BRADLEY T. WEEKS, Bar No. 173745
CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551
(661) 265-0969

Attorney for Quartz Hill Water District
Defendant/Cross Complainant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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. BC325201;

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 353840, RIC 344436, RIC 344668.

Judicial Council Coordination Proceeding No. 4408

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

OPPOSITION TO WILLIS CLASS MOTION FOR ORDER COMPELLING DISCOVERY OF PRIVILEGED BILLING DOCUMENTS

Date: March 22, 2011
Time: 9:00 a.m.
Before Judge Komar

This opposition is on behalf of all parties set forth below:

RICHARDS WATSON & GERSHON
James L. Markman, Bar No. 43536
Steven Orr, Bar No. 136615
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Phone: (213) 626-8484 Fax: (213) 626-0078
Attorneys for City of Palmdale

LEMIEUX & O'NEILL
Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Ste. 201
Westlake Village, CA 91361
Phone: (805) 495-4770 Fax: (805) 495-2787
Attorneys for Littlerock Creek Irrigation District, Palm Ranch Irrigation District, et. al.

LAGERLOF SENECAL GOSNEY & KRUSE
Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-5123
Phone: (626) 793-9400 Fax: (626) 793-5900
Attorneys for Palmdale Water District

CALIFORNIA WATER SERVICE COMPANY
John Tootle, Bar No. 181822
2632 West 237th Street
Torrance, CA 90505
Phone: (310) 257-1488 Fax: (310) 325-4605

BEST BEST & KRIEGER LLP
Eric L. Garner, Bar No. 130665
Jeffrey V. Dunn, Bar No. 131926
Stefanie D. Hedlund, Bar No. 239787
5 Park Plaza, Suite 1500
Irvine, CA 92614
Phone: (949) 263-2600 Fax: (949) 260-0972
Attorneys for Los Angeles County Waterworks District No. 40

OFFICE OF COUNTY COUNSEL COUNTY OF LOS ANGELES
Andrea Ordin, Bar No. 38235
COUNTY COUNSEL
Warren Wellen, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
500 West Temple Street
Los Angeles, CA 90012
Phone: (213) 974-8407 Fax: (213) 687-7337

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

Attorneys for Los Angeles County Waterworks District No. 40

MURPHY & EVERTZ
Douglas J. Evertz
650 Town Center Drive, Suite 550
Costa Mesa, CA 92626
Phone: (714) 277-1700 Fax: (714) 277-1777
Attorneys for City of Lancaster and Rosamond Community Services District

SMITHTRAGER LLP
Susan Trager
19712 MacArthur Blvd., Suite 120
Irvine, CA 92612
Phone: 949-752-8971 Fax: 949-863-9804
Attorneys for Phelan Pinon Hills Community Services District

ALESHIRE & WYNDER, LLP
Wesley Miliband
18881 Von Karman Ave., Ste. 400
Irvine, CA 92612
Phone: 949-223-1170 Fax: 949-223-1180
Attorneys for Phelan Pinon Hills Community Services District

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

The Willis class seeks production of confidential, privileged records. They should not be produced for that reason alone. Moreover, these records will not illuminate the class attorney fee issue before the court. The Court should deny the motion.

I. BACKGROUND

The issue, as always, is attorney's fees. Counsel for the Willis Class has submitted a claim for a breathtaking amount of money following their settlement of the case. In response to what should have been readily-foreseeable objections to this, Willis Class counsel then demanded billing information from the objecting parties, presumably on the hope and theory that if counsel for the public water suppliers have similarly-dense bills, class counsel could claim that their fees were reasonable. Naturally, this discovery was objected to as irrelevant, privileged, and work product. These objections are well-taken, as set forth below.

The court ought to consider the practical result of ordering the Public Water Suppliers to disclose their billing records. They are in the middle of this case. The information provided will be used by their adversaries. The production of these records will give these adversaries an unfair insight into the legal concerns, strategies, and opinions of the PWS and their attorneys. If production is ordered, the nature of the attorney client relationship will be undermined because attorneys will no longer be able to make a full and frank explanation of their services for fear that those explanations will be subject to discovery.

II. PUBLIC WATER SUPPLIERS' BILLING INFORMATION IS IRRELEVANT

As should be obvious to the casual observer, the public water suppliers and the Willis Class are differently-situated in the case and face differing needs in terms of attorney time and effort. Comparing what public water suppliers have needed to do with what the Willis Class has needed to do is, on its face, an apples-and-oranges claim. At best, the records may reveal similar (or perhaps dissimilar) rates for attorney and paralegal time, but they will offer little insight into whether particular tasks were necessary for the Willis Class, and if so how much time and what level of professional was reasonable to accomplish it. Counsel for the Willis Class must defend and justify their billings on their own merits.

This is supported by the California Supreme Court in *Serrano v. Unruh* (1982) 32 Cal.3d 621. In *Serrano* the court determined the salaries of public-interest lawyers were irrelevant in computing a fee award. The court stated "Billing rates reflect not only costs but also a margin of profit and the financial stakes of varying clients. Moreover, for salaries to be discoverable they should be "relevant" to the standard of "reasonable value." We fail to see how they are." *Id.* at 641.

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

III. THE INFORMATION IN QUESTION IS CLEARLY PRIVILEGED

That an attorney's bills sent to a client, accounting for time spent working on behalf of the client, are communications between the attorney and client in question is tautologically true. Pursuant to Evidence Code section 917 all communications between a lawyer and client are presumed to be made in confidence.

Moreover, the California Supreme Court has determined that Attorney billing is protected by the attorney-client privilege. In *Moeller v. Superior Court* (1997) 16 Cal.4th 1124[1] a trust beneficiary attempted to obtain "invoices, and billings pertaining to legal services" *Id.* at 1128. The court referred to these documents as "confidential communications" *Id.* at 1133 and that they were protected by the attorney-client privilege *Id.* at 1139.

Likewise, in *Smith v. Laguna Sur Villas Community Association* (2000) 79 Cal.App.4th 639 a group of condominium unit owners sought to review the legal bills of the condominium association. The association objected on the grounds of attorney-client and work product privileges (*Id.* at 642). The court determined that the legal bills were protected by the attorney-client privilege and the unit owners could not demand their production (*Id.* at 643). Treated similarly by federal court, billing records will reveal "the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law" and therefore are protected communications between attorney and client. *Clarke v. American Commerce National Bank* (9th Cir. 1992) 974 F.2d 127, 129.

The seminal analysis of the issue is based in a twenty-two-year-old opinion of the Los Angeles County Bar Association's Ethics Committee, Formal Opinion No. 456 (August 21, 1989)

[1] This case regarded who was the holder of the attorney client privilege, but the court treated the documents as privileged.

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

(hereinafter "Opinion 456.") This opinion still sets the standard for the issue of whether bills are confidential communications today. In Opinion 456, the Ethics Committee noted that Business & Professions Code § 6068(e) imposes upon all attorneys a duty to "maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his or her client." Citing *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945, Opinion 456 makes clear that attorney's bills are privileged communications. Although some cases have distinguished it since, *Commercial Standard Title* remains good law to this day.

The scope of what is privileged has been given broad interpretation by the Courts. The threshold standard is merely a confidential communication between attorney and client. *Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 345. And indeed, all communications between attorney and client are presumed to be confidential in nature, *Estate of Kime* (1983) 144 Cal.App.3d 246, 256, simply based upon the intention of the party who initiated the communication that it be confidential, *Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 600. In their moving papers, counsel for the Willis Class refer to but do not quote Evidence Code § 952. It is worth considering the full text of that statute to understand that, in fact, it has a broad scope as written:

> As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Thus, any information transmitted solely between attorney and client, which may reasonably be understood to further the interests of the client, is privileged. Since billing records describe what attorneys have done to further the interests of the client, they are privileged within the meaning of

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

Evidence Code § 952.

Moving papers place significant weight on the case of *Willis v. Superior Court* (1980) 112 Cal.App.3d 277. In *Willis*, the litigants were brothers, both attorneys who had been law partners at one time, and who had suffered a falling-out and were now suing one another regarding the division of proceeds from their formerly shared law practice, supplemented by the usual business tort claims, and which were predicated upon discovery for which the time in which to interpose objections had expired. *Id.* at 281-2, 285. The differences between such a case and the matter at bar are obvious. *Willis* involved untimely responses, for which objections were waived by operation of law, concerning the splitting of the proceeds of a law practice and business torts inextricably intertwined with the generation of legal fees owed to the litigants. This case involves *timely* objections, and public entities and private parties making claims to groundwater extraction rights – with the critical distinction being that the subject matter of this litigation is not, itself, attorney's fees.

Since this litigation is not inherently about attorney's fees, since the privilege has been timely asserted, and most of all since the content of the records requested would divulge confidential communications between counsel and client concerning the specific nature of the services provided, such as litigation strategy and the researching of particular areas of law or fact, the records in question are privileged and cannot be made the subject of discovery. The motion should be denied.

IV. THE CITED FEDERAL CASES DO NOT SUPPORT THE MOTION TO COMPELL

Willis has cited two district court cases and one appellate court case. These cases applied Federal common law, not California law regarding the attorney-client privilege. The Supreme Court has stated this is improper.

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

A. This Court Ought to Disregard the Federal Cases

In *Wells Fargo v. Superior Court* (2000) 22 Cal.4th 201 parties used federal case law to support their position regarding the California attorney-client privilege. The Supreme Court rejected this argument. The issue in *Wells Fargo* was whether the court could create a fiduciary exception to the attorney-client privilege, as was the done in the federal courts. "Nor, under California law, could a "fiduciary exception [to the attorney-client privilege] ... be understood as an instance of the attorney-client privilege giving way in the face of a competing legal principle." What courts in other jurisdictions give as common law privileges they may take away as exceptions. We, in contrast, do not enjoy the freedom to restrict California's statutory attorney-client privilege based on notions of policy or ad hoc justification." *Id.* at 209.

The California Supreme Court has stated we must look to California law, not federal law, regarding the attorney-client privilege.

B. Under the Federal Cases Cited by Willis the Discovery is Privileged.

In *Real v. Continental Group Inc.* (N.D. Cal 1986) 116 F.R.D. 211 the court stated "[B]ills, ledgers, statements, time records and the like which also reveal the nature of law, also should fall within the privilege. On the other hand, a simple invoice requesting payment for unspecified services rendered reveals nothing more than the amount of the fee and would not normally be privileged" *Id.* at 213-214. *Amsterdam Project Mgmt. Hum. Found v. Laughrin* (N.D. Cal. Jan. 14, 2009, No. 07-00935) [2009 WL 102816], where attorneys were also parties, simply cited to *Real*. All of the documents requested fall under the categories of bills, ledgers, statements, and time records which *Real* stated were privileged under federal common law.

In *Clark v. American Commerce Natl. Bank* (9th Cir. 1992) 974 F.2d 127 the court again confirmed that "correspondence, bills, ledgers, statements, and time records which also reveal the

motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided fall within the privilege (*Id.* at 129).

V. THE PUBLIC RECORDS ACT DOES NOT REQUIRE DISCLOSURE OF THESE RECORDS

Moving party also requests the records on a claim that the Public Records Act would compel their disclosure through non-discovery means. To be sure, no Public Records Act request has ever been made; at issue is discovery in active litigation, not an inquiry by the public into the activities of public agencies.

This is a very salient point. If the Public Records Act has any application here, then Government Code § 6254(b) is an exception exactly on point – exempt from production and disclosure under the Public Records Act are

> Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

Those, of course, are exactly what are being sought in the motion at bar – billing records for pending litigation, billing records for a case (***this*** case) which has not been finally adjudicated or settled. The records fit exactly into this statutory exception and are therefore beyond the scope of what could be produced under the Public Records Act. Importantly, the billing records do not even have to be privileged to be protected from disclosure on this basis and indeed, the protection provided by Government Code § 6254(b) is even broader than the attorney-client and work product privileges. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372, *citing* 71 Ops.Cal.Atty.Gen. 235-240-241 (1988).

Of course, the records in question ***are*** privileged, as set forth above. That provides a

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

separate reason why the Public Records Act does not apply -- Government Code § 6254(k) exempts from production any records which are privileged under either state or federal law, including but not limited to Evidence Code §§ 952 and 954 (attorney-client communications) and Code of Civil Procedure § 2018.030 (attorney work product). As one court explained, this exemption therefore protects attorney-client privileged and attorney work product, as well as, more broadly, any other work product related to pending litigation: "[Section 6254(b)] is not duplicative of subdivision (k), through which Code of Civil Procedure section 2018 applies and protects attorney work product, but rather subdivision (b) confers upon public agencies a broader exemption from disclosure by protecting the 'work product' generated by a public agency in anticipation of litigation." *Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 898, *citing Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1422 & fn. 5.

The records in question are categorically excluded from disclosure under the Public Records Act, and the motion should be denied.

VI. ADDITIONAL DISCOVERY REQUIREMENTS HAVE NOT BEEN SATISFIED

A. The Request is Burdensome and Overbroad

This discovery requests the PWS, or their attorneys, to review each and every line of every bill they have received from their attorneys. Analyzing each line the client and the attorney will have to determine if it relates to this adjudication. If it does relate to the adjudication, then the amount that it relates will have to be determined. For example, a billing entry could include adjudication and non-adjudications matters. Then the Willis Counsel expects these bills to be produced and then an abstract of time prepared. This is overbroad and burdensome.

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

B. Willis Counsel served in excess of 35 Special Interrogatories and did not provide a declaration of necessity

Prior to the service of these interrogatories, Willis served in excess of thirty five interrogatories. Code of Civil Procedure section 2030.030(b) limits special interrogatories to thirty five. While this limitation may be overcome by a declaration of necessity, no such declaration was provided by counsel. The Public Water Suppliers were not required to respond.

C. Willis Counsel did not provide an adequate Separate Statement of Items in Dispute

California Rule of Court Rule 3.1345 requires a Separate Statement of Items in Dispute to be provided in conjunction with motions to compel discovery responses. This Rule states "The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. . . . (1) The text of the request, interrogatory, question, or inspection demand; (2) The text of each response, answer, or objection, and any further responses or answers." The Separate Statement provided by the Counsel for Willis is merely an incomplete summary of the objections, and therefore does not satisfy this section.

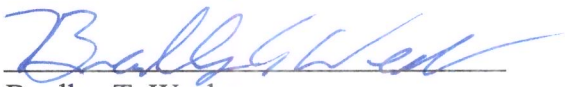
VII. CONCLUSION

By and for the reasons stated above, the motion should be denied.

Date: March 7, 2011

Respectfully Submitted,

CHARLTON WEEKS LLP



Bradley T. Weeks
Attorneys for Quartz Hill Water District

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551

DECLARATION OF BRADLEY T. WEEKS

I, Bradley T. Weeks, declare as follows.

1. If called to testify as a witness in the above mentioned matter, I could competently testify to the following matters, which are within my personal knowledge. I am the attorney for Quartz Hill Water District.

2. I bill my client monthly. My billing includes a great amount of detailed information. My billing includes work descriptions, my thoughts and conclusions, important issues regarding this litigation, the amount of time I spent on the numerous legal and factual issues regarding this litigation, and costs and expenses.

3. The production of the bills would necessarily disclose the specific nature of the legal services provided, time spent and expenses.

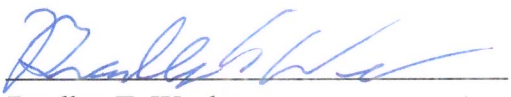
4. I have not seen the billing of the other opposing parties, but based upon representations of counsel, I believe that they are similarly detailed.

5. Prior to the service of these third set of interrogatories counsel for Ms. Willis served in excess of thirty five interrogatories. No declaration of necessity was served in conjunction with the third set of interrogatories.

6. I respectively request that the denial of this motion to compel.

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

Date: March 7, 2011



Bradley T. Weeks

PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is:

1007 West Avenue M14, Suite A, Palmdale, California 93551.

On March 7, 2011 at my place of business at Palmdale, California, a copy of the following document(s):

OPPOSITION TO WILLIS CLASS MOTION FOR ORDER COMPELLING DISCOVERY OF PRIVILEGED BILLING DOCUMENTS

By posting the documents listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on March 7, 2011

Bradley T. Weeks

CHARLTON WEEKS LLP
1007 West Avenue M-14, Suite A
Palmdale, CA 93551