719, 726 (2.0 multiplier; public agency;  
1021.5); *Leuzinger v. County of Lake* (2009) 2009 U.S. Dist. Lexis 29843 \*31 (2.0  
multiplier; public agency); *Chabner v. United of Omaha Life Ins. Co.* (N.D.Cal. 1999)  
1999 US Dist Lexis 16552 \*21 (2.0 multiplier; 1021.5); *Gutierrez v. Wells Fargo Bank*  
(N.D.Cal. 2015) 2015 US Dist Lexis 67298 \*23 (2.0 and 5.5 multiplier); *Cates v. Chiang*

only for the legal services he renders but for the loan of those services. . . . A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 579-580.) Here, services were loaned for over eight years for the benefit of the class and all of the attorney hours are at risk. Indeed, the oppositions both urge the Court to deny all fees to class counsel.

As one court wrote, “the market value of the services provided by [respondent’s] counsel in a case of this magnitude must take into consideration that any compensation

(2013) 213 Cal.App.4<sup>th</sup> 791, 805 (1.85 multiplier; public agency; 1021.5); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4<sup>th</sup> 545 (1.75 multiplier; 1021.5); *Pellegrino v. Robert Half Int’l* (2010) 182 Cal.App.4<sup>th</sup> 278, 290 (1.75 multiplier); *Amaral v. Cintas* (2008) 163 Cal.App.4<sup>th</sup> 1157 (1.65 multiplier; 1021.5); *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2016) 206 Cal.App.4<sup>th</sup> 988 (1.5 multiplier; public agency defendant; 1021.5); *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4<sup>th</sup> 866 (1.5 multiplier; public agency; 1021.5); *Edgerton v. State Personnel Board* (2000) 83 Cal.App.4<sup>th</sup> 1350 (same); *Animal Protection & Rescue League v. City of San Diego* (2015) 237 Cal.App.4<sup>th</sup> 99 (same); *Downey Cares v. Downey Comm. Dev. Comm’n* (1987) 196 Cal.App.3d 983, 994 (1.5 multiplier; public agency; 1021.5); *Kern River Pub. Access Comm. v. City of Bakersfield* (1985) 170 Cal.App.3d 1205 (1.5 multiplier; public agency; 1021.5); *In re Lugo* (2008) 164 Cal.App.4<sup>th</sup> 1522 (1.5 multiplier; public agency; approving with the comment that 1.5 is “not large” by comparison to typical awards); *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4<sup>th</sup> 924, 947 (1.5 multiplier; 1021.5); *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1418-19 (1.5 multiplier; 1021.5); *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 108 (1.5 multiplier; 1021.5); *Taylor v. Nabors Drilling USA* (2014) 222 Cal.App.4<sup>th</sup> 1228 (1.5 multiplier); *see also Chau v. CVS RS Services* (2008) Los Angeles County Superior Court No. BC349224, Pearl Decl. Ex. F, 5:7 (3.8 multiplier); *Thompson v. Santa Clara County Open Space Auth.* (2009) Santa Clara County Superior Court No. 1-02-CV-804474, Pearl Decl. Exs. G, 4:9-20, & H, 5:23 (2.85 multiplier; public agency; 1021.5); *Sierra Club v. County of San Diego* (2015) San Diego County Superior Court No. 37-2012-00101054-CU-TT-CTL, Pearl Decl. Ex. L, p. 5 (2.0 multiplier; public agency; 1021.5); *Uphold Our Heritage v. Town of Woodside* (2008) San Mateo Superior Court No. 444270, *aff’d by unpublished decision*, 2008 Cal.App.Unpub. LEXIS 8875, Pearl Decl. Ex. J, p.4 (same); *EPIC v. Cal. Dept. of Fire & Forestry* (2004) Humboldt County Superior Court Nos. CV990445 and CV990452, Pearl Decl. Ex. K, p. 14 (same); *Hope v. State of California* (2006) Los Angeles County Superior Court No. BC 258985, Pearl Decl. Ex. I, 2:12 (2.0 multiplier; public agency).

1 has been deferred . . . from the time an hourly fee attorney would begin collecting fees  
2 from his or her client; that the demands of the present case substantially precluded  
3 other work during that extended [deferral] period, which makes the ultimate risk of not  
4 obtaining fees all the greater . . . ; and that a failure to fully compensate for the enormous  
5 risk in bringing even a wholly meritorious case would effectively immunize large or  
6 politically powerful defendants from being held to answer for constitutional  
7 deprivations or deprivations of statutory rights, resulting in harm to the public.”  
8 (*Horsford*, 132 Cal.App.4<sup>th</sup> at 399-400.)

9 That tracks closely with the circumstances here. Counsel for the Small Pumper  
10 Class has worked on this case for over eight years. They have passed on other work, they  
11 have advanced many thousands of hours of time and tens of thousands of dollars, none  
12 of which has been available for their other clients. (The partial settlement in 2013  
13 compensated class counsel for 34% of the hours expended through that time, but at a  
14 reduced rate.) They took enormous risk; their fees and costs are still at risk as none of  
15 the settling parties acknowledge any exposure to fees, despite agreeing to pay reasonable  
16 fees in the Stipulation for Judgment.

17 Class counsel cannot be fully compensated for their time and risk without the use  
18 of a multiplier. Merely paying the time spent over an eight year period at current rates  
19 does not compensate counsel for effectively lending over 5,000 hours of attorney time  
20 for the benefit of the Class. As the Court knows, the class had great difficulty locating  
21 counsel at the beginning of the case, because of the complexity and effort that all parties  
22 to this action knew would be required. The reality was, if anything, worse that anyone  
23 anticipated back in 2008. The amount of time and effort required to secure pumping  
24 rights for the class vastly exceeded what anyone would have undertaken on a straight  
25 contingency basis.

26 Both Class Counsel have indicated that, with hindsight, they would have rejected  
27  
28

1 this representation. But, luckily for the Class and the basin as a whole, they did not.  
2 Now that the judgment has been entered, they should be fully and fairly compensated.  
3 Full and fair compensation requires the Court to apply a multiplier to the lodestar. (*See*  
4 *FN 13, infra.*)

5 **B. The Negative Multiplier Urged by the PWS Is Unsupported and**  
6 **Should Be Rejected.**

7 D40 argues that the Court should apply a negative multiplier, going so far as the  
8 claim that “There is ample authority for the Court to reduce the lodestar here.” (D40  
9 *Opp.*, p. 25:17-18.) D40 cites three cases as the “ample authority.” The first, *State*  
10 *Water Resources Control Board Cases* (2008) 161 Cal.App.4<sup>th</sup> 304, is a complete mis-  
11 cite. That case reversed a trial court’s denial of a fee application filed by The Audubon  
12 Society in a case in which several public entities also sued the State Water Resources  
13 Control Board for failure to implement rules aimed at protecting Delta wildlife. The  
14 public entities were successful (and were awarded fees). Thus, the trial court concluded  
15 that private attorney general fees were not warranted because private enforcement was  
16 not necessary. The Court of Appeal reversed, holding that the necessity criterion in  
17 Code of Civil Procedure section 1021.5 cannot be applied with hindsight without  
18 undermining “the very purpose of the statutes, which is ‘to induce persons to shoulder a  
19 burden disproportionate to their personal financial state in order to ensure the  
20 vindication of important public rights.” (*Id.*, 161 Cal.App.4<sup>th</sup> at 318.) The case contains  
no discussion of a reduced lodestar.

21 The second case, *San Diego Police Officers Assn v. San Diego Police Dept.* (1999)  
22 76 Cal.App.4<sup>th</sup> 19, contains a one-paragraph discussion in which the Court of Appeal  
23 affirms the reduction of a fee award from the \$9,300 requested to \$1,875 (a reduction of  
24 80%) because of the apparently small amount of actual work done and for unspecified  
25 reasons that “are amply supported by the record” but not disclosed in the opinion. (*Id.*,  
26 76 Cal.App.4<sup>th</sup> at 24.) The case includes no analysis.

27 The third case, *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4<sup>th</sup> 819, supports  
28 class counsel’s position. In *Thayer*, several lawsuits were filed in response to Wells

1 Fargo's attempts to charge fees on no-fee checking accounts. Almost immediately, Wells  
2 Fargo undid the charges and agreed to provide free checking for the life of all the  
3 effected accounts. It also agreed to pay reasonable attorney's fees in each of the  
4 lawsuits. With one exception, each attorney resolved their fee claims with Wells Fargo.  
5 The trial court awarded the one holdout his full lodestar with a multiplier applied to  
6 some, but not all, of the holdout attorney's hours. Wells Fargo appealed, arguing that  
7 while the attorney deserved some fees, he should have his lodestar decreased to avoid an  
8 unjust award. The court of appeal summarized the context in which the fees were  
9 awarded. In sharp contrast to this case, "the Bank never contested plaintiffs' legal  
10 claims or their right to reasonable fees under Code of Civil Procedure section 1021.5,  
11 and communicated a desire to settle the cases and pay reasonable attorney's fees almost  
12 immediately after the complaints were filed." (*Id.*, 92 Cal.App.4<sup>th</sup> at 835.)

13 The *Thayer* court ultimately agreed that the holdout lawyer should not get paid  
14 for what amounted to unnecessary busywork. But the court limited its holding to the  
15 circumstances it found in that particular case:

16 Nothing we have said in this opinion signals any retreat from our firm and  
17 continuing commitment to the settled principle that attorneys entitled to fee  
18 awards for advancing important public interests **must** be fully and fairly  
compensated, so as to encourage the provision of such legal assistance.

19 (*Id.*, 92 Cal.App.4<sup>th</sup> at 846 (emphasis added).)

20 Thus, under *Thayer*, class counsel should receive their full lodestar with a  
21 positive multiplier. No other result provides full and fair compensation.

22 **C. The Public Entity Status of Some of the PWS Is Not Relevant to  
the Multiplier.**

23 The PWS argue that the Court should consider their status as public entities in  
24 denying a multiplier to the lodestar. They base this argument in language in *Serrano v.*  
25 *Priest* (1977) 20 Cal.3d 25 indicating that a trial court could consider this factor in  
26 determining an amount of fees. (*Serrano*, 20 Cal.3d at 49.) But just because a court can  
27 do something does not mean that it should. Or that it can under all circumstances.

28 *Horsford v. Board of Trustees* (2005) 132 Cal.App.4<sup>th</sup> 359 makes this clear. In

1 *Horsford*, the Court of Appeal rejected, as an abuse of discretion, a trial court's refusal  
2 to apply a multiplier to counsel's lodestar after counsel successfully handled a FEHA  
3 claim against the State University system. The *Horsford* court noted that *Serrano*  
4 involved the constitutionality of a school district funding scheme over which the public  
5 entity defendants had no control and were required to defend. In *Horsford*, by  
6 comparison, the public entity defendant engaged in improper conduct that it  
7 strenuously defended. (*Horsford*, 132 Cal.App.4<sup>th</sup> at 400-401.)

8 Here, the public entity defendants created and perpetuated the litigation. (2<sup>nd</sup>  
9 Supp. Decl., ¶¶ 9-15.) Consider: the Small Pumper class was initially a defendant-class,  
10 named in the PWS's cross-complaint. When a defendant-class proved unworkable, the  
11 PWS and the Court involved themselves in locating counsel to represent the Small  
12 Pumper class, as detailed in the Declarations of Michael McLachlan and David Zlotnick.  
13 If counsel had not been found, the entire litigation would have failed because the  
14 McCarran Amendment comprehensiveness would have been missing. Without the  
15 Small Pumper class, there would have been no comprehensive physical solution.

16 The Small Pumper Class, which is nominally a plaintiff-class, actually existed to  
17 defend existing rights against prescription claims. (Dunn Decl., Ex. B, 5:1-4.) The class  
18 members, for the most part, wanted to maintain the status quo: they wanted to pump  
19 for domestic use without paying any assessments, fines, or fees. The PWS challenged  
20 that status quo for year-after-year of litigation. The Small Pumper Class's involvement  
21 in this litigation was driven by decisions made by the PWS. The *Horsford* court  
22 additionally held that trial courts lack the discretion to deny a multiplier as against a  
23 public entity when the counsel seeking fees undertook actual risk and delay in obtaining  
24 compensation. In comparing the *Serrano* situation, where the public entity was  
25 required to defend a statutory scheme with which it may not have agreed with *Horsford*,  
26 where the public entity engaged in wrongdoing, the court wrote:

27 [I]n neither event is a trial court permitted to use the 'public entity' factor to  
28 wholly negate the enhancement of a lodestar that otherwise would be appropriate  
after consideration of the contingency and delay factors.

(*Horsford*, 132 Cal.App.4<sup>th</sup> at 401.) Thus, California law **requires** the Court to use a multiplier to class counsel's lodestar. And while the Court has discretion in setting the amount of the multiplier, the requested multiplier of 2.5 is within the range routinely granted by courts, particularly considering that this case took many years longer than is typical. (*See* cases cited at FN13, *infra*.)

**VI . ALL OF PLAINTIFFS COSTS ARE RECOVERABLE.**

Finally, D40 argues that Plaintiff cannot recovery any costs. (Opp., 29:2-3.) This is of course a complete misstatement of the law. In an action brought under Section 1021.5, costs are recoverable, as with any other prevailing party, under Section 1033.5. (*Benson v. Kwikset Corp.* (2007) 152 Cal.App.4<sup>th</sup> 1254, 1283 (C.C.P. § 1033.5 applies to § 1021.5 action);<sup>14</sup> *Olsen v. Automobile Club of Southern Cal.* (2008) 42 Cal.4<sup>th</sup> 1142, 1149-50 (discussing applicability of Section 1033.5 to action under Section 1021.5).)

Section 1033.5 lists various categories of recoverable costs, e.g. filing and motion fees, court reporting fees for depositions, among others. (C.C.P. § 1033.5(a)(1)-(3).) More importantly, 1033.5 provides that “[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court’s discretion. (§ 1033.5((c)(4).) The range of such recoverable costs is very broad, “includ[ing] legislative history material, arbitrator’s fees, and the fees of a special master.” (*City of Anaheim v. Dept. of Transportation* (2005) 135 Cal.App.4<sup>th</sup> 526, 534.) Essentially, the Court can approve any costs “reasonably necessary to the conduct of the litigation.” (*Applegate v. St. Francis Lutheran Church* (1994) 23 Cal.App.4<sup>th</sup> 361, 364 (approving photographs and blueprints); *see also Plumbers & Steamfitters, Local 290 v. Duncan* (2007) 157 Cal.App.4<sup>th</sup> 1083, 1099 (holding that computerized legal research is recoverable under

---

<sup>14</sup> D40 mis-cites the *Benson* case several times for the proposition that no costs are recoverable in an action brought under Section 1021.5. *Benson* only held that expert costs are not recoverable; nowhere does it state that recovery of all costs are barred under Section 1021.5. (*Id.* at 1283.)

1 Section 1021.5.)<sup>15</sup> “[T]he prevailing party is entitled to all of his costs unless another  
2 statute provides otherwise. [Citation.] Absent such statutory authority, the court has no  
3 discretion to deny costs to the prevailing party.” (*Nelson v. Anderson* (1999) 72  
4 Cal.App.4<sup>th</sup> 111, 129.)

5 In addition, because the PWS do not challenge any specific costs they have  
6 waived the right to do so. (*Nelson*, at 131 (burden is on losing party to properly  
7 challenge a particular cost item).)

8 **VII. PLAINTIFF SHOULD BE GRANTED AN INCENTIVE AWARD.**

9 The Court should grant the incentive award in the form of two additional acre-  
10 feet. For reasons stated in the Motion, Plaintiff can actually establish such a right, and  
11 should not be penalized for volunteering – he should be rewarded. Otherwise, the  
12 adoption of a monetary award is entirely appropriate here:

13 While there has been scholarly debate about the propriety of individual awards to  
14 named plaintiffs, “[i]ncentive awards are fairly typical in class action cases.”  
15 [citation omitted]; 4 Newberg on Class Actions (4th ed. 2002) § 11:38, p. 81;  
16 Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical*  
17 *Study* (2006) 53 UCLA L.Rev. 1303.) These awards “are discretionary, [citation],  
and are intended to compensate class representatives for work done on behalf of  
the class, to make up for financial or reputational risk undertaken in bringing the  
action, and, sometimes, to recognize their willingness to act as a private attorney  
general.

18 (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4<sup>th</sup> 1380, 1394.)

19 **VIII. CONCLUSION.**

20 For all of the foregoing reasons, Plaintiff Richard Wood requests that the Court  
21 approve a lodestar rate of \$3,348,160, with a multiplier of 2.5, and costs of \$76,639.48.

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

---

24  
25  
26 <sup>15</sup> Indeed, the Court has discretion to apply a multiplier to the costs. (*Downey*  
27 *Cares v. Downey Comm. Dev'l Commission* (1987) 196 Cal.App.3d 983, 998 (upholding  
28 1.5 multiplier applied to costs).) If the Court were to deny any item of costs in this  
matter, it should exercise its discretion to make up for such items by applying a  
multiplier to the remaining costs. This would be warranted given the eight year



1 DATED: March 25, 2016

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

2  
3 Michael D.  
4 McLachlan

Digitally signed by Michael D.  
McLachlan  
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Offices of Michael D. McLachlan, ou,  
email=mike@mclachlanlaw.com, c=US  
Date: 2016.03.25 17:10:20 -07'00'

By:

5 MICHAEL D. MCLACHLAN  
6 Attorneys for Plaintiff and the Class  
7  
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27  
28 timeframe at issue, as well as the sizeable amount of interest incurred. (McLachlan  
Decl., ¶ 35.)

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

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

Defendant.

## AND RELATED ACTIONS

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

**PROOF OF SERVICE**  
**Electronic Proof of Service**

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Fri. March 25, 2016 at 5:10 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Fri. March 25, 2016 at 5:10 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

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

correct. Executed on March 25, 2016 at Oakland, California.

Dated: March 25, 2016

For WWW.SCEFILING.ORG

Andy Jamieson

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
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Electronic Proof of Service  
Page 2

Document(s) submitted by Michael McLachlan of Law Offices of Michael D. McLachlan APC on Fri. March 25, 2016 at 5:10 PM PDT

1. Reply Brief: REPLY BRIEF IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY FEES, COSTS AND INCENTIVE AWARD

## **Exhibit P**

Michael D. McLachlan (State Bar No. 181705)  
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Attorneys for Plaintiff Richard Wood and the Class

**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

**SECOND SUPPLEMENTAL  
DECLARATION OF MICHAEL D.  
MCLACHLAN IN SUPPORT OF  
MOTION FOR AWARD OF  
ATTORNEYS' FEES, COSTS AND  
INCENTIVE AWARD**

Location: Dept. TBA  
Santa Clara Superior Court  
191 N. First Street  
San Jose, California

Date: April 1, 2016  
Time: 1:30 p.m.

1                   **SECOND SUPPLEMENTAL DECLARATION OF MICHAEL D.**  
2   **MCLACHLAN**

3  
4 I, Michael D. McLachlan, declare:

5           1.       I make this declaration of my own personal knowledge, except where  
6 stated on information and belief, and if called to testify in Court on these matters,  
7 I could do so competently.

8           2.       I am co-counsel of record of record for Plaintiff Richard Wood and  
9 the Class, and have been since 2008. I am duly licensed to practice law in  
10 California. I make this second supplemental declaration in support of the Motion  
11 Award of Attorney Fees, Costs and Incentive Award.

12           3.       Attached as **Exhibit 13** is a true and correct copy of the relevant  
13 pages of the hearing transcript of March 12, 2007.

14           4.       Attached as **Exhibit 14** is a true and correct copy of the relevant  
15 pages of the hearing transcript of April 16, 2007.

16           5.       Attached as **Exhibit 15** is a true and correct copy of the relevant  
17 pages of the hearing transcript of August 11, 2008.

18           6.       The PWS and the Court fully acknowledged that the case could be at  
19 issue and be litigated with the Class mechanism. (Ex. 13, 12:16-23.)

20           7.       Attached as **Exhibit 16** is a true and correct copy of the relevant  
21 pages of the hearing transcript of May 21, 2007 (*see* 28:17-28), wherein the Court  
22 stated:

23                   THE COURT: NONE OF THIS, MR. WEINSTOCK, WE CAN DO IN ANY  
24 BINDING WAY UNTIL WE HAVE EVERYBODY A PARTY AND SERVED,  
25 EITHER AS A CLASS MEMBER OR AS A DEFENDANT CLASS OR  
26 OTHERWISE. AND SO FAR, IT HAS BEEN LIKE PULLING TEETH TO  
27 GET THAT TO OCCUR. AND I'VE BEEN TALKING ABOUT THAT NOW  
28 FOR A LONG TIME. AND ONCE THAT IS ACCOMPLISHED I WILL BE  
VERY HAPPY TO START HEARING EVIDENCE CONCERNING ALL OF  
THE ISSUES THAT YOU JUST DESCRIBED. BUT UNTIL THAT HAS  
HAPPENED, IT WOULD BE AN EXERCISE IN FUTILITY AND

1 REDUNDANCY FOR THE COURT TO START  
2 HEARING THAT KIND OF EVIDENCE.

3 (*Id.* at 41:3-12.)

4 8. I have practiced law for over 20 years, nearly all of which has been  
5 spent as a Plaintiff's attorney. I therefore have considerable experience in having  
6 service of summons effectuated, and the costs of doing same. Personal service in  
7 a remote area like the Antelope Valley, or out of state, where a large portion of the  
8 Willis and Small Pumper Class members live, would cost in the range of \$100 -  
9 \$300, or more, on average.

10 9. After the failed settlement hearing on June 16, 2011, at the Court's  
11 encouragement, I met with Jeff Dunn, Warren Wellen and Richard Wood in the  
12 courthouse cafeteria, where we all agreed to revise the settlement agreement in  
13 accord with the Court's reservations, and resubmit it. I revised the agreement  
14 accordingly and circulated it on June 20, 2011. On July 14, 2011, Warren Wellen  
15 advised me in writing that the settlement did not have to go back to District 40's  
16 board for re-approval.

17 10. Thereafter, by August 4, 2011, counsel for District 40 went silent  
18 again, and refused to proceed with the settlement. During this time, several  
19 other PWS continued to express a preference for settling with the Class,  
20 including Thomas Bunn and Doug Evertz. Attached as **Exhibit 17**, collectively,  
21 are true and correct copies of relevant emails from 2011 discussed above.

22 11. In the Spring of 2013, I had a discussion with Jeff in Court about a  
23 settlement, using a class complaint against the landowners as leverage to force  
24 them to not oppose it. If they did, we would go through with the PWS settlement  
25 and litigate against the landowners. Dunn blessed this idea. The AV Materials  
26 case was filed on May 23, 2013. That day I emailed all PWS to advise of the  
27 settlement plans. That same day, Eric Garner emailed regarding his interest. He  
28 On June 18, 2013, Warren Wellen called to inform me that D40 was reneging on



1 its agreement to settle after the filing of AV Materials.

2 12. On June 26, I wrote to all other PWS counsel on settlement, with a  
3 discussion of legal fees. On July 3, 2013, I emailed all PWS counsel again with a  
4 revised draft agreement. By August 15, the following counsel had agreed that  
5 their clients would settle: Brad Weeks; Doug Evertz; Tom Bunn; and Wes  
6 Miliband. An e-mail of that same day, contained discussion of fee exposure. On  
7 August 19, John Tootle called to tell me that Cal Water was also going to join the  
8 settlement.

9 13. On October 17, Quartz Hill took the matter to their Board for  
10 approval (I was aware of this by direct communications from Bradley Weeks),  
11 after the preliminary approval motion was filed, and voted to pull out of the  
12 settlement. In a telephone call the next day, Mr. Weeks told me his client pulled  
13 out due to “intense” pressure from District 40. On October 23, 2013, after the  
14 motion for preliminary approval had been filed, Cal Water also pulled out via a  
15 formal notice filed with the Court.

16 14. Attached as **Exhibit 18**, collectively, are true and correct copies of  
17 relevant emails from 2013 discussed above.

18 15. It is well known that District 40 spent many year trying to stop  
19 settlement efforts, including the foregoing and the long-running principles  
20 mediation process under James Waldo (in which I participated directly). In  
21 November of 2013, the growing frustration with District 40’s efforts to stop  
22 settlement led a handful of parties – the United States, Palmdale Water District,  
23 AVEK, and a few other parties, including myself as Class counsel – to commence  
24 settlement discussions in a small, private group. District 40 and the other public  
25 water suppliers were expressly excluded, and not advised. These settlement  
26 meetings went on for many months, and ultimately produced the agreement that  
27 ultimately, after further improvement, became the Judgment and Physical  
28 Solution.

16. My extensive experience with groundwater-related litigation spans over 20 years. It was very useful when interfacing with experts in this case, and enabled me to handle those issues without access to a hydrogeologist or hydrologist expert of my own.

17. The Court should recall that the Scalmanini deposition was taken over many days in order to preserve his testimony for the Phase III trial due to his health problems. In fact, the deposition occurred during a break in the trial. It appeared that there would have been no opportunity to wait for the transcripts and review them before the trial recommenced. So both myself and Mr. O'Leary attended portions of this deposition. But only I flew to Northern California to conduct the Class' cross-examination of Mr. Scalaminini.

18. Attached as **Exhibit 19** is a true and correct copy of the Stipulation for Entry of Judgment and Physical Solution, omitting the voluminous signature pages beyond that of District 40.

19. Mr. Dunn's statement in paragraph 13 of his declaration is wrong. I did attend trial on February 10, 2014. Similarly, Ms. Wang is incorrect that I did not attend the settlement conference on February 18, 2014.

20. Attached as **Exhibit 20** is a true and correct copy of the declarations of Wesley Milliband, Thomas Bunn and Douglas Evertz, filed in 2013.

## ALLOCATION AMONG DEFENDANTS

21. The table below shows the water right for each of the defendants subject to this motion (Dunn Decl., Ex. G.) as a relative percentage among, and then the proportionate share of the lodestar at issue in this Motion:

<b>Defendant</b>	<b>Production Right</b>	<b>Relative %</b>	<b>Percentage of Lodestar</b>
District No. 40	6,789.26	74.76%	\$2,503,084
Quartz Hill	563.73	6.21%	\$207,921
Littlerock Creek I.D.	796.58	8.77%	\$293,634
California Water	343.14	3.78%	\$126,560
Desert Lake C.S.D.	73.53	.81%	\$27,120
Palm Ranch I.D.	465.69	5.13%	\$171,761
North Edwards	49.02	.54%	\$18,080
	<b>9,080.95</b>	<b>100.00%</b>	<b>\$3,348,160.00</b>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25<sup>th</sup> day of March, 2016, at Hermosa Beach, California.

**Michael D.  
McLachlan**

Digitally signed by Michael D. McLachlan  
 DN: cn=Michael D. McLachlan, o=Law  
 Offices of Michael D. McLachlan, ou,  
 email=mike@mclachlanlaw.com,  
 c=US  
 Date: 2016.03.25 17:15:12 -07'00'

Michael D. McLachlan

## **Exhibit 13**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

4  
5 COORDINATION PROCEEDING )  
6 SPECIAL TITLE (RULE 1550B) )  
7 ANTELOPE VALLEY GROUNDWATER CASES) )

JUDICIAL COUNCIL  
COORDINATION NO. P4408

8 PALMDALE WATER DISTRICT AND )  
9 QUARTZ HILL WATER DISTRICT, )

SANTA CLARA CASE NO.  
1-05-CV-049053

10 CROSS-COMPLAINANTS, )

11 VS )

12 LOS ANGELES COUNTY WATERWORKS, )  
13 DISTRICT NO. 40, ET AL, )

14 CROSS-DEFENDANTS. )

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 MONDAY, MARCH 12, 2007

17  
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)

20  
21  
22  
23 ORIGINAL

24  
25  
26  
27 CHARLOTTE NICHOLAS MOHAMED, CSR #2384  
28 OFFICIAL REPORTER

1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 12, 2007; 9:03 A.M.

2 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

3 CASE NO.: 1-05-CV-049053

4 CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES

5 APPEARANCES: (AS NOTED ON TITLE PAGE)

6  
7 (CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

8 ---0---

9 THE COURT: GOOD MORNING.

10 THIS IS THE ANTELOPE VALLEY GROUND WATER CASES.  
11 COORDINATED PROCEEDINGS. WE HAVE SEVERAL MATTERS TO TAKE UP  
12 THIS MORNING.

13 HOW MANY COUNSEL INTEND TO APPEAR THIS MORNING?  
14 (RAISE HANDS)

15 THE COURT: OKAY. LET'S HAVE EACH COUNSEL STAND AND  
16 IDENTIFY THEMSELVES FOR THE RECORD.

17 THE OTHER THING THAT I'LL ASK YOU TO DO, WHEN YOU  
18 SPEAK, IN CONNECTION WITH THESE PROCEEDINGS, MAKE SURE TO  
19 IDENTIFY YOURSELF FOR THE RECORD SO THAT THE REPORTER HAS YOUR  
20 NAME.

21 SO WE WILL START.

22 MR. FIFE: GOOD MORNING, YOUR HONOR.

23 MICHAEL FIFE, ANTELOPE VALLEY GROUNDWATER  
24 AGREEMENT ASSOCIATION.

25 MR. DUNN: GOOD MORNING, YOUR HONOR.

26 JEFFREY DUNN ON BEHALF OF ROSAMOND COMMUNITY  
27 SERVICES DISTRICT AND LOS ANGELES COUNTY WATERWORKS DISTRICT  
28 NUMBER 40.



1 THE COURT: WE ARE PROBABLY GOING TO ADDRESS PART OF  
2 THEM TODAY. BUT THERE IS GOING TO BE OBVIOUSLY, AS I JUST  
3 SAID, A FUTURE HEARING UPON NOTICE, THAT WE WILL TAKE UP A  
4 FINAL DETERMINATION AS TO THAT.

5 MR. FIFE: THEN I'LL WAIT TO ADDRESS THEM.

6 THE COURT: BUT I DO WANT TO TALK ABOUT THE CLASS  
7 CERTIFICATION MOTION THAT HAS BEEN FILED ON BEHALF OF THE  
8 WATER WORKS DISTRICT 40 AND ROSEMOND. AND THAT IS FOR THE  
9 CREATION OF A DEFENDANT CLASS. AND I HAVE SOME CONCERNS ABOUT  
10 IT BECAUSE IT SEEMS TO ME AS IT IS STATED, IT IS OVERBROAD,  
11 NUMBER ONE.

12 BUT THE PRECURSOR TO ANY MOTION TO CERTIFY A  
13 CLASS HAS TO BE A PLEADING UPON WHICH IT IS BASED. AND RIGHT  
14 NOW WE DON'T HAVE A PLEADING, WE HAVE A PROPOSED PLEADING.  
15 AND WHAT I THINK I NEED TO DO THIS MORNING IS AUTHORIZE THE  
16 FILING OF THAT CROSS-COMPLAINT. NOW, AS I'VE INDICATED -- AS  
17 AN AMENDED CROSS-COMPLAINT.

18 AS I HAVE INDICATED, THE FILING OF A PLEADING  
19 DOES NOT, PER SE, RESULT IN CERTIFICATION OF A CLASS THAT IS  
20 ALLEGED IN THAT PLEADING. AND THAT IS A SEPARATE ISSUE AND I  
21 WANT TO TAKE THAT UP IN PART THIS MORNING BECAUSE I THINK THAT  
22 THE PROPOSED CLASS AS STATED IS OVERBROAD AND IN SOME WAYS  
23 MIGHT MAKE IT IMPOSSIBLE TO CERTIFY A CLASS BECAUSE OF THE  
24 NUMBER OF INDIVIDUAL ISSUES THAT MIGHT PREDOMINATE DEPENDING  
25 ON HOW THE CLASS IS CONSTRUCTED.

26 AND THE OTHER ISSUE IS, WITH REGARD TO THE CLASS  
27 MEMBERS, IS THE -- WELL, I AM LOSING MY TRAIN OF THOUGHT ON  
28 THIS, BUT I THINK THAT WHAT WE HAVE TO DO IS CONSIDER WHETHER



1 OR NOT THERE NEED TO BE SUB CLASSES WITHIN THE CLASS  
2 CERTIFICATION OR THE CLASS THAT IS CERTIFIED.

3 THE OTHER THING THAT -- WITH REGARD TO A  
4 DEFENDANT CLASS, IT SEEMS TO ME THAT YOU HAVE TO NAME A CLASS  
5 REPRESENTATIVE AS THE DEFENDANT. AND ONE WHO IS SIMILARLY  
6 SITUATED TO THE MEMBERS OF THE CLASS, THAT THAT DEFENDANT  
7 OUGHT TO REPRESENT. AND IT PROBABLY NEEDS THE CONCURRENCE OF  
8 THAT CLASS MEMBER, BECAUSE I DON'T THINK YOU CAN MAKE SOMEBODY  
9 AN INVOLUNTARY REPRESENTATIVE OF A CLASS. I DON'T THINK THAT  
10 IS FUNCTIONALLY APPROPRIATE.

11 SO AS THE CLASS IS CONSTRUCTED HERE, IT SEEMS TO  
12 ME THAT IT IS CERTAINLY POSSIBLE TO HAVE A DEFENDANT CLASS OR  
13 A SUB CLASS OF ALL OVERLYING OWNERS WHO ARE OUTSIDE OF WATER  
14 SERVICE DISTRICTS AND WHO ARE NOT PUMPING AND HAVE NOT PUMPED.  
15 SO THAT IS BASICALLY A DORMANT CLASS.

16 SO THAT A CLASS, IT SEEMS TO ME, OF THAT NATURE,  
17 COULD BE A SUB CLASS. AND I'M GOING TO ASK COUNSEL TO ADDRESS  
18 THAT.

19 THE OTHER CLASS, WHICH I -- IT SEEMS TO ME IS NOT  
20 EVEN A NECESSARY CLASS IN ORDER TO PROPERLY ADJUDICATE THIS  
21 CASE, ARE THOSE INDIVIDUALS WHO RESIDE WITHIN THE WATER  
22 SERVICE DISTRICT AND RECEIVE WATER FROM THAT WATER SERVICE  
23 DISTRICT, DO NOT HAVE WELLS, AND DO NOT MAKE ANY CLAIM TO  
24 WATER RIGHTS UNDERLYING THEIR LAND OR THE USE OF THE WATER  
25 UNDERLYING THEIR LAND.

26 A THIRD GROUP COULD BE THOSE INDIVIDUALS WHO  
27 INTEND TO PUMP, AND THAT IS OBVIOUSLY THE ADD-ON CASE THAT WE  
28 HAVE HERE THIS MORNING, AN ASSERTION THAT THEY MAY WISH TO



1 PUMP IN THE FUTURE. AND IF THE INDIVIDUALS ARE ~~PART~~ OF AN  
2 ADDITIONAL PLAINTIFF'S CLASS, THAT MIGHT SOLVE THAT PROBLEM.

3 NOW IT SEEMS TO ME THAT ANYBODY WHO IS A  
4 SIGNIFICANT PUMPER NEEDS TO BE A PARTY AND THEY EITHER NEED TO  
5 BE SERVED OR THEY HAVE TO HAVE FILED THEIR ACTIONS THEMSELVES.  
6 AND THOSE ARE INDIVIDUALS WHO DON'T INTEND TO OR WHO ARE  
7 NOMINAL PUMPERS OR WATER PRODUCERS WITH AN INDIVIDUAL WELL IN  
8 THEIR BACKYARD. I DON'T KNOW HOW MANY OF THOSE THERE ARE.  
9 THEY MIGHT WELL BE MINIMUS INDIVIDUALS AND MAY NOT NEED TO BE  
10 A PART OF THIS ADJUDICATION BECAUSE THEY DON'T AFFECT THE  
11 WATER SUPPLY IN ANY MEASURABLE AMOUNT AND WHATEVER HAPPENS  
12 HERE IS GOING TO HAVE LITTLE IMPACT ON THEM.

13 SO IT SEEMS TO ME THAT THAT IS KIND OF THE BROAD  
14 STRUCTURE THAT I ENVISION HERE AND I WOULD LIKE COUNSEL TO  
15 ADDRESS THAT. AND I DON'T REALLY CARE WHO STARTS.

16 MR. DUNN: I THINK, IF MY NOTES ARE CORRECT, WE ARE  
17 LOOKING AT RESPONDING HERE TO THREE POTENTIAL SUBCLASSES OR  
18 CLASSES. ONE WOULD BE, FOR LACK OF A BETTER DESCRIPTION, THE  
19 DORMANT CLASS OF ALL PERSONS OUTSIDE THE MUNICIPAL WATER  
20 SERVICE AREAS AND THESE INDIVIDUALS OR ENTITIES DO NOT PUMP.

21 AND THE SECOND GROUP COULD BE THOSE INDIVIDUALS  
22 WHO DO NOT HAVE WELLS BUT ARE WITHIN THE SERVICE AREA  
23 DISTRICTS AND THE MUNICIPAL WATER SUPPLIER SERVICE AREAS BUT  
24 DO NOT CLAIM TO PUMP OR PUMP.

25 AND THEN THE THIRD GROUP COULD POSSIBLY BE THOSE  
26 INDIVIDUALS WHO MAY WISH TO PUMP IN THE FUTURE, BEING THINK  
27 SORT OF GENERALLY DESCRIBED IN THE PUTATIVE CLASS MEMBER  
28 WILLIS' PETITION.

1 MR. ZIMMER: YOUR HONOR, WHAT WAS THE RESPONSE DEADLINE  
2 NOW, THE 23RD?

3 THE COURT: FRIDAY, THE 23RD. THIS FRIDAY HE IS GOING  
4 TO PREPARE -- APRIL THE --

5 MR. ZIMMER: 6TH?

6 THE COURT: 6TH? APRIL, WHATEVER THE DATE WAS THAT I  
7 STATED ON THE RECORD.

8 MR. JOYCE: APRIL 6, YOUR HONOR.

9 THE COURT: YES. APRIL 6.

10 YOU ASKED FOR 2 WEEKS?

11 MR. ZIMMER: YES, YOUR HONOR, THANK YOU. THAT IS WHAT  
12 I THOUGHT IT WAS.

13 THE COURT: ALL RIGHT. SO YOU HAVE A LOT OF WORK TO DO  
14 BETWEEN NOW AND FRIDAY.

15 IS THERE ANYTHING ELSE, COUNSEL, WE SHOULD TAKE  
16 UP? ANYBODY ELSE HAVE ANYTHING THEY WOULD LIKE TO ADDRESS?

17 (NO AUDIBLE RESPONSE)

18 THE COURT: ALL RIGHT. WE WILL BE IN RECESS.

19 THANK YOU VERY MUCH.

20  
21  
22 (AT 10:30 A.M. PROCEEDINGS CONCLUDED)  
23  
24  
25  
26  
27  
28

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING  
SPECIAL TITLE (RULE 1550(B))  
ANTELOPE VALLEY GROUNDWATER CASES

JUDICIAL COUNCIL  
COORDINATION NO. P4408

PALMDALE WATER DISTRICT AND  
QUARTZ HILL WATER DISTRICT,

SANTA CLARA CASE NO.  
1-05-CV-049053

CROSS-COMPLAINANTS,

VS

REPORTER'S CERTIFICATE

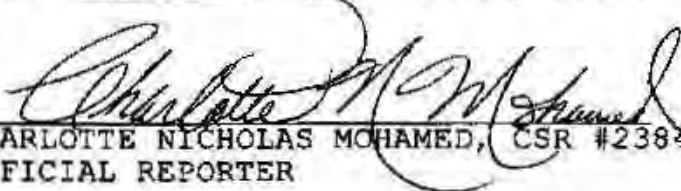
LOS ANGELES COUNTY WATERWORKS,  
DISTRICT NO. 40, ET AL,

CROSS-DEFENDANTS.

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF LOS ANGELES )

I, CHARLOTTE NICHOLAS MOHAMED, CSR, OFFICIAL  
REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES, 1 THROUGH 50, COMPRISE A TRUE AND  
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER ON MONDAY, MARCH 12, 2007.

DATED THIS 13<sup>th</sup> DAY OF MARCH, 2007.

  
CHARLOTTE NICHOLAS MOHAMED, CSR #2384  
OFFICIAL REPORTER

## **Exhibit 14**



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING }  
SPECIAL TITLE (RULE 1550B) }  
ANTELOPE VALLEY GROUNDWATER CASES }  
\_\_\_\_\_ }

JUDICIAL COUNCIL  
COORDINATION NO. P4408

PALMDALE WATER DISTRICT AND }  
QUARTZ HILL WATER DISTRICT, }  
\_\_\_\_\_ }

SANTA CLARA CASE NO.  
1-05-CV-049053

CROSS-COMPLAINANTS, }

VS }

LOS ANGELES COUNTY WATERWORKS, }  
DISTRICT NO. 40, ET AL, }

CROSS-DEFENDANTS. }

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**MONDAY, APRIL 16, 2007**

APPEARANCES:

(SEE APPEARANCE PAGES)

**COPY**

CHARLOTTE NICHOLAS MOHAMED, CSR #2384  
OFFICIAL REPORTER

1 LOS ANGELES, CALIFORNIA; **MONDAY, APRIL 16, 2007; 9:00 A.M.**

2 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

3 **CASE NO.:** 1-05-CV-049053

4 **CASE NAME:** ANTELOPE VALLEY GROUNDWATER CASES

5 **APPEARANCES:** (AS NOTED ON TITLE PAGE)

6  
7 (CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

8 ---0---

9 THE COURT: GOOD MORNING.

10 (COUNSEL RESPOND "GOOD MORNING, YOUR HONOR.")

11 THE COURT: THIS IS IN THE ANTELOPE GROUND WATER CASES.

12 IT IS THE TIME SET FOR HEARING ON SEVERAL THINGS.  
13 IT IS A CASE MANAGEMENT CONFERENCE SCHEDULED. WE ARE GOING TO  
14 TALK ABOUT THE CLASS DEFINITION. WE ARE GOING TO TALK ABOUT  
15 NOTICE TO THE CLASS. AND I ALSO HAVE A MOTION TO INTERVENE  
16 THAT HAS BEEN FILED BY ANAVERDE. SO WE WILL TAKE UP THOSE  
17 THINGS AND ANYTHING ELSE THAT COUNSEL ARE INTERESTED IN THIS  
18 MORNING.

19 WE HAVE SOMEBODY APPEARING BY TELEPHONE?

20 MS. CAHILL: WE DO, YOUR HONOR.

21 VIRGINIA CAHILL APPEARING FOR THE STATE OF  
22 CALIFORNIA ALTHOUGH I BELIEVE MY COLLEAGUE MICHAEL CROW IS IN  
23 THE COURTROOM.

24 MR. ALLENBY: YES, YOUR HONOR. LIKEWISE, ROBERT  
25 ALLENBY APPEARING ON BEHALF OF JUNG TOM WHO IS A DEFENDANT AND  
26 MINIMAL PROPERTY OWNER.

27 MR. HOLMES: GOOD MORNING, YOUR HONOR.

28 MIKE HOLMES ON BEHALF OF SPC DEL SUR RANCH, LLC.

1 MR. PFAEFFLE: IT IS NOT.

2 THE COURT: AND I PRESUME THEN THAT TO THE EXTENT ONE  
3 OF MR. DUNN'S CUSTOMERS WANTS TO HAVE A WELL IN THEIR FRONT  
4 YARD, AS A PRACTICAL MATTER THEY MAY NOT DO IT BUT TECHNICALLY  
5 THEY HAVE THE RIGHT TO DO IT; IS THAT RIGHT?

6 MR. PFAEFFLE: THAT'S CORRECT.

7 THE COURT: ALL RIGHT. DO YOU THINK THAT -- AND I  
8 UNDERSTAND, MR. DUNN, YOUR DESIRE NOT TO SUE YOUR CUSTOMERS,  
9 ALTHOUGH DECLARATORY RELIEF IS NOT NECESSARILY ADVERSE TO  
10 THEM; IT COULD BE SUPPORTIVE OF THEIR INTERESTS. AND OF  
11 COURSE THERE IS ANOTHER ISSUE CONCERNING THE ABILITY TO DO A  
12 CLASS ACTION FOR DECLARATORY RELIEF. BUT WITHOUT GETTING TO  
13 THAT POINT, MY ONLY CONCERN IS THAT IF SOMEBODY HAS AN  
14 OBJECTION TO WHAT WE ARE DOING HERE, THAT THEY HAVE A RIGHT TO  
15 COME IN AND INTERVENE AND/OR TO SEEK TO BE A MEMBER OF THE  
16 CLASS.

17 AND IT SEEMS TO ME THAT THE CLASS IS PRETTY CLOSE  
18 TO THE CLASS THAT IS ENVISIONED BY MS. WILLIS' COMPLAINT, OR  
19 CROSS-COMPLAINT AS IT WERE, FOR A CLASS ACTION. AND IT MIGHT  
20 BE THAT THAT IS SUFFICIENTLY BROAD TO ENCOMPASS YOUR CLIENTS.  
21 AND TO THE EXTENT THAT THEY WISH TO BE WITHIN THE LITIGATION,  
22 THEY CAN DO SO; IF THEY CHOOSE NOT TO BE, THEY CAN SEEK TO  
23 MOVE OUT.

24 BUT THERE IS NO QUESTION, I THINK, THAT TO THE  
25 EXTENT THAT A PARTY IS AN OVERLYING OWNER OF REAL PROPERTY,  
26 THEY DO HAVE CERTAIN MINERAL AND WATER RIGHTS UNDERLYING THAT  
27 PROPERTY AND THIS COURT CANNOT AND SHOULD NOT CAUSE DETRIMENT  
28 TO THOSE RIGHTS WITHOUT DUE PROCESS.

1                   SO I'M CONCERNED ABOUT TWO THINGS HERE: I'M  
2 CONCERNED ABOUT YOUR CONCERN ABOUT NOT HAVING TO BRING IN, BY  
3 CLASS OR OTHERWISE, ALL OF YOUR CUSTOMERS AND THE CUSTOMERS OF  
4 RELATED WATER PROVIDERS. BUT I ALSO AM CONCERNED ABOUT NOT  
5 INFRINGING UPON ANYBODY'S RIGHTS WITHOUT NOTICE AND  
6 OPPORTUNITY FOR HEARING. IN OTHER WORDS, DUE PROCESS.

7                   SO WE ARE GOING TO HAVE TO DEAL WITH THAT AND I'D  
8 LIKE TO SEE IF WE CAN COME TO SOME TERMS THIS MORNING ABOUT  
9 HOW WE ARE GOING TO DEAL WITH THAT. IN PART, WE MAY BE  
10 INHIBITED BECAUSE THERE IS A DEMURRER, A MOTION TO STRIKE,  
11 PENDING -- I THINK IT IS SET FOR MAY THE 21ST -- AS TO THE  
12 WILLIS PLEADINGS. AND OBVIOUSLY UNTIL THOSE PLEADINGS ARE AT  
13 ISSUE, I CAN'T TELL WHAT EFFECT THAT MIGHT HAVE IN THESE  
14 PROCEEDINGS.

15                  OKAY. WOULD ANYBODY ELSE LIKE TO OFFER ANYTHING  
16 ON THESE ISSUES?

17                 MR. DUNN: MAY I HAVE A MOMENT, YOUR HONOR.

18                 THE COURT: YES.

19                 MR. DUNN: THANK YOU.

20                                 (PAUSE)

21                 MR. DUNN: A COUPLE OF IDEAS, YOUR HONOR, IN TERMS OF  
22 THE CONCERN THE COURT HAS EXPRESSED OVER INDIVIDUALS WHO  
23 HAVE -- I'LL CALL THEM "HOMEOWNERS" AT THIS POINT, JUST TO  
24 SORT OF KEEP IT SIMPLE -- HOMEOWNERS WHO DON'T CURRENTLY HAVE  
25 A GROUNDWATER WELL BUT RECEIVE WATER SERVICE FROM A PUBLIC  
26 WATER SERVICE SUPPLIER.

27                 AS MR. PFAEFFLE HAS MENTIONED, IT IS A  
28 MINISTERIAL DUTY ON THE PART OF AT LEAST THE COUNTY TO ISSUE



1 THE PERMIT, SUBJECT TO MEETING THE HEALTH AND SAFETY  
2 DEPARTMENT.

3 ALL OF THIS IS SORT OF BACKGROUND OF SAYING THAT  
4 WHAT WE HAVE PROPOSED IN THE INITIAL PRIMER HERE IS A CLASS  
5 DEFINITION THAT EXCLUDES THESE INDIVIDUALS. BUT BECAUSE THEY  
6 WOULD HAVE TO APPLY FOR A WELL PERMIT, THEY CAN BE IDENTIFIED  
7 AT A LATER POINT IN TIME AND THEY COULD IN FACT UNDER THE  
8 ONGOING JURISDICTION OF THE COURT, ALBEIT EVEN WITH A WATER  
9 MASTER, THESE INDIVIDUALS OVER TIME AS THEY APPLY FOR A WELL  
10 PERMIT, THEY COULD THEN BECOME SUBJECT TO THE JURISDICTION OF  
11 THE COURT AT THAT POINT IN TIME. SO THERE WOULD NOT BE A  
12 SITUATION NECESSARILY WHERE THERE WOULD BE NO MEANS OF SORT OF  
13 IN THE FUTURE OF DEALING WITH THIS PROBLEM.

14 I THINK AS A PRACTICAL MATTER THE NUMBER OF  
15 POTENTIAL CASES INVOLVING THIS IS PRETTY SLIM AT BEST. AND SO  
16 AGAIN, I KEEP RAISING THIS ISSUE OF BEING PRAGMATIC.

17 THE OTHER PART OF THE PROBLEM IS IF WE ARE IN  
18 FACT LOOKING AT THE ZLOTNICK SLASH WILLIS CLASS ACTION  
19 COMPLAINT AS A MECHANISM FOR BRINGING IN ALL OF THESE PARTIES,  
20 THEN IT DOES IN FACT, I WOULD HAVE TO CONCEDE, IT TAKES THE  
21 COUNTY AND MY CLIENT OUT OF THE POSITION OF SORT OF SUING  
22 THEM. THEY ARE BROUGHT IN ON SOMEBODY ELSE'S CLASS ACTION  
23 LAWSUIT. SO THEN IT SORT OF GOES TO THE NOTICE ISSUE.

24 SO IF THE COURT IS SORT OF HEADING IN THAT  
25 DIRECTION, OF SORT OF LOOKING AT THE EXISTING WILLIS CROSS --  
26 CLASS ACTION COMPLAINT, AS BEING SORT OF THE MECHANISM AS  
27 OPPOSED TO, SAY, THE ONE THAT HAS BEEN FILED BY THE PUBLIC  
28 WATER SUPPLIERS, THEN THAT PROCEDURALLY PUTS US IN PROBABLY A

1 SLIGHTLY BETTER -- OR MAYBE A SIGNIFICANTLY BETTER SITUATION.

2 THE COURT: SUBCLASS A IS DORMANT LANDOWNERS WHO HAVE  
3 NOT OPERATED THE GROUNDWATER WELL SINCE FIVE YEARS IMMEDIATELY  
4 PRIOR TO A CERTAIN DATE. ISN'T THAT ALSO CONSISTENT WITH THE  
5 ALLEGATIONS IN THE WILLIS CLASS ACTION COMPLAINT?

6 MR. DUNN: I WOULD HAVE TO DEFER TO MR. ZLOTNICK ON  
7 THAT. I'M JUST NOT, MEMORYWISE, FAMILIAR WITH THOSE  
8 ALLEGATIONS.

9 THE COURT: WELL, IT CERTAINLY IS CONSISTENT WITH HIS  
10 CLIENT'S DEFINITION, AND THAT IS A LANDOWNER OF ABOUT TEN  
11 ACRES WHO HAS NOT PUMPED BUT MIGHT PUMP IN THE FUTURE.

12 MR. DUNN: GENERALLY, YES.

13 THE COURT: SO I GUESS WHAT I'M LOOKING AT HERE IS I'M  
14 TRYING TO PARE DOWN THE VARIOUS SUBCLASSES, IF WE CAN, AND TO  
15 MAKE SURE THAT WE COVER EVERYBODY WHO HAS ANY RIGHTS WITHIN  
16 THIS ANTELOPE VALLEY, AND MAKE SURE THAT THEIR RIGHTS ARE  
17 PROPERLY PROTECTED AND ADJUDICATED.

18 SO THAT IT MAY BE THAT IF THE WILLIS COMPLAINT  
19 STANDS, THAT DORMANT SUBCLASS A, DORMANT LANDOWNERS, FALLS BY  
20 THE WAYSIDE AS A DEFENDANT CLASS BECAUSE THEY ARE A PLAINTIFF  
21 CLASS.

22 MR. DUNN: YES. YES. AND I WOULD QUICKLY ADD THAT  
23 PROCEDURALLY IT IS SIMPLER AND I'LL CALL IT "CLEANER" TO  
24 PROCEED AS A PLAINTIFF'S CLASS IN ANY EVENT. SO THERE ARE A  
25 VARIETY OF ADVANTAGES OF DOING IT IN THAT FASHION.

26 THE COURT: CERTAINLY A LOT MORE PRECEDENT --

27 MR. DUNN: YES.

28 THE COURT: -- THAT WE CAN RELY ON IN DOING THAT.



1 MR. DUNN: SERVICE HAS BEEN SENT TO WAGAS ALREADY SO  
2 YOU MIGHT WANT TO CHECK YOUR OFFICE.

3 MR. RENWICK: GLAD TO KNOW THAT. OKAY.

4 THE COURT: WELL, WELCOME ABOARD. THANK YOU.

5 MR. JOYCE: YOUR HONOR, THIS IS BOB JOYCE AGAIN.

6 THE DIFFICULTY AND THE CONCERN I HAVE IS THAT IT  
7 IS MY UNDERSTANDING THAT THE EFFORT AT SERVICE WAS  
8 CORRESPONDENCE WITH SUMMONS AND COMPLAINT AND A NOTICE AND  
9 ACKNOWLEDGMENT. MY REAL CONCERN IS THAT HAVE ALL OF THOSE  
10 NOTICES AND ACKNOWLEDGMENTS BEEN SIGNED AND RETURNED; AND  
11 THOSE PEOPLE WHO HAVE NOT FORMALLY APPEARED, ARE THEY THEN NOW  
12 POSTURED TO BE DEFAULTED. AND THAT IS THE QUESTION THAT HAS  
13 NOT YET BEEN ANSWERED. AND IF NOT RETURNED, THEN HAVE THEY  
14 MADE A FOLLOWUP EFFORT OF PERSONAL SERVICE, AND THAT LIKEWISE  
15 HAS NOT BEEN ADDRESSED AND ANSWERED.

16 MY CONCERN IS THAT WHEN WE GET TO THE END, IF WE  
17 GET A FINAL JUDGMENT THAT IS GOING TO BIND --

18 THE COURT: STOP THUMPING ON THAT LECTERN.

19 MR. JOYCE: I AM SORRY, YOUR HONOR. THAT WAS MY HEART  
20 POUNDING.

21 THE COURT: I THOUGHT IT WAS.

22 MR. JOYCE: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU.

24 MR. LEININGER.

25 MR. LEININGER: GOOD MORNING, YOUR HONOR.

26 LEE LEININGER FOR THE UNITED STATES.

27 JUST A QUESTION PROCEDURALLY WITH REGARD TO THE  
28 CERTIFICATION ORDER. IT SOUNDS LIKE AT THIS POINT WE HAVE TWO

1 CLASSES, TWO SUBCLASSES: SUBCLASS A, WHICH IT SOUNDS AS IF IT  
2 WOULD BE MOST APPROPRIATE AS A PLAINTIFF'S CLASS WITH MISS  
3 WILLIS AS CLASS REPRESENTATIVE. THEN WE HAVE SUBCLASS B WITH  
4 LANDOWNERS WITH WELLS, BUT WE DON'T HAVE A DEFINED CLASS  
5 REPRESENTATIVE FOR THAT CLASS.

6 IS IT THE COURT'S INTENT TO ATTEMPT TO HAVE THIS  
7 RESOLVED BY MAY 21ST WHEN WE HAVE ADDITIONAL HEARING ON THAT  
8 QUESTION?

9 THE COURT: YES.

10 MR. LEININGER: OKAY.

11 THE COURT: AND YOU ARE EXACTLY RIGHT. I THINK  
12 THE PLAINTIFF'S CLASS REALLY ENCOMPASSES ONE OF THE  
13 SUBCLASSES AND THE OTHER SUBCLASS NEEDS A REPRESENTATIVE.

14 MR. LEININGER: THAT IS MY UNDERSTANDING. BEFORE THE  
15 COURT CAN ISSUE A CERTIFICATED ORDER, WE NEED TO DETERMINE THE  
16 CLASS REPRESENTATIVE.

17 THE COURT: YES. AND COUNSEL WHO ARE INTERESTED IN  
18 THIS ADJUDICATION AND WHO WANT TO HAVE AN EFFECTIVE  
19 ADJUDICATION NEED TO WORK WITH EACH OTHER TO DEVELOP WHO THAT  
20 DEFENDANT CLASS REPRESENTATIVE MIGHT BE, BOTH FROM A -- AND I  
21 THINK THERE MAY WELL BE A PARTY WHO IS ALREADY SERVED HERE WHO  
22 MEETS THAT DESCRIPTION. BUT WE WANT COMPETENT COUNSEL AND AN  
23 EFFECTIVE DEFENDANT FOR THAT CLASS. WE MAY HAVE HEARD FROM  
24 HIM TODAY.

25 ALL RIGHT. SO I EXPECT COUNSEL TO HAVE THAT FOR  
26 US BY THE 21ST.

27 ANYTHING ELSE?

28 (NO AUDIBLE RESPONSE)

1 THE COURT: OKAY. I WILL SEE YOU ON THE 21ST.

2 THANK YOU.

3  
4  
5 (AT 10:10 A.M. PROCEEDINGS CONCLUDED)  
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING  
SPECIAL TITLE (RULE 1550(B))  
ANTELOPE VALLEY GROUNDWATER CASES

JUDICIAL COUNCIL  
COORDINATION NO. P4408

PALMDALE WATER DISTRICT AND  
QUARTZ HILL WATER DISTRICT,

SANTA CLARA CASE NO.  
1-05-CV-049053

CROSS-COMPLAINANTS,

VS

REPORTER'S CERTIFICATE


LOS ANGELES COUNTY WATERWORKS,  
DISTRICT NO. 40, ET AL,

CROSS-DEFENDANTS.

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF LOS ANGELES )

I, CHARLOTTE NICHOLAS MOHAMED, CSR, OFFICIAL  
REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES, 1 THROUGH 40, COMPRISE A TRUE AND  
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER ON MONDAY, APRIL 16, 2007.

DATED THIS 17<sup>th</sup> DAY OF APRIL, 2007.

  
CHARLOTTE NICHOLAS MOHAMED, CSR #2384  
OFFICIAL REPORTER

# **Exhibit 15**

8-11-08 ANTELOPE VALLEY FINAL ASCII TRANSCRIPT

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE  
4 COORDINATION PROCEEDING )  
5 SPECIAL TITLE (RULE 1550B) )  
6 ANTELOPE VALLEY GROUNDWATER CASES ) JUDICIAL COUNCIL  
7 ) COORDINATION  
8 ) NO. JCCP4408  
9 )  
10 )  
11 )  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
MONDAY, AUGUST 11, 2008

APPEARANCES:  
(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585  
OFFICIAL REPORTER



8-11-08 ANTELOPE VALLEY FINAL ASCII TRANSCRIPT

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1 CASE NUMBER: JCCP 4408  
2 CASE NAME: ANTELOPE VALLEY  
3 LOS ANGELES, CALIFORNIA, MONDAY, AUGUST 11, 2008  
4 DEPARTMENT NO. HON. JACK KOMAR  
5 REPORTER GINGER WELKER, CSR #5585  
6 TIME: 9:00 A.M.  
7 APPEARANCES: (SEE APPEARANCE PAGES)

8

9 THE COURT: GOOD MORNING. WE HAVE A RATHER  
10 AMBITIOUS CALENDAR THIS MORNING AND, UNFORTUNATELY, NOT  
11 AS MUCH TIME AS I WOULD LIKE TO DO IT. SO LET'S START  
12 BY FINDING OUT WHO IS HERE, WHO WANTS TO APPEAR IN  
13 CONNECTION WITH THESE MATTERS.

14 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN  
15 ON BEHALF OF PALMDALE WATER DISTRICT AND QUARTZ HILL  
16 WATER DISTRICT.

17 MR. ROBERT KUHS: ROBERT KUHS APPEARING ON BEHALF  
18 OF TEJON RANCH CORP.

19 MR. LEMIEUX: KEITH LEMIEUX, L-E-M-I-E-U-X, ON  
20 BEHALF OF THE LITTLE ROCK CREEK IRRIGATION DISTRICT, ET  
21 AL.

22 MR. O'LEARY: GOOD MORNING, YOUR HONOR, DANIEL

14 SOMETHING THAT MAY BE EXERCISED. IT IS A STATUTE OF  
15 LIMITATION DEFENSE. THERE IS NO LIMITATION ON THE RIGHT  
16 TO ASSERT THAT DEFENSE BECAUSE IT WAS A GOVERNMENTAL  
17 AGENCY OR ENTITY OR QUASI -GOVERNMENTAL ENTITY OR AGENCY  
18 OR A PRIVATE PARTY.

19 AND IT IS -- IT JUST SEEMS TO ME WE ARE  
20 TAKING LANGUAGE OUT OF CASES THAT HAS SOME SIGNIFICANCE  
21 IN THOSE CASES, BUT REALLY DOESN'T APPLY TO THE BASIC  
22 ISSUE THAT WE ARE TALKING ABOUT HERE. AND THAT IS, IS  
23 THE GOVERNMENT EVER PRECLUDED FROM ASSERTING IN THIS  
24 TYPE OF A SITUATION THE DEFENSE OF THE STATUTE OF  
25 LIMITATIONS.

26 AND I JUST DON'T THINK IT IS. THERE ARE  
27 ELEMENTS TO THE STATUTE OF LIMITATIONS THAT THEY HAVE TO  
28 ESTABLISH. AND SOMEHOW THAT HAS EVOLVED INTO A

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41

1 SUBSTANTIVE CONCEPT OF HOW TO TAKE PROPERTY. AND -- BUT  
2 THAT IS REALLY AN OVERBROAD, I THINK, CONCLUSION THAT WE  
3 HAVE REACHED WITH REGARD TO ADVERSE POSSESSION, OR  
4 PRESCRIPTION AS THE CASE MAY BE.

5 BUT I SEE NOTHING IN ANY LAW THAT I HAVE  
6 EVER SEEN. I HAVE SEEN NO CASE THAT EVER SAYS THAT THE  
7 GOVERNMENT AND QUASI -GOVERNMENTAL ENTITIES CAN NOT  
8 ASSERT THE STATUTE OF LIMITATIONS AS A DEFENSE OR TO USE  
9 IT AS AN OFFENSIVE WEAPON.

10 MR. ZLOTNICK: WELL, I THINK, YOU KNOW, THE LAST  
11 POINT THAT THE COURT MADE IS THE KEY HERE. AND AS YOUR  
12 HONOR HAS PREVIOUSLY RECOGNIZED, THE WILLIS CLASS

13 SUED -- WE ARE PLAINTIFFS SO WE BROUGHT THIS CASE  
14 ESSENTIALLY IN A DEFENSIVE MODE TO PREVENT OUR RIGHTS TO  
15 BEING AFFIRMATIVELY TAKEN.  
16 THE COURT: IT IS DECLARATORY RELIEF. YOU HAVE TO  
17 ESTABLISH WHAT YOUR RIGHTS ARE. YOU HAVE A RIGHT TO DO  
18 THAT. AND, HOPEFULLY, AT SOME POINT IN TIME IN THIS  
19 CENTURY, WE WILL GET TO THAT DETERMINATION AND THAT  
20 DECLARATION MADE.

21 MR. ZLOTNICK: I UNDERSTAND THE COURT'S POSITION.  
22 THE ONE FINAL POINT I WOULD LIKE TO MAKE IS JUST THAT IN  
23 THE -- I THINK THE CITY OF BARSTOW CASE MADE CLEAR THAT  
24 THE KEY IS NOT THE COMPREHENSIVENESS ISSUE. THE KEY  
25 IS -- AND I QUOTE THAT DECISION -- "BECAUSE THE COURT  
26 CANNOT FIX OR ABSOLUTELY ASCERTAIN THE QUANTITY OF WATER  
27 REQUIRED FOR FUTURE USE AT ANY GIVEN TIME."

28 THE COURT: AND I THINK THAT IS TRUE, BUT YOU CAN

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42

1 LIMIT WHAT PEOPLE CAN PUMP.

2 MR. ZLOTNICK: ONE CAN LIMIT WHAT PEOPLE CAN PUMP,  
3 AND WE ARE NOT TRYING TO AVOID THAT. YOUR HONOR, THAT  
4 IS WHY WE ARE IN THIS LITIGATION. THANK YOU.

5 THE COURT: AND I APPRECIATE THE FACT THAT YOU  
6 ARE, MR. ZLOTNICK. I WANT YOU TO UNDERSTAND THAT.

7 MR. ZLOTNICK: I UNDERSTAND.

8 THE COURT: THE OTHER PARTIES ARE APPRECIATED,  
9 TOO.

10 MR. BUNN, MR. MARKMAN, YOU WANT TO SAY  
11 ANYTHING?

12 MR. MARKMAN: NO, YOUR HONOR, IN VIEW OF THE  
13 COURT'S DISPOSITION ON THIS, WE DON'T WANT TO GIVE  
14 OURSELVES OUT OF IT.

15

16 (LAUGHING)

17

18 THE COURT: SNATCH VICTORY FROM DEFEAT -- FROM THE  
19 JAWS OF VICTORY. OKAY. LET'S TALK ABOUT THE STATUS OF  
20 SERVICE.

21 MR. DUNN, YOU RECEIVED THIS DECLARATION FROM  
22 YOU SETTING FORTH WHOSE BEEN SERVED AND WHO HASN'T AND  
23 WHY CERTAIN PEOPLE HAVE NOT YET BEEN SERVED. AND  
24 ESSENTIALLY -- I'M A LITTLE RELUCTANT TO PUT IT THIS  
25 WAY, BUT WHAT I'M READING HERE IS AN EXCUSE.

26 BUT IT IS NOT JUSTIFICATION. WE NEED TO GET  
27 EVERYBODY SERVED. NOW WHAT ARE YOU DOING ABOUT THAT?  
28 AND I KNOW THAT IS A TOUGH QUESTION TO ANSWER.

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43

1 MR. DUNN: WELL, LET ME TELL YOU WHAT WE HAVE  
2 DONE. WE HAVE IDENTIFIED AS DISCUSSED WITH THE COURT IN  
3 THE PAST PROPERTY OWNERS WHO OWN MORE THAN 100 ACRES OF  
4 LAND WITHIN THE ADJUDICATION AREA. WE HAVE COME UP WITH  
5 APPROXIMATELY 600 OF THOSE PROPERTY OWNERS.

6 THE COURT: WELL, LET ME CUT TO THE BOTTOM LINE  
7 HERE. AS I UNDERSTAND IT, THERE ARE 58 LARGE PROPERTY  
8 OWNERS WHO HAVE NOT YET SERVED OR AT LEAST WEREN'T  
9 SERVED AS OF THE TIME THAT I RECEIVED THE DECLARATION.

10 MR. DUNN: YES.

11 THE COURT: WHAT ARE YOU DOING TO SERVE THEM?

12 MR. DUNN: WE WERE WAITING TO SEE WHAT THE COURT  
13 WOULD DO ON THE CERTIFICATION OF THE CLASS OR CLASSES.  
14 THE COURT MAY OR MAY NOT RECALL THAT OVER THIS EXTENDED  
15 PERIOD OF TIME WHEN SERVICE WAS STARTED AND THEN STOPPED  
16 AND STARTED AND STOPPED -- AND I BELIEVE SEVERAL TIMES  
17 THAT HAPPENED.

18 BUT WHAT HAD HAPPENED IN ONE OF THOSE TIME  
19 PERIODS IS THAT WHEN WE WERE OUT PERSONALLY SERVING  
20 HUNDREDS OF THESE PROPERTY OWNERS, MANY OF THEM  
21 RESPONDED BY CONTACTING NOT JUST OUR OFFICE, BUT THEY  
22 CONTACTED THE COURT. AND THE COURT MAY RECALL WHAT IT  
23 WAS RECEIVING -- I DON'T KNOW. I GUESS IT WAS PHONE  
24 CALLS OR CORRESPONDENCE OR BOTH.

25 BUT THAT PROMPTED AT A HEARING HERE AND A  
26 DISCUSSION WITH THE COURT THAT LET'S PUT THIS SERVICE ON  
27 HOLD ON ALL THESE FOLKS, AND LET'S SEE IF THE CLASS  
28 MECHANISM CAN ENCOMPASS THE REMAINDER OF THESE

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44

1 INDIVIDUALS AND SERVICE.

2 BECAUSE WHAT YOU WERE HEARING -- WHAT WE  
3 WERE TOLD THAT I KNOW IS WHAT WE HAD HEARD IS THAT WHEN  
4 WE SERVE THESE PEOPLE AND THEY CONTACT US AND SAY WE  
5 DON'T WANT TO BE A PART OF THIS. WE DON'T HAVE AN  
6 INTEREST IN IT. WE DON'T WANT TO BE A PART OF IT. WE  
7 JUST WANT TO SORT OF STAND ON THE SIDELINES AND LET THIS  
8 THING SORT OF WORK ITS COURSE.

9 AND WE HAVE BEEN BACK BEFORE THE COURT WITH

10 THIS. AND I KNOW WE HAVE GONE BACK AND FORTH WITH  
11 SERVICE, AND WE HAVE GONE BACK AND FORTH WITH CLASS  
12 CERTIFICATION. BUT THE SHORT ANSWER TO YOUR QUESTION --  
13 AND I'LL BE VERY CLEAR ON THIS -- IS THAT WE WERE  
14 ULTIMATELY WAITING TO SEE WHAT THE FINAL RESOLUTION OF  
15 THE CLASS CERTIFICATION DEFINITIONS ARE.  
16 BECAUSE IF THERE HAD NOT BEEN, FOR EXAMPLE,  
17 A CUTOFF AT 25-ACRE FEET, WE WOULD HAVE EFFECTIVELY PUT  
18 ALL THE REST OF THESE FOLKS INTO THIS CLASS, AND WE  
19 WOULDN'T HAVE TO DO ANYTHING MORE ON THAT.  
20 THE COURT: EXCEPT THAT THOSE WHO ARE -- WITH THE  
21 EXCEPTION OF KERN COUNTY WHO ARE PUMPING MORE THAN  
22 25-ACRE FEET A YEAR, HAVE BEEN CHARACTERIZED. THEY HAVE  
23 BEEN SERVED WITH THE EXCEPTION OF NINE PEOPLE.  
24 MR. DUNN: YES.  
25 THE COURT: SO THAT IS REALLY KIND OF ACADEMICS,  
26 AND WE'RE TALKING ABOUT A VERY SMALL NUMBER OF PEOPLE  
27 WHO ARE GOING TO BE SELF-DEFINING IN THE KERN COUNTY WHO  
28 MAY BE PUMPING.

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1 MR. DUNN: WE HOPE SO.  
2 THE COURT: BUT WHAT WE ARE TALKING ABOUT NOW IS  
3 THE 58 YOU WOULD HAVE LEFT OUT OF THAT 600 AND WHAT IS  
4 HAPPENING WITH THEM? THAT IS MY REAL QUESTION.  
5 MR. DUNN: YES. THE SHORT ANSWER IS WE HAVE NOT  
6 ENGAGED IN ANY FURTHER EFFORTS TO SERVE THOSE PEOPLE  
7 WITH INDIVIDUAL SERVICE OF PROCESS. THERE HAS BEEN ONE  
8 ATTEMPTED PERSONAL SERVICE AS TO EVERYONE. AND MUCH OF

8-11-08 ANTELOPE VALLEY FINAL ASCII TRANSCRIPT  
 10 OPPORTUNITY -- THE PUBLIC WHO HAVE AN INTEREST IN THIS  
 11 CASE HAVE AN OPPORTUNITY TO BE PRESENT TO OBSERVE IT  
 12 EVEN THOUGH MOST OF THE STUFF WE'RE GOING TO BE DOING IS  
 13 LEGAL AND EXPERT, BUT NEVERTHELESS IT'S ON OPEN COURT.  
 14 ALL RIGHT. WE ARE OFF THE RECORD, AND WE'RE ADJOURNED  
 15 FROM OUR CALENDAR.

16

17 (THE PROCEEDINGS WERE THEN CONCLUDED.)

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22

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1	SUPERIOR COURT FOR THE STATE OF CALIFORNIA	
2	COUNTY OF LOS ANGELES	
3	DEPARTMENT NO. 1	HON. JACK KOMAR, JUDGE
4	COORDINATION PROCEEDING	JUDICIAL COUNCIL COORDINATION NO. JCCP4408
5	SPECIAL TITLE (RULE 1550B)	
6	ANTELOPE VALLEY GROUNDWATER CASES	
7	PALMDALE WATER DISTRICT AND	SANTA CLARA CASE NO. 1-05-CV-049053
8	QUARTZ HILL WATER DISTRICT,	

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9                   8-11-08 ANTELOPE VALLEY FINAL ASCII TRANSCRIPT  
                   CROSS-COMPLAINANTS,                   }  
 10                   VS.   }  
   }  
 11   LOS ANGELES COUNTY WATERWORKS,                   }  
   DISTRICT NO. 40, ET AL,                               }  
 12   }  
                   CROSS-DEFENDANTS.                   }  
 13   \_\_\_\_\_  
 14  
 15                   I, GINGER WELKER, OFFICIAL REPORTER OF THE  
 16   SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
 17   COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
 18   TRANSCRIPT DATED AUGUST 11, 2008 COMPRISES A FULL, TRUE,  
 19   AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
 20   ABOVE ENTITLED CAUSE.  
 21                   DATED THIS 12TH DAY OF AUGUST, 2008.  
 22  
 23  
 24   \_\_\_\_\_  
 25   OFFICIAL REPORTER, CSR #5585  
 26  
 27  
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♀

1                                   I N V O I C E  
 2                   SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 3                   FOR THE COUNTY OF LOS ANGELES  
 4  
 5                                   GINGER WELKER, CSR #5585  
 6                                   25916 ROYAL OAKS ROAD  
 7                                   STEVENSON RANCH, CALIFORNIA 91381



## **Exhibit 16**

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 21, 2007; 10:00 A.M.

2 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

3 CASE NO.: SANTA CLARA CASE NO. 1-05-CV-049053

4 CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES

5 APPEARANCES: (AS NOTED ON TITLE PAGE)

6

7 (CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

8 ---0---

9 THE COURT: GOOD MORNING.

10 THIS IS THE ANTELOPE VALLEY GROUND WATER CASES.

11 I THINK I WILL START WITH ASKING IF THERE ARE ANY  
12 TELEPHONIC APPEARANCES.

13 MR. KUNEY: YES, YOUR HONOR.

14 SCOTT KUNEY APPEARING ON BEHALF OF VAN DAM FARMS,  
15 ET CETERA.

16 MR. CROW: YOUR HONOR, MICHAEL CROW APPEARING ON BEHALF  
17 OF THE STATE OF CALIFORNIA.

18 MS. CAHILL: YOUR HONOR, VIRGINIA CAHILL ALSO APPEARING  
19 ON BEHALF OF THE STATE PARTIES.

20 MR. HOLMES: GOOD MORNING, YOUR HONOR.

21 MIKE HOLMES APPEARING ON BEHALF OF SPC DEL SUR  
22 RANCH, LLC.

23 THE COURT: ANY OTHERS?

24 (NO AUDIBLE RESPONSE)

25 THE COURT: ALL RIGHT. WE HAVE SEVERAL MATTERS ON THIS  
26 MORNING. LET'S START WITH THE DEMURRER TO THE WILLIS  
27 COMPLAINT.

28 MR. ORR: GOOD MORNING, YOUR HONOR.

1           THE COURT:    SO I THINK WE ARE AT THE POINT WHERE WE  
2           NEED TO HEAR FURTHER CONCERNING THE DESCRIPTION OF THE CLASS  
3           AND THE SUBCLASSES.   AND CERTAINLY WITH REGARD TO THE  
4           DEFENDANTS I WANT A REPRESENTATIVE DEFENDANT TO BE DESIGNATED AT  
5           SOME POINT HERE.

6           MR. JOYCE:    I UNDERSTAND.

7           THE COURT:    AND I THINK THAT COUNSEL HAVE BEEN APPRISED  
8           OF THAT ON SEVERAL OCCASIONS AND I THINK THAT WE NEED TO MOVE  
9           IN THAT DIRECTION TOO.

10          MR. JOYCE: YOUR HONOR, I APPRECIATE IT.   AND I ACCEPT  
11          THE COURT'S RULING.

12          THE COURT:    ALL RIGHT.   THANK YOU.

13                        ANYBODY WANT TO SAY ANYTHING IN OPPOSITION TO THE  
14          MOTION?

15                                        (NO AUDIBLE RESPONSE)

16          THE COURT:    OKAY.   ALL RIGHT.   THERE WAS A REQUEST FOR  
17          AN ORDER THAT   -- THAT THE COURT MAKE AN ORDER CONCERNING THE  
18          REQUEST AT THE APRIL HEARING FOR JUDICIAL NOTICE.   PRESUMABLY  
19          I DID NOT MAKE THAT ON THE RECORD, BUT THE REQUEST FOR  
20          JUDICIAL NOTICE IS DENIED, THE REASON BEING THAT THERE HAS  
21          BEEN NO PROVISION GIVEN TO THE COURT AS TO THE BASIS FOR THE  
22          COURT TO TAKE JUDICIAL NOTICE.   IT WAS A REQUEST FOR JUDICIAL  
23          NOTICE WITHOUT ANY INDICATIONS OF WHY.   SO IT IS DENIED.   AND  
24          I DON'T THINK IT MAKES ANY DIFFERENCE.   BUT THAT IS THE ORDER.

25          MS. CAHILL:   THANK YOU, YOUR HONOR.

26          THE COURT:    YOU ARE WELCOME.

27                        THERE ARE TWO OTHER MATTERS THAT ARE HERE.  
28          ACTUALLY I WANT TO GO BACK AND TALK TO THE PUBLIC WATER

1 PRODUCERS ABOUT THEIR REQUEST OR ABOUT MY REQUEST THAT THERE  
2 BE A DEFENDANT REPRESENTATIVE FOR THE PURPORTED CLASS AND THE  
3 PUTATIVE CLASS.

4 WHO WOULD LIKE TO ADDRESS THAT? MR. DUNN?

5 MR. DUNN: YES, YOUR HONOR. JEFFREY DUNN.

6 I THINK THE BEST WAY TO ADDRESS THIS IS TO PICK  
7 UP WHERE WE WERE LAST BEFORE THE COURT. THE COURT HAD  
8 INDICATED THAT THE DEFENDANT CLASS WOULD NEED ONE OR MORE  
9 REPRESENTATIVES. AND IT WAS THE COURT'S DESIRE OR PREFERENCE,  
10 IF I COULD PUT IT THAT WAY, THAT THERE NOT HAVE TO BE AN ORDER  
11 IMPOSED UPON THE DEFENDANTS OR A GROUP OF DEFENDANTS. AND  
12 BECAUSE OF THAT, WHAT WE HAVE DONE SINCE WE WERE LAST BEFORE  
13 THE COURT IS TO SEE IF WE COULD FIND -- IN SIMPLE TERMS TO  
14 FIND SOMEBODY WHO WOULD BE WILLING TO REPRESENT THE CLASS ON A  
15 DEFENDANT BASIS, SUBJECT TO MEETING ALL THE GENERAL  
16 REQUIREMENTS FOR BOTH CLASS REPRESENTATION AND CLASS COUNSEL.

17 WITHOUT GETTING TOO DETAILED OR REVEALING SORT OF  
18 WHAT I GUESS WOULD BE GENERALLY OUT-OF-COURT TYPE DISCUSSIONS  
19 WITH COUNSEL, THERE HAD BEEN SOME PROGRESS MADE, IN PARTICULAR  
20 WHEN, IF I COULD CALL IT "GROUP" -- I THINK IT IS FAIR TO SAY  
21 THAT THERE IS NOT A COMPLETE AGREEMENT AT THIS POINT ON THAT  
22 GROUP WILLING TO DO IT, AT LEAST ACCORDING TO WHAT HAS BEEN  
23 PROPOSED.

24 SO WE ARE TODAY STILL WITHOUT SOMEONE WHO IS --  
25 OTHER THAN MR. ZLOTNICK WITH HIS CLASS REPRESENTATION AND HIS  
26 CLIENT MISS WILLIS -- AS FAR AS I KNOW THERE IS NO ONE AS OF  
27 THIS MOMENT WHO IS STEPPING FORWARD AND SAYING "I WILL  
28 REPRESENT A DEFENDANT CLASS" AS IT HAS BEEN PROPOSED.

1           THE COURT:   WELL, MR. DUNN, TO THE EXTENT THAT  
2           PLAINTIFF WILLIS IS, AND HAS BROUGHT A CLASS ACTION ON BEHALF  
3           OF NONPUMPERS, WHICH SEEMS TO ME TO BE THE LARGEST GROUP OF  
4           PEOPLE, THERE IS PROBABLY NO NEED FOR A DEFENDANT CLASS  
5           REPRESENTATIVE OF THAT CATEGORY OF SUBCLASS MEMBERS; WOULD YOU  
6           AGREE?

7           MR. DUNN:    I WOULD AGREE WITH THAT, YES.  WE HAVE BEEN  
8           FOCUSING -- AND I SHOULD HAVE MADE THIS CLEAR AT THE OUTSET --  
9           OUR DISCUSSIONS OR INQUIRIES HAVE BEEN FOCUSED  -- WELL, WITH  
10          THE ASSUMPTION THAT WE HAVE MISS WILLIS AND COUNSEL  
11          MR. ZLOTNICK TO HANDLE THE GROUP THAT THE COURT JUST  
12          DESCRIBED, OUR FOCUS HAS BEEN ENTIRELY ON WHAT I WOULD  
13          GENERALLY CALL "A PUMPER GROUP," THE SMALLER PUMPERS.  AND  
14          THERE HAS BEEN DISCUSSIONS BACK AND FORTH ON WHERE THAT  
15          THRESHOLD WOULD BE DRAWN.  BUT THE FOCUS IS ON CLASS  
16          REPRESENTATION OR SUBCLASS FOR A PUMPER GROUP.

17                 AND THAT IS WHERE WE ARE CURRENTLY.  WE DON'T  
18          HAVE -- AT LEAST AMONGST THE CURRENT DEFENDANTS IN THIS  
19          CASE -- SOMEONE WHO HAS STEPPED FORWARD AND SAID "I WILL DO  
20          IT" VOLUNTARILY.

21                 AS THE COURT MAY RECALL, THIS IS -- THE DEFENDANT  
22          CLASS ASPECT IS MORE UNUSUAL, SHALL WE SAY, THAN THE  
23          PLAINTIFF'S CLASS.  AS WE HAD EXPLAINED IN EARLIER FILINGS OR  
24          POSTINGS, THAT IN SOME CASES COURTS HAVE HAD TO RESORT TO  
25          ORDERING A DEFENDANT GROUP, GROUP OF DEFENDANTS.  I KNOW THE  
26          COURT HAS INDICATED OTHERWISE.  AND FOR THAT REASON WE HAVE  
27          TRIED TO ENGAGE IN DISCUSSION OR EVEN NEGOTIATION, I GUESS YOU  
28          COULD CALL IT, WITH PARTIES TO TRY AND COME UP WITH SOMEONE TO

1                   AND SO THAT IS JUST ONE IDEA.

2                   THE COURT: WELL, I THINK THAT IS A GOOD IDEA. I WOULD  
3                   LIKE TO HEAR OTHERS CONCERNING THAT, BUT IT DOES SEEM TO ME  
4                   THAT AT THIS POINT, CERTAINLY IN TERMS OF GETTING A  
5                   DESCRIPTION OF THE BASIN, WHETHER THERE ARE SUBBASINS, THE  
6                   STATE OF THE AQUIFER.

7                   MR. JOYCE POINTS OUT THAT HE BELIEVES THAT THERE  
8                   IS EVIDENCE SHOWING OVERDRAFT IN ONE AREA AND MAY NOT SHOW  
9                   OVERDRAFT IN ANOTHER AREA. I DON'T HAVE ANY EVIDENCE  
10                  CONCERNING THAT. WE HAVE NOT MADE ANY DETERMINATIONS  
11                  CONCERNING THAT. AND THOSE ARE IMPORTANT ISSUES THAT HAVE TO  
12                  BE DECIDED.

13                  I THINK WE NEED TO DECIDE WHAT THE SAFE YIELD OF  
14                  THE BASIN IS AND PERHAPS THERE IS MORE THAN ONE SAFE YIELD  
15                  DETERMINATION THAT HAS TO BE MADE, DEPENDING ON THE NATURE OF  
16                  THE AQUIFER.

17                  SO I AGREE WITH YOU AND, YOU KNOW, I WOULD LIKE  
18                  TO GET THE MATTER AT ISSUE AND GET AS MANY PEOPLE ON NOTICE  
19                  WHO HAVE TO BE ON NOTICE. AND TO THE EXTENT THAT THE -- AND I  
20                  WANT TO SEE THE FINAL PLEADING THAT MR. ZLOTNICK FILES ON  
21                  BEHALF OF MISS WILLIS. BUT IT MAY WELL BE THAT WE CAN PROVIDE  
22                  ADEQUATE NOTICE OF THE PROCEEDINGS FOR THAT CLASS ONCE THE  
23                  MATTER IS AT ISSUE AND MAKE SOME DETERMINATIONS AS TO THE  
24                  STATE OF THE AQUIFER. SO THAT OBVIOUSLY IS ONE OF THE FIRST  
25                  ORDERS OF BUSINESS HERE.

26                  SO I THINK WHAT WE HAVE TO HAVE IS THE MATTER AT  
27                  ISSUE. AND I DON'T KNOW IF MR. ZLOTNICK -- DO YOU INTEND TO  
28                  FILE AN AMENDMENT TO YOUR PLEADINGS ON INVERSE CONDEMNATION?

1 MR. ZLOTNICK: YOUR HONOR, I DO NEED SOME TIME TO  
2 CONFER WITH MY CLIENT AND DO A LITTLE INVESTIGATION BEFORE I  
3 CAN REALLY ANSWER THAT.

4 THE COURT: ALL RIGHT. IT SEEMS TO ME, THOUGH, THAT  
5 YOU NEED TO DO THAT WITHIN 30 DAYS --

6 MR. ZLOTNICK: YES, YOUR HONOR.

7 THE COURT: -- OF TODAY'S DATE.

8 MR. ZLOTNICK: I'M HAPPY TO DO THAT WITHIN 30 DAYS,  
9 YOUR HONOR.

10 THE COURT: AND THAT MEANS THAT WHAT I WOULD LIKE TO DO  
11 IS HAVE ANOTHER HEARING SCHEDULED SO THAT FOLLOWING YOUR  
12 DETERMINATION AS TO THE NATURE OF YOUR PLEADING, WE CAN DECIDE  
13 WHERE TO GO FROM THERE.

14 SO THAT IS GOING TO PROBABLY BE ABOUT SIXTY DAYS  
15 HENCE?

16 MR. ZLOTNICK: YES, YOUR HONOR. I THINK THAT MAKES  
17 SENSE.

18 BUT I WOULD LIKE TO JUST BRIEFLY GO BACK TO ONE  
19 OF THE POINTS THAT HAS BEEN IN THE AIR HERE. AND ALTHOUGH OUR  
20 ORIGINAL PLEADING WAS NOT LIMITED TO NONPUMPERS, I THINK, YOU  
21 KNOW, IN THE COURSE OF DISCUSSIONS WE HAVE HAD OVER THE LAST  
22 SEVERAL MONTHS, IT DOES SEEM TO ME THAT THAT IS PROBLEMATIC  
23 FOR US TO REPRESENT BOTH GROUPS. SO, YOU KNOW, I THINK THAT  
24 IT DOES NEED TO BE SOME SEPARATE REPRESENTATION.

25 THE COURT: IT SEEMS TO ME TO BE A CONFLICT BETWEEN THE  
26 PUMPERS AND NONPUMPERS.

27 MR. ZLOTNICK: RIGHT. THERE SEEMS TO BE. THERE ARE  
28 DIFFERENT ISSUES.

1 NATURE OF THE BASIN. I THINK IT WOULD BE MORE PRACTICAL TO  
2 DO --

3 THE COURT: NONE OF THIS, MR. WEINSTOCK, WE CAN DO IN  
4 ANY BINDING WAY UNTIL WE HAVE EVERYBODY A PARTY AND SERVED,  
5 EITHER AS A CLASS MEMBER OR AS A DEFENDANT CLASS OR OTHERWISE.  
6 AND SO FAR, IT HAS BEEN LIKE PULLING TEETH TO GET THAT TO  
7 OCCUR. AND I'VE BEEN TALKING ABOUT THAT NOW FOR A LONG TIME.  
8 AND ONCE THAT IS ACCOMPLISHED I WILL BE VERY HAPPY TO START  
9 HEARING EVIDENCE CONCERNING ALL OF THE ISSUES THAT YOU JUST  
10 DESCRIBED. BUT UNTIL THAT HAS HAPPENED, IT WOULD BE AN  
11 EXERCISE IN FUTILITY AND REDUNDANCY FOR THE COURT TO START  
12 HEARING THAT KIND OF EVIDENCE.

13 MR. WEINSTOCK: ABSOLUTELY, YOUR HONOR. AND THAT IS  
14 WHY WE WOULD NOT PROPOSE SCHEDULING THIS TRIAL IN THE NEXT FEW  
15 MONTHS BECAUSE WE ASSUMED THAT WHEN WE HAVE A HEARING IN JULY,  
16 THAT IT WILL TAKE MORE TIME AFTER THAT BEFORE ALL THE PARTIES  
17 ARE ACTUALLY JOINED AND REPRESENTED.

18 THE COURT: MR. WEINSTOCK, I CAN'T EVEN SEND OUT A  
19 NOTICE OF TRIAL UNTIL I HAVE ALL THE PARTIES WHO ARE GOING TO  
20 BE INVOLVED IN THAT TRIAL HERE.

21 MR. WEINSTOCK: WELL, YOUR HONOR, THE NOTICE OF TRIAL  
22 COULD CERTAINLY GO OUT BUT IT WOULDN'T BE BINDING ON PEOPLE  
23 WHO AREN'T PARTIES YET. BUT WE THINK IF WE SCHEDULE THIS FOR  
24 THE END OF THE YEAR, THERE SHOULD BE ENOUGH TIME TO DO EVEN  
25 THAT.

26 THE COURT: WELL, I THINK THAT I CAN SCHEDULE IT. I  
27 WOULDN'T DO IT IN DECEMBER; DECEMBER IS A VERY BAD TIME TO TRY  
28 AND GET LAWYERS TO DO ANYTHING. BUT JANUARY IS PROBABLY A



## **Exhibit 17**

**Mike McLachlan**

---

**From:** Mike McLachlan  
**Sent:** Monday, June 20, 2011 12:14 PM  
**To:** Jeffrey Dunn  
**Cc:** Wellen, Warren; Eric Garner; Dan Oleary  
**Subject:** revised Wood Agreement  
**Attachments:** RV\_PUB-767215-v23-AV - LOS ANGELES COUNTY - WOOD CLASS SETTLEMENT.doc

I attach a redlined revision to the settlement agreement that I think deals with the Court's comments, other than the one about class member vs. household, which we agreed should stay as is.

Please let me know your thoughts on this draft. I would also like to know whether these modifications will require this to go back through the entire Board of Supervisor process. We have a number of steps we may need to take, contingent upon whether a settlement can be re-drafted, the timing on that, and what occurs at the next status conference.

---

**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

## Mike McLachlan

---

**From:** Wellen, Warren <Wwellen@counsel.lacounty.gov>  
**Sent:** Thursday, July 14, 2011 5:54 PM  
**To:** Mike McLachlan; Eric Garner; Stefanie Hedlund  
**Cc:** Dan Oleary; Jeffrey Dunn  
**Subject:** RE: Revised Draft Agreement

Yes, the revised version is consistent with what the Board has already approved. I have confirmed with my boss that we do not need to seek further Board approval for the revised agreement.

Warren R. Wellen  
Principal Deputy County Counsel  
Office of the County Counsel  
County of Los Angeles  
500 West Temple Street  
Los Angeles, CA 90012  
Tel: (213) 974-9668  
Fax: (213) 687-7337

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---

**From:** Mike McLachlan [mailto:mike@mclachlanlaw.com]  
**Sent:** Thursday, July 14, 2011 5:54 PM  
**To:** Eric Garner; Stefanie Hedlund  
**Cc:** Dan Oleary; Jeffrey Dunn; Wellen, Warren  
**Subject:** RE: Revised Draft Agreement

And I will assume Warren and Jeff still agree that this modified version does not have to go back to the Board.

---

**From:** Eric Garner [mailto:Eric.Garner@bbklaw.com]  
**Sent:** Thursday, July 14, 2011 5:42 PM  
**To:** Mike McLachlan; Stefanie Hedlund  
**Cc:** Dan Oleary; Jeffrey Dunn; Wwellen@counsel.lacounty.gov  
**Subject:** RE: Revised Draft Agreement

once we are all okay with the clean document I need to circulate to the other PWS.

---

**From:** Mike McLachlan [mailto:mike@mclachlanlaw.com]  
**Sent:** Thursday, July 14, 2011 5:45 PM  
**To:** Eric Garner; Stefanie Hedlund  
**Cc:** Dan Oleary; Jeffrey Dunn; Wwellen@counsel.lacounty.gov  
**Subject:** Re: Revised Draft Agreement

## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Tuesday, July 19, 2011 5:08 PM  
**To:** keith@lemieux-oneill.com  
**Cc:** wayne@lemieux-oneill.com; Dan Oleary; Jeffrey Dunn; Tom Bunn; Bradley T.Weeks; 'wmiliband@awattorneys.com'; Doug Evertz  
**Subject:** RE: Revised Small Pumper Settlement

Keith, This was drafted by BBK and plaintiff's counsel with the Court's comments in mind. It winds up being essentially the Willis agreement, with water allocations deferred. Your use of the word 'reconsider' suggests you are thinking about not participating.

We are either going to litigate this the prescription claims now, or pursue settlement. If your clients perceive some benefit to litigating the class claims, that is certainly their right. If you feel there is some modification in the agreement that is material to your clients such that you need to discuss that with them, I would urge you to do so soon. We plan to file this by August 5 for hearing on the 30<sup>th</sup>. We will pursue the revised settlement with any and all those public water suppliers who are willing. Presently I believe that everyone else remains on board.

### 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

---

**From:** [keith@lemieux-oneill.com](mailto:keith@lemieux-oneill.com) [<mailto:keith@lemieux-oneill.com>]  
**Sent:** Monday, July 18, 2011 4:53 PM  
**To:** Mike McLachlan  
**Cc:** [wayne@lemieux-oneill.com](mailto:wayne@lemieux-oneill.com)  
**Subject:** RE: Revised Small Pumper Settlement

We will need to reconsider this in light of the judge's comments and the other settlement efforts. I will let you know our thoughts once we have a chance to talk to our various boards.

### W. Keith Lemieux

Lemieux & O'Neill  
4165 East Thousand Oaks Blvd, Suite 350  
Westlake Village, CA 91362  
Office: 805.495.4770  
Cell: 805.208.6952

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---

**From:** Mike McLachlan [<mailto:mike@mclachlanlaw.com>]  
**Sent:** Thursday, July 14, 2011 6:26 PM  
**To:** Tom Bunn; Doug Evertz; James L. Markman; Wayne Lemieux; Keith Lemieux; Bradley T.Weeks; 'Tootle, John';

## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Tuesday, July 19, 2011 10:50 PM  
**To:** Eric Garner; Jeffrey Dunn; 'Wellen, Warren'  
**Subject:** RE: Small pumper settlement

The concern is, again, Lemieux. I have no interest in wrestling with these guys on the settlement.

---

**From:** Eric Garner [<mailto:Eric.Garner@bbklaw.com>]  
**Sent:** Tuesday, July 19, 2011 7:29 PM  
**To:** Mike McLachlan; Jeffrey Dunn; 'Wellen, Warren'  
**Subject:** RE: Small pumper settlement

Mike,

We will discuss internally and get back to you.

Eric

---

**From:** Mike McLachlan [<mailto:mike@mclachlanlaw.com>]  
**Sent:** Tuesday, July 19, 2011 4:34 PM  
**To:** Jeffrey Dunn; 'Wellen, Warren'; Eric Garner  
**Subject:** Small pumper settlement

Does the County are if this settlement does not include every public water supplier? I inquired last time around and I recall the answer was no, but I would like to reconfirm.

### Mike McLachlan

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---

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## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Thursday, August 04, 2011 12:44 PM  
**To:** Tom Bunn  
**Subject:** RE: Revised Small Pumper Settlement

Tom, I have not responded further on this as it is apparent this settlement is not going forward right now. The county has gone back into 'non-responsive' mode.

Mike

---

**From:** Tom Bunn [<mailto:TomBunn@lagerlof.com>]  
**Sent:** Thursday, July 28, 2011 11:55 AM  
**To:** Mike McLachlan; Doug Evertz; James L. Markman; Wayne Lemieux; [keith@lemieux-oneill.com](mailto:keith@lemieux-oneill.com); Bradley T. Weeks; Tootle, John; [wmiliband@awattorneys.com](mailto:wmiliband@awattorneys.com); Steven R. Orr  
**Cc:** Eric Garner; [Wwellen@counsel.lacounty.gov](mailto:Wwellen@counsel.lacounty.gov); Jeffrey Dunn; Stefanie Hedlund; Dan Oleary  
**Subject:** RE: Revised Small Pumper Settlement

Mike,

Thank you for your revised draft. As to my third suggestion regarding meters, I still think it is appropriate to use language similar to the language you put elsewhere in the agreement – for example, “The Wood Class Members whose pumping exceeds the annual production of 3 acre-feet per year, or such other allocation as set by the Corut, agree to provide Replacement Water ...” and “The Settling Defendants agree and recognizes that the 3 acre-foot per year pumping right, set forth in IV.D.2, above, or any lesser amount set by the Court, is domestic use pursuant to California Water Code section 106.” Why can’t we use the same language for meters?

However, as an alternative, I would consider deleting the entire paragraph relating to meters (paragraph 2 on page 14) and leave it up to the court and the Watermaster.

Tom

---

**From:** Mike McLachlan [<mailto:mike@mclachlanlaw.com>]  
**Sent:** Tuesday, July 26, 2011 2:37 PM  
**To:** Tom Bunn; Doug Evertz; James L. Markman; Wayne Lemieux; [keith@lemieux-oneill.com](mailto:keith@lemieux-oneill.com); Bradley T. Weeks; Tootle, John; [wmiliband@awattorneys.com](mailto:wmiliband@awattorneys.com); Steven R. Orr  
**Cc:** Eric Garner; [Wwellen@counsel.lacounty.gov](mailto:Wwellen@counsel.lacounty.gov); Jeffrey Dunn; Stefanie Hedlund; Dan Oleary  
**Subject:** RE: Revised Small Pumper Settlement

Tom, I made the first change. I also made the second change, which I think is simply not appropriate given the court’s numerous comments about tying his hands on any of the terms of a physical solution. If he comments on that, I am pointing the finger at you, ok? You might discuss it with Eric and Jeff.

I did not make change number 3 as it simply makes no sense. The agreement no longer has a 3 afy exemption. We don’t know what the class number will be, whether it is subject to exemption, etc. The judge will decide that down the road along with various other elements of the physical solution, if that comes to pass.

If we are going to resolve the class claims without further litigation, we need to move this forward. If this is not filed for approval next week, it will not be heard on the 30<sup>th</sup>. If that does not occur, we are going to propound a good deal of written discovery and start taking PMK depositions.

## **Exhibit 18**

## **Mike McLachlan**

---

**From:** Mike McLachlan  
**Sent:** Thursday, May 23, 2013 7:15 AM  
**To:** Tom Bunn; Jeffrey Dunn; John Tootle (jtootle@calwater.com); Doug Evertz; Brad Weeks (brad@charltonweeks.com); Keith Lemieux (Keith@lemieux-oneill.com)  
**Cc:** Dan Oleary; Warren Wellen (wwellen@counsel.lacounty.gov)  
**Subject:** Small Pumper class settlement

I have previously discussed with some of you the concept of settling with the water suppliers and proceeding against the landowners if they would not agree to terms with the Class. There are essentially two options here: (1) the landowners agree to our water rights allocation as set forth before and there is a global settlement with the Class; (2) we settle on terms with your clients similar to the Willis settlement (prescription surrendered and class bound by ultimate physical solution judgment), and we proceed against the landowners on the complaint filed yesterday, seeking our fees and costs against them alone at a later date.

If option 1 is the course, which is believe more likely, your clients will also need to agree not to object to the rather limited fees and filing cost relative to the landowner complaint. Your clients can reserve the right to challenge the hourly rate.

Please let me know whether your clients wish to proceed.

**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



## Mike McLachlan

---

**From:** Eric Garner <Eric.Garner@bbklaw.com>  
**Sent:** Thursday, May 23, 2013 4:22 PM  
**To:** Mike McLachlan  
**Cc:** Dan Oleary; Wellen, Warren  
**Subject:** RE: New Filing

Okay, I won't be in San Jose tomorrow but Warren and I will be back to you on a time to talk next week.

Eric

---

**From:** Mike McLachlan [<mailto:mike@mclachlanlaw.com>]  
**Sent:** Thursday, May 23, 2013 4:00 PM  
**To:** Eric Garner  
**Cc:** Dan Oleary  
**Subject:** RE: New Filing

I will be in San Jose tomorrow and available next week.

Mike McLachlan

----- Original message -----

**From:** Eric Garner <[Eric.Garner@bbklaw.com](mailto:Eric.Garner@bbklaw.com)>  
**Date:** 05/23/2013 3:56 PM (GMT-08:00)  
**To:** Mike McLachlan <[mike@mclachlanlaw.com](mailto:mike@mclachlanlaw.com)>  
**Cc:** "Wellen, Warren" <[Wwellen@counsel.lacounty.gov](mailto:Wwellen@counsel.lacounty.gov)>, Jeffrey Dunn <[jeffrey.dunn@BBKLAW.COM](mailto:jeffrey.dunn@BBKLAW.COM)>  
**Subject:** New Filing

Mike,

Warren forwarded to me the email you sent to the public water suppliers. I am very intrigued by your filing and we would like to discuss it with you and also discuss the options you outlined in your email. We are very busy this week trying to complete stipulations. Do you have any time next week, probably after Tuesday since that is the first day of trial, when we could set up a phone conference?

Eric

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## Mike McLachlan

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**From:** Eric Garner <Eric.Garner@bbklaw.com>  
**Sent:** Monday, June 10, 2013 8:42 AM  
**To:** Mike McLachlan  
**Cc:** Dan Oleary  
**Subject:** RE: Antelope call, 9:30

Mike,

I will review this and call your cell. My 8:30 conf call is running late, can I call you closer to 9:45?

Eric

---

**From:** Mike McLachlan [<mailto:mike@mclachlanlaw.com>]  
**Sent:** Monday, June 10, 2013 8:36 AM  
**To:** Eric Garner  
**Cc:** Dan Oleary  
**Subject:** Antelope call, 9:30

Eric, please call on my cell, 310-936-4292.

I attach what I believe to be the last draft of the small pumper class settlement with the water suppliers from July of 2011. As you may recall, we had a settlement at that time which was objected to by several landowners based on the water right defined by the settlement. The Court suggested we pull the defined water right out. After that hearing, I met with Jeff, Warren and Richard Wood and we decided to pursue the Court's suggestion, and prepare a draft that looked more like the Willis settlement.

Since that time, our position has changed a bit, most noticeably with regard to the 3 afy per parcel average for domestic use. What I envision is inserting some "agree not to object to" language relative to the water right and some of the related terms. The attached .pdf file is from my most recent round of discussions with the landowners in April, which arose from the Robie meetings. The redlining is my markup to a set of hastily drawn up bullet points, and below that is some specific language Zimmer asked me to prepare for the larger settlement agreement.

If the terms are agreed to by the water suppliers, my plan would be to take the agreement in substance to the landowners on a two-week or less timetable to agree to the terms. Those who agreed would be added to the agreement. With the others, we will continue to litigate against.

Going forward, your client would not be obligated for legal fees beyond what is necessary to bring Wood v. LACW District 40 to a close (language close to what is contained in the Willis agreement). You would be required to complete the funding of the Court-appointed expert work, which is mid-stream and essential if we are to litigate against the water right issue. That cost is small when compared to the legal fees, but is not one we can recover even if we prevail.

**Mike McLachlan**

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10490 Santa Monica Boulevard  
Los Angeles, CA 90025  
Office: 310-954-8270  
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## **Mike McLachlan**

---

**From:** Mike McLachlan  
**Sent:** Wednesday, June 19, 2013 11:32 AM  
**To:** Warren Wellen (wwellen@counsel.lacounty.gov)  
**Cc:** Dan Oleary; Jeffrey Dunn; Eric Garner (eric.garner@bbklaw.com)  
**Subject:** Antelope Valley, Small Pumpers Class

Warren,

This shall memorialize our discussion last night regarding Waterworks District 40s decision not to resolve the pending lawsuit with the Richard Wood and the Small Pumper Class. You have cited some undefined concerns of a party or parties who are not defendants to the action.

This about-face runs counter to a series of discussions I have had with BB&K over the last six to eight months, but certainly your client can elect to continue the litigation with the Class.

Since we did not discuss any substantive terms of settlement, and I do not do so here, I do not consider this to be a settlement communication.

### **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

**Mike McLachlan**

---

**From:** Mike McLachlan  
**Sent:** Wednesday, June 26, 2013 1:20 PM  
**To:** Tom Bunn; Brad Weeks (brad@charltonweeks.com); Keith Lemieux (Keith@lemieux-oneill.com); Doug Evertz; Wes Miliband (wmiliband@awattorneys.com); John Tootle (jtootle@calwater.com)  
**Cc:** Dan Oleary  
**Subject:** Small Pumper Class Settlement

Gentlemen,

I write to inform you that we plan to move forward with a partial settlement with a number of you. We will not be doing this more than once, so if your client would like to permanently end its exposure to our legal fees, now is the time.

You will note that Waterworks' counsel is not copied on this e-mail, although they are aware we plan to move forward with this partial settlement. Warren has indicated to me that he sees some leverage arising from the latest class complaint and wishes to defer settlement with the class for some undefined period.

With regard to legal fees, subject to Court approval, we would agree to cap our request for fees at your clients respective share of the gross fee request as determined by that client's average annual groundwater production during the pendency of this action (2008 to 2012) as a ratio of the production for all ten defendants.

If your client(s) are interested in participating, please let me know. Later this week I hope to be able to circulate a proposed settlement agreement to those interested.

**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

## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Wednesday, July 03, 2013 9:05 AM  
**To:** Tom Bunn; Doug Evertz; Wes Miliband (wmiliband@awattorneys.com); Brad Weeks (brad@charltonweeks.com); Wayne Lemieux (Wayne@lemieux-oneill.com); John Tootle (jtootle@calwater.com)  
**Cc:** Dan Oleary  
**Subject:** Wood class settlement  
**Attachments:** WOOD CLASS SETTLEMENT v29.doc

Per my email of a week ago, I enclose a draft settlement agreement. This is substantively unchanged from the version we drafted with BBK and some of you two years ago after the prior settlement was not approved by the Court.

I have left all the parties in the agreement, and will adjust that language once we know who is settling now.

I did not yet modify the legal fees language along the lines set forth in my last email, but will draft appropriate language once it is confirmed who is settling. Unless I hear otherwise, WW is still out.

### Mike McLachlan

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10490 Santa Monica Boulevard  
Los Angeles, CA 90025  
Office: 310-954-8270  
Fax: 310-954-8271

## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Thursday, August 15, 2013 5:03 PM  
**To:** Tom Bunn; Doug Evertz; Brad Weeks (brad@charltonweeks.com); Wes Miliband (wmiliband@awattorneys.com)  
**Cc:** John Tootle (jtootle@calwater.com); Keith Lemieux (Keith@lemieux-oneill.com); Dan Oleary  
**Subject:** Small Pumper class settlement  
**Attachments:** WOOD CLASS SETTLEMENT v29.doc

Gentlemen,

The four of you have indicated that your clients would like to settle with the small pumper class. It has been about six weeks since I forwarded the draft settlement agreement, but to date I have received only limited comment from one of you. If your client no longer wishes to pursue settlement with the Class at this time, please let us know.

As part of this proposal, we have offered, for the limited purpose of this settlement, to limit the fee request to your clients' proportionate share of total public water supplier pumping during the years of 2011 and 2012, as reflected in the Phase 4 trial stipulation. We have also agreed not to pursue your clients for legal fees incurred after the final approval of the settlement. This offer will be withdrawn as of September 3, 2013.

For Keith and John, who have not responded to the earlier settlement-related emails, we will assume that you have discharged your duties to forward the settlement offer to your clients, and they have declined. The smaller water suppliers in particular should understand that, in absence of an indemnity agreement from Waterworks District 40, the joint and several liability arising from a fee award under C.C.P. section 1021.5 could increase these defendants' individual exposure by a factor of several hundred times the offer that is currently on the table (in dollars, seven figures).

### Mike McLachlan

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10490 Santa Monica Boulevard  
Los Angeles, CA 90025  
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Fax: 310-954-8271

## Mike McLachlan

---

**From:** Mike McLachlan  
**Sent:** Monday, August 19, 2013 8:48 PM  
**To:** Tom Bunn; Wesley A. Miliband; Doug Evertz; brad@charltonweeks.com  
**Cc:** jtuttle@calwater.com; Keith@lemieux-oneill.com; Dan Oleary  
**Subject:** RE: Small Pumper class settlement

I am informed by John that Cal Water is similarly interested. I will send some fee language tomorrow, and see if I can't clean up a few non-substantive items in the document.

As we did two years ago, I need your input on the form and substance, so we can get a final version to take your respective clients/boards for approval.

### 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

---

**From:** Tom Bunn [mailto:TomBunn@lagerlof.com]  
**Sent:** Monday, August 19, 2013 12:10 PM  
**To:** Mike McLachlan; Wesley A. Miliband; Doug Evertz; brad@charltonweeks.com  
**Cc:** jtuttle@calwater.com; Keith@lemieux-oneill.com; Dan Oleary  
**Subject:** RE: Small Pumper class settlement

PWD is still interested.

---

**From:** Mike McLachlan [mailto:mike@mclachlanlaw.com]  
**Sent:** Monday, August 19, 2013 12:09 PM  
**To:** Wesley A. Miliband; Tom Bunn; Doug Evertz; brad@charltonweeks.com  
**Cc:** jtuttle@calwater.com; Keith@lemieux-oneill.com; Dan Oleary  
**Subject:** RE: Small Pumper class settlement

Wes,

Although we have discussed your email by phone last week, I thought I would respond briefly for the benefit of others, and to update you further.

I suspect what the confusion you reference in your e-mail arises from the sequence of the phone calls to various counsel, and more specifically that in the timeframe you reference, the fact that I likely spoke to you first. Shortly thereafter, I confirmed with Doug, Tom and Brad that their respective clients remained interested in settling.



I did not circle back to you at that time because of the mechanics of the proposed settlement. Unfortunately, it is not cost effective to have a standalone settlement with your client by itself, given the attorney time and costs of notice involved. In recent days, I have again spoken with Brad and Doug, who have confirmed their respective client's continuing interest in this settlement (subject to further detailed client discussions and comment on the draft settlement agreement).

I do not know as of today where PWD stands, but even if that supplier is no longer interested, a settlement with Rosamond CSD, QHWD, and your client is workable. I suspect when he gets the time, we will hear further from Tom.

I hope that nobody is bothered by my sharing any of the information above, as it seems necessary for all to be informed. This e-mail string is obviously a settlement communication among those listed parties. Unless until John or Keith indicate interest in the settlement, we will drop them from the string going forward. But their clients are still welcome to participate if they so choose.

**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

---

**From:** Wesley A. Miliband [<mailto:wmiliband@awattorneys.com>]  
**Sent:** Thursday, August 15, 2013 6:01 PM  
**To:** Mike McLachlan; Tom Bunn; Doug Evertz; [brad@charltonweeks.com](mailto:brad@charltonweeks.com)  
**Cc:** [jtootle@calwater.com](mailto:jtootle@calwater.com); [Keith@lemieux-oneill.com](mailto:Keith@lemieux-oneill.com); Dan Oleary  
**Subject:** RE: Small Pumper class settlement

Mike,

Your email is surprising – it is inconsistent with our conversations from six weeks or so ago, wherein you told me that there is no sense in moving forward with this settlement agreement without certain suppliers interested in settling with the Wood Class (also, see your July 3 email which expresses the same uncertainty in moving forward with this process). Our discussions ended with you saying that you would need to confirm settlement interest from Tom and other suppliers' counsels in order for you to assess whether pursuing the settlement was worthwhile. Also, my question remains unanswered as to what your attorneys' fees and costs are to date.

I heard nothing more until your email below, though it appears PWD and QHWD are interested in settlement with the Wood Class. I believe PPHCSD remains interested in pursuing the settlement, and I do have specific comments that I can provide on the draft agreement.

Please let me know within the next week the Wood Class' fees and costs to date. I will be on vacation next week, but I can provide detailed comments about the agreement during the week of Aug. 26.

Thanks,  
Wes

## Mike McLachlan

---

**From:** Bradley T. Weeks <Brad@charltonweeks.com>  
**Sent:** Friday, October 18, 2013 12:50 AM  
**To:** Mike McLachlan  
**Subject:** Wood Class Settlement

**Follow Up Flag:** Follow Up  
**Due By:** Friday, October 18, 2013 7:25 AM  
**Flag Status:** Flagged

Please withdraw Quartz Hill Water District from the motion for preliminary approval of the partial class settlement and be advised it has not approved the Wood Class Stipulation of Settlement.

Brad

Bradley T. Weeks  
Charlton Weeks LLP  
1031 West Avenue M-14, Suite A  
Palmdale, CA 93551  
(661) 265-0969  
[www.charltonweeks.com](http://www.charltonweeks.com)

## **Exhibit 19**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10  
11 Coordination Proceeding  
Special Title (Rule 1550 (b))

12 **ANTELOPE VALLEY GROUNDWATER**  
13 **CASES**

Judicial Council Coordination  
Proceeding No. 4408

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

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

14  
15 **STIPULATION FOR ENTRY OF**  
16 **JUDGMENT AND PHYSICAL SOLUTION**  
17  
18

19 1. The undersigned Parties (“Stipulating Parties”) stipulate and agree to the entry of the  
20 proposed Judgment and Physical Solution (“Judgment”), attached hereto as Exhibit 1 and incorporated  
21 herein by reference, as the Judgment in this Action. This Stipulation is expressly conditioned, as set  
22 forth in Paragraph 4 below, upon the approval and entry of the Judgment by the Court.

23 2. The following facts, considerations and objectives, among others, provide the basis for  
24 this Stipulation for Entry of Judgment (“Stipulation”):

25 a. The Judgment is a determination of all rights to Produce and store Groundwater in  
26 the Basin.

27 b. The Judgment resolves all disputes in this Action among the Stipulating Parties.  
28

1 c. The Stipulating Parties represent a substantial part of the total Production within  
2 the Basin.

3 d. There exists now and has existed for many years an Overdraft on the  
4 Groundwater supply within the Basin.

5 e. It is apparent to the Stipulating Parties that protection of the rights of the  
6 Stipulating Parties and protection of the public interest within the Basin require the  
7 development and imposition of a Physical Solution.

8 f. The Physical Solution contained in the Judgment is in furtherance of the mandate  
9 of the State Constitution and the water policy of the State of California.

10 g. Entry of the Judgment will avoid the time, expense, and uncertainty associated  
11 with continued litigation.

12 h. The Judgment will create incentives, predictability and long-term certainty  
13 necessary to promote beneficial use of the Basin's Groundwater resources to the fullest  
14 extent practicable and for the greatest public benefit.

15 i. The Judgment will create opportunities for state and local funding as may be  
16 available to promote greater development and beneficial use of the Basin's Groundwater  
17 resources.

18 j. The Judgment will aid in securing a reliable and cost-effective water supply to  
19 serve the Stipulating Parties' constituencies and communities.

20 3. Defined terms in the Judgment shall have the same meaning in this Stipulation.

21 4. The provisions of the Judgment are related, dependent and not severable. Each and every  
22 term of the Judgment is material to the Stipulating Parties' agreement. If the Court does not approve the  
23 Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the trial  
24 court, then this Stipulation is *void ab initio* with the exception of Paragraph 6, which shall survive.

25 5. The Stipulating Parties will cooperate in good faith and take any and all necessary and  
26 appropriate actions to support the Judgment until such time as this Judgment is entered by the Court, and  
27 appeals, if any, are final, including:

28 a. Producing evidentiary testimony and documentation in support thereof;

1           b.     Defending the Judgment against Non-Stipulating Parties, including, as  
2           appropriate, providing evidence of the Stipulating Parties' prescriptive and self-help  
3           rights.

4           6.     Each Stipulating Party has agreed to this Stipulation without admitting any factual or  
5           legal provisions of this Stipulation or the proposed Judgment. In the event that this Stipulation is void,  
6           or if trial is necessary against any Non-Stipulating Party to determine issues provided for in the  
7           Judgment, the resulting factual or legal determinations shall not bind any Stipulating Party or become  
8           law of the case.

9           7.     As consideration and as a material term of this Stipulation, the Stipulating Parties hereby  
10          declare that they are not aware of any additional Person pumping Groundwater, or landowner owning  
11          property in the Basin, that is not either named as a Party in the Action, included in the Non-Pumper  
12          Class or Small Pumper Class, or a Defaulting Party.

13          8.     The Stipulating Parties, in order to protect the Basin from over-pumping, have stipulated  
14          and agreed to the terms of the Judgment and have agreed to substantial cuts to water allocation  
15          compared with what they claim under California law, and in the case of the United States, also under  
16          federal law. In return, the Stipulating Parties have agreed to provisions in the Physical Solution which  
17          are only available by stipulation. These provisions include, without limitation, the right to transfer  
18          Production Rights and the right to Carry Over rights from year to year, as set forth in the Judgment.  
19          Non-Stipulating Parties, or any other Parties contesting the Judgment, shall not be entitled to the benefit  
20          of these provisions, and shall have only the rights to which they may be entitled by law according to  
21          proof at trial.

22          9.     The Stipulating Parties agree to request the Court to order the representatives of the Non-  
23          Pumper Class and the Small Pumper Class to identify any Persons which have opted out of the Classes  
24          and provide the identities of any opt-outs to District No. 40 within twenty (20) days of the Court's order  
25          approving this Stipulation. District No. 40 will assure that all Persons opting out of the Classes have  
26          been named, served, and defaulted or otherwise adjudicated, and will provide a report to the Court and  
27          the Stipulating Parties.

1           10. As consideration for this Stipulation between the Stipulating Parties, District No. 40  
2 specifically agrees to the following:

3           a. District No. 40 agrees to identify all landowners in the Basin, to confirm that each  
4 landowner was served, and to confirm that each landowner is a part of the Non-Pumper  
5 Class, the Small Pumper Class, the Stipulating Parties, a Defaulting Party, or a Party that  
6 has appeared, as the case may be. District No. 40 will file a report containing this  
7 information with the Court and with all Parties.

8           b. District No. 40 agrees to take all available steps and procedures to prevent any  
9 Person that has not appeared in this Action from raising claims or otherwise contesting  
10 the Judgment.

11           11. The Public Water Suppliers and no other Parties to this Stipulation shall pay all  
12 reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the  
13 Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and  
14 the Small Pumper Class or as determined by the Court. The Public Water Suppliers reserve the right to  
15 seek contribution for reasonable Small Pumper Class attorneys' fees and costs through the date of the  
16 final Judgment in the Action from each other and Non-Stipulating Parties. Any motion or petition to the  
17 Court by the Small Pumper Class for the payment of attorneys' fees in the Action shall be asserted by the  
18 Small Pumper Class solely as against the Public Water Suppliers (excluding Palmdale Water District,  
19 Rosamond Community Services District, City of Lancaster, Phelan Piñon Hills Community Services  
20 District, Boron Community Services District, and West Valley County Water District) and not against  
21 any other Party.

22           12. In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as  
23 provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown  
24 established in the Judgment, a drought water management program ("Drought Program") shall be  
25 implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

26           13. The Stipulating Parties do not object to the award of an incentive to Richard Wood, the  
27 Small Pumper Class representative, in recognition of his service as Class representative. The Judgment  
28 shall provide that Richard Wood has a Production Right of up to five (5) acre-feet per year for

1 reasonable and beneficial use on his parcel, free of a Replacement Water Assessment. This Production  
2 Right shall not be transferable and is otherwise subject to the provisions of the Judgment. If the Court  
3 approves this award of an additional two (2) acre-feet of water, such award shall be in lieu of any  
4 monetary incentive payment.

5 14. The Stipulating Parties agree that an orderly procedure for obtaining the Court's approval  
6 of the Judgment is a material term to this Stipulation. The Parties agree that the Case Management  
7 Order attached hereto as Appendix 1 is an appropriate process for obtaining such approval.

8 15. The Stipulating Parties agree that this Stipulation shall bind and benefit them, and will be  
9 binding upon and benefit all their respective heirs, successors-in-interest and assigns.

10 16. Each signatory to this Stipulation represents and affirms that he or she is legally  
11 authorized to bind the Stipulating Party on behalf of whom he or she is signing. The Stipulating Parties  
12 understand that this Stipulation and the Judgment are not effective as to the Small Pumper Class until  
13 the Court grants approval of a settlement agreement in *Wood v. Los Angeles County Waterworks District*  
14 *No. 40 et al.*



1 LOS ANGELES COUNTY WATER WORKS  
2 DISTRICT NO. 40

3 By: Gail Farber  
4 Gail Farber  
5 Director of Public Works

Date: 2/24/15

6 Approved as to form by:  
7 Mark J. Saladino, County Counsel

8  
9 By: Warren R. Wellen  
10 Warren R. Wellen  
11 Principal Deputy County Counsel

12 Approved as to form by: Eric L. Garner

13  
14 By: Jeffrey V. Ann and Eric L. Garner  
15 ~~Eric L. Garner~~ Jeffrey V. Ann and Eric L. Garner  
16 Best Best & Krieger

## **Exhibit 20**

1 ALESHIRE & WYNDER, LLP  
DAVID J. ALESHIRE, Bar No. 65022  
2 WILLIAM W. WYNDER, Bar No. 84753  
WESLEY A. MILIBAND, Bar No. 241283  
3 18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
4 Telephone: (949) 223-1170  
Facsimile: (949) 223-1180  
5 daleshire@awattorneys.com  
wwynder@awattorneys.com  
6 wmiliband@awattorneys.com

7 Attorneys for Defendant and Cross-Complainant,  
Phelan Piñon Hills Community Services District  
8

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**  
11

12 Coordination Proceeding  
Special Title (Rule 1550(b))

13 **ANTELOPE VALLEY**  
14 **GROUNDWATER CASES**

15 Included Actions:

16 *Los Angeles County Waterworks District*  
*No. 40 v.*  
17 *Diamond Farming Co., et al.*  
Los Angeles County Superior Court, Case  
18 No. BC 325 201  
19 *Los Angeles County Waterworks District*  
*No. 40 v.*  
20 *Diamond Farming Co., et al.*  
Kern County Superior Court, Case No.  
21 S-1500-CV-254-348  
22

23 *Wm. Bolthouse Farms, Inc. v. City of*  
*Lancaster*  
24 *Diamond Farming Co. v. City of Lancaster*  
*Diamond Farming Co. v. Palmdale Water*  
25 *Dist.*  
Riverside County Superior Court,  
26 Consolidated Action, Case Nos. RIC 353  
840, RIC 344 436, RIC 344 668  
27

28 **AND RELATED CROSS-ACTIONS**

) Judicial Council Coordination Proceeding  
) No. 4408

) (For Filing Purposes Only: Santa Clara  
) County Case No.: 1-05-CV-049053)

) Assigned for All Purposes To:  
) Judge: Hon. Jack Komar

) (Filing Fees Exempt, Per Gov't Code § 6103)

) **DECLARATIONS OF SETTLING**  
) **DEFENDANTS TO WOOD CLASS**  
) **PARTIAL CLASS SETTLEMENT IN**  
) **SUPPORT OF WOOD CLASS MOTION**  
) **FOR FINAL APPROVAL OF PARTIAL**  
) **CLASS SETTLEMENT**

) Hearing Date: December 11, 2013  
) Phase Five Trial Date: February 10, 2014  
) Phase Six Trial Date: August 4, 2014

1 **PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT**

2 I, Wesley A. Miliband, declare:

3 1. I am a partner with the law firm of Aleshire & Wynder, LLP, attorney of record for  
4 Phelan Piñon Hills Community Services District ("PPHCSD") in this action. I have personal  
5 knowledge of each fact stated in this declaration, and if called as a witness, I could and would  
6 competently testify thereto.

7 2. PPHCSD, Palmdale Water District, Rosamond Community Services District, and  
8 City of Lancaster ("Settling Defendants") have entered into a settlement agreement with the Wood  
9 Class, for which the Court granted preliminary approval of on October 25, 2013 and for which the  
10 Court is set to determine final approval of on December 11, 2013 ("Settlement Agreement").

11 3. I did not negotiate with the Wood Class (including its legal counsel) about the Wood  
12 Class' attorneys' fees or costs that are included within the Settlement Agreement until and after I  
13 came to agreement with the Wood Class on the substantive terms of the Settlement Agreement that  
14 do not relate to payment of the Wood Class' attorneys' fees and costs.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct. Executed this 3rd day of December, 2013, at Irvine, California.

17  
18 

19 Wesley A. Miliband  
20

21 **PALMDALE WATER DISTRICT**

22 I, Thomas Bunn, III, declare:

23 1. I am a partner with the law firm of Lagerlof, Sencal, Gosney & Kruse, LLP,  
24 attorney of record for Palmdale Water District ("PWD") in this action. I have personal knowledge  
25 of each fact stated in this declaration, and if called as a witness, I could and would competently  
26 testify thereto.

27 ///

28 ///

2. Phelan Piñon Hills Community Services District, PWD, Rosamond Community Services District, and City of Lancaster ("Settling Defendants") have entered into a settlement agreement with the Wood Class, for which the Court granted preliminary approval of on October 25, 2013 and for which the Court is set to determine final approval of on December 11, 2013 ("Settlement Agreement").

3. I did not negotiate with the Wood Class (including its legal counsel) about the Wood Class' attorneys' fees or costs that are included within the Settlement Agreement until and after I came to agreement with the Wood Class on the substantive terms of the Settlement Agreement that do not relate to payment of the Wood Class' attorneys' fees and costs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of December, 2013, at Pasadena, California.



Thomas Burn, III

**ROSAMOND COMMUNITY SERVICES DISTRICT AND CITY OF LANCASTER**

I, Douglas J. Evertz, declare:

1. I am a partner with the law firm of Murphy & Evertz, LLP, attorney of record for Rosamond Community Services District ("RCSD") and City of Lancaster ("Lancaster") in this action. I have personal knowledge of each fact stated in this declaration, and if called as a witness, I could and would competently testify thereto.

2. Phelan Piñon Hills Community Services District, Palmdale Water District, RCSD, and Lancaster ("Settling Defendants") have entered into a settlement agreement with the Wood Class, for which the Court granted preliminary approval of on October 25, 2013 and for which the Court is set to determine final approval of on December 11, 2013 ("Settlement Agreement").

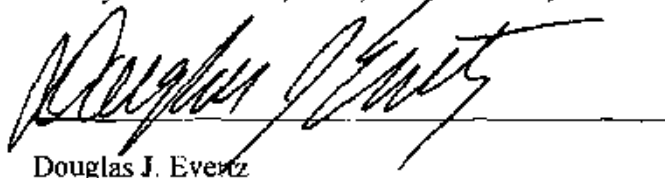
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1           3.       I did not negotiate with the Wood Class (including its legal counsel) about the Wood  
2 Class' attorneys' fees or costs that are included within the Settlement Agreement until and after I  
3 came to agreement with the Wood Class on the substantive terms of the Settlement Agreement that  
4 do not relate to payment of the Wood Class' attorneys' fees and costs.

5           I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct. Executed this 3rd day of December, 2013, at Costa Mesa, California.

7   
8  
9 Douglas J. Evertz

10  
11  
12 Respectfully submitted,

13 Dated: December 3, 2013

ALESHIRE & WYNDER, LLP

14  
15  
16 By: 

17 Wesley A. Miliband  
18 Attorneys for Cross-Defendant and  
19 Cross-Complainant,  
20 Phelan Piñon Hills Community  
21 Services District  
22  
23  
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**PROOF OF SERVICE**

I, Linda Yarvis,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On December 4, 2013, I served the within document(s) described as **DECLARATIONS OF SETTLING DEFENDANTS TO WOOD CLASS PARTIAL CLASS SETTLEMENT IN SUPPORT OF WOOD CLASS MOTION FOR FINAL APPROVAL OF PARTIAL CLASS SETTLEMENT** as follows:

☒ (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through [www.sccfiling.org](http://www.sccfiling.org).

☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, 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.

☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on December 4, 2013, at Irvine, California.

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

\_\_\_\_\_  
Linda Yarvis  
(Type or print name)

\_\_\_\_\_  
(Signature)

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING - WWW.SCEFILING.ORG

**c/o Glotrans**  
2915 McClure Street  
Oakland, CA94609  
TEL: (510) 208-4775  
FAX: (510) 465-7348  
EMAIL: [Info@Glotrans.com](mailto:Info@Glotrans.com)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

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

Defendant.

## AND RELATED ACTIONS

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

**PROOF OF SERVICE**  
**Electronic Proof of Service**

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Fri. March 25, 2016 at 5:12 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Fri. March 25, 2016 at 5:12 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

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



correct. Executed on March 25, 2016 at Oakland, California.

Dated: March 25, 2016

For WWW.SCEFILING.ORG

Andy Jamieson

**Electronic Proof of Service**  
**Page 2**

**Document(s) submitted by Michael McLachlan of Law Offices of Michael D. McLachlan APC on Fri. March 25, 2016 at 5:12 PM PDT**

1. Decl in Support: SECOND SUPPLEMENTAL DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD [SIGNED VERSION]

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On February 28, 2022, I caused the foregoing document(s) described as **APPENDIX RE: SMALL PUMPER CLASS' MOTIONS FOR ATTORNEYS' FEES [Vol. 3]** to be served on the parties in this action, as follows:

26

27

28