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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

This Pleading Relates to Included Action:
REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; PHELAN PINON HILL COMMUNITY SERVICE DISTRICT; and DOES 1 through 1,000;

Defendants.

RELATED CASE TO JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

WILLIS CLASS' ALTERNATIVE PROPOSED PHSYICAL SOLUTIONS

Date: March 26, 2015
Time: 10:00 am
Place:

Superior Court of California
County of Los Angeles
111 North Hill Street, Room 222
Los Angeles, Ca 90012

Judge: Hon. Judge Komar

As the Willis Class' Opposition Brief conclusively demonstrates, the SPPS does not recognize or include the Court-established groundwater rights of the Willis Class. Further, the SPPS is inconsistent with the Willis Class' priority rights to pump groundwater for domestic and human uses. The Court therefore must look to alternative physical solutions to carry out its duties in reaching a comprehensive adjudication for the Antelope Valley Basin. Indeed, the California Supreme Court has ruled that the trial court must admit evidence regarding possible physical solutions even where, as here, certain parties object or attempt to prevent the trial court from considering alternative physical solutions:

> Other suggestions as to possible physical solutions were made during the trial. The trial court apparently took the view that none of them could be enforced by it unless the interested parties both agreed thereto. That is not the law. Since the adoption of the 1928 constitutional amendment, **it is not only within the power, but it is also the duty of the trial court to admit evidence relating to possible physical solutions**, and if none is satisfactory to it to suggest on its own motion such physical solution. (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., [3 Cal.2d 489,* 574 (1935)].) The court possesses the power to enforce such solution regardless of whether the parties agree.

City of Lodi v. E. Bay Mun. Util. Dist., 7 Cal. 2d 316, 341 (1936) (emphasis supplied).

Thus, under California law, it is of no consequence that the Stipulating Parties have shamelessly attempted to force this Court to accept the SPPS "as is . . .or else" when they stated in the SPPS that: "If the Court does not approve the Judgment as presented . . . then this Stipulation is *void ab initio* . . .". *See*, Stipulation for Entry of Judgment and Physical Solution, ¶ 4. Despite the statement in the SPPS, this Court has the power to suggest alternative physical solutions, if necessary, or to accept alternative physical solutions presented by non-stipulating parties to ensure that all parties' rights to groundwater are properly incorporated into the Physical Solution ultimately adopted by the Court.

After *Lodi*, the California Supreme Court in *Mojave* provided more specific guidance to trial courts for achieving legally viable physical solutions:

> **First,** the doctrine of correlative rights is the governing rule for overlying uses of groundwater. (*City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1241 (2000)). This means, "in disputes among overlying landowners, all have equal rights. If the supply of water is insufficient for all needs, each user is entitled to a fair share and just proportion of the water." (Arthur L. Littleworth & Eric L. Garner, California Water II 75 (2nd ed. 2007)). **Second,** there are no senior overlying users who gain priority by being the first to pump groundwater. (*Tehachapi-Cummings Cnty. Water Dist. v. Armstrong*, 49 Cal.App.3d 992, 1001 (1975)). **Third,** the substantial enjoyment of a prior right must be protected. (*Peabody v. City of Vallejo*, 2 Cal.2d 351, 383-4 (1935)). **Fourth,** the physical solution may not change priorities or eliminate vested rights without first considering them in relation to the reasonable use doctrine. "Although it is clear that a trial court may impose a physical solution to achieve a practical allocation of water to competing interests, the solution's general purpose cannot simply ignore the priority rights of the parties asserting them. **In ordering a physical solution, therefore, a court may neither change priorities among the water rights holders nor eliminate vested rights in applying the solution** without first considering them in relation to the reasonable use doctrine." (*City of Barstow*, 23 Cal.4th at 1250). **Fifth,** any physical solution must be fair to all parties who have vested overlying water rights. (*Id.*) **Sixth,** the physical solution may not unreasonably burden a party. (*Id.*)

City of Barstow v. Mojave Water Agency, 23 Cal.4th 1224 (2000) (emphasis supplied).

Recognizing that facts, circumstances, and technology change over time, the trial court retains jurisdiction to change and modify the Physical Solution as necessary, either on its own motion or on motion of any party. *City of Santa Maria v. Adam*, 211 Cal.App.4th 266, 288 (2012).

The Willis Class offers the following Alternative Proposed Physical Solutions ("APPS") for the Court's consideration as sanctioned by the California Supreme Court in *City of Lodi*.

Alternative Possible Physical Solutions That Follow Legal Priorities

A. The Tulare Plan

The first alternative proposed physical solution follows the Supreme Court's approach in the case of *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal.2d 489 (1935). Discussing the Constitutional Amendment, the *Tulare* Court said:

> The new doctrine not only protects the actual reasonable beneficial uses of the riparian but also the **prospective reasonable beneficial uses of the riparian**. As to such future or prospective reasonable beneficial uses, it is quite obvious that the **quantity of water so required for such uses cannot be fixed in amount until the**

1 **need for such use arises**. Therefore, as to such uses, the trial court, in its findings and judgment, should declare **such prospective uses paramount to any right of the appropriator**. By such declaratory judgment, the rights of the riparian will be fully protected against the appropriative use ripening into a right by prescription, but, until the riparian needs the water, the appropriator may use it, thus, at all times, putting all of the available water to beneficial uses. The trial court might well, by appropriate provisions in its judgment, retain jurisdiction over the cause, so that when a riparian claims the need for water, the right to which was awarded him under such a declaratory decree, the trial court may determine whether the proposed new use, under all the circumstances, is a reasonable beneficial use and, if so, the quantity required for such use.

8 *Id.* at 525. (emphasis supplied).

9 The Court in the Santa Maria adjudication adopted the same approach and said:

10 The overlying right extends to the landowners' "present **and prospective**" reasonable beneficial use upon the land and, therefore, that is the right, less the volume lost to prescription, preserved by self-help. **Quantification of the overlying right is not necessary because there is no present need to allocate the native supply**. Accordingly, appellants are entitled to a declaration that their overlying rights are prior to all but the prescriptive rights proved by Santa Maria and GSWC.

14 *City of Santa Maria*, 211 Cal.App.4th at 300 (emphasis supplied).

15

16 Below is a chart of the Tulare Plan as applied to the Antelope Valley Basin:

17

Party	Allocation	De Minimis	Cost	Term	Transfer
Federal	7,600		Free	Perm	No
State	207		Free	Perm	No
PWS	11,205		Free	Perm	No
Present Pumpers	59,482		Free	Annual	No
Wood Class	3,806	5,710	Free	Annual	No
Willis Class	TBD	11,205	Free	Annual	No
Total	82,300	16,915			

23 The allocation to all private landowners under this approach would be flexible and adjustable. The Watermaster would determine the private parties' reasonable and beneficial uses on an annual basis and accommodate new uses as they arose. The Court would retain broad jurisdiction to review the Watermaster determinations. Unused Federal rights are allocated to private overlying landowners. The PWS are limited to their allocation as provided under the Willis

Class Judgment. The PWS are barred by the Judgment from asserting any prescriptive rights as against the Willis Class. Thus, unlike the Santa Maria adjudication, no volume of prospective water use by the Willis Class will be lost to prescription. Willis Class Members have an equivalent *de minimus* use exemption up to the amount conferred on the PWS. *See* Declaration of Eric Garner in Support of Motion For Preliminary Approval of The Wood Class Settlement dated May 2, 2011 (hereinafter "Garner Declaration"), attached as Exhibit G.

The Chino Basin Plan

The second proposal is based on the *Chino Basin Municipal Water District v. City of Chino, et al.* case. (1978) San Bernardino Superior Court, No. RCV 51010. The Chino Basin Judgment (Physical Solution) is attached as Exhibit H. The solution that worked for the parties in the Chino Basin case can be described as a "Three Pool Model." Like Antelope Valley, the Chino Basin is a single connected aquifer that is not hydrologically separated in any meaningful way. Despite this, the court broke up the groundwater into distinct pools or quantities that would be available for different groups to use. There were three pools: Overlying (Agricultural) Pool; Overlying (Non-agricultural) Pool; and the Appropriative Pool. Each of the parties to the litigation was fit into one of the three pools and was allowed to access the water allocated to the pool, subject to a reasonable and beneficial use. If the pumping within a pool exceeded its allocation, then either the parties in the pool would have their water use reduced or would have to pay a replacement fee.

Below is a Chart of the Chino Basin Plan as applied to the Antelope Valley Basin:

Party		Allocation	Cost	Term	Transfer
Federal		7,600	Free	Perm	No
State		207	Free	Perm	No
PWS	15%	11,205	Free	Perm	No
Overlying Pool	85%	63,288	Free	Annual	No
Total		82,300			

There are two overlying pools in this case, one for the PWS/Federal/State and one for the overlying landowners. On an annual basis, the Watermaster determines the appropriate allocations within each pool and assigns the water rights accordingly. All parties are subject to reasonable and beneficial use constitutional standards. Any unused Federal water right is committed to the overlying landowner pool. Additional pumping would require payment of a replacement fee. As Willis Class Members come online, they would be accommodated within the overlying landowner pool. *De minimis* domestic use exemption applies to any pumping under 1.2 AFY as suggested by the testimony of Mr. Eric Garner. *See* Garner Declaration attached as Exhibit G.

The Antelope Valley Accord

The third proposal is based on the proposed Antelope Valley Accord. This proposal was agreed to by nearly all the parties to the Antelope Valley adjudication, with the notable exception of District 40. The Federal government, most of the PWS, and almost all landowners, including the Wood Class, approved this proposal. The Antelope Valley Accord is attached as Exhibit I. But for District 40's refusal, this proposal would have been submitted to this Court for approval. The Willis Class endorsed this proposal before it entered into the Stipulation of Settlement with the Public Water Suppliers.

Charted, the Antelope Valley Accord Plan would look like this:

Party	Members	Acres	Unit AFY	Allocation	Cap	Acre-Feet	Cost	Term	Transfer
Federal						7,600	Free	Permanent	Yes
State						207	Free	Permanent	No
PWS						11,205	Free	Permanent	No
OL Pumpers						59,482	Free	Permanent	Yes
Wood Class						3,806	Free	Permanent	Yes
Willis under 20 acre	63,227	335,030			11,205	-	De minimis	Permanent	No
Willis over 20 acres	4,321	196,874	0.10	19,687	19,687	-	Free	Permanent	Yes
Total	67,548	531,904		19,687	30,892	82,300			

The Willis Class' allocation is defined based on acreage. There are two groups of Willis Class Members: those with 20 acres or less and those with more than 20 acres. The Willis Class is capped at 30,892 AFY free of replacement assessment.

The Tiered Allocation Plan

This plans takes into consideration the demographics of the Willis Class and provides for their water use in accordance with their property ownership. Charted, this plan would look like this:

Party	Acreage	Parcels	Ave Acres	Acres	AF/Acre	Allocation	Cap	Acre-Feet	Cost	Term	Transfer
										-	-
Federal								7,600	Free	Perm	No
State								207	Free	Perm	No
PWS								11,205	Free	Perm	No
Pumpers								59,482	Free	Perm	yes
Wood								3,806	Free	Perm	yes
Willis	Under 5	49,070	2.5	122,675	1.00	19,628.00	5,602.50	-	D	Perm	no
Willis	Under 20	14,157	10	141,570	0.10	14,157.00	5,602.50	-	D	Perm	no
Willis	Under 100	3,683	50	184,150	0.10	18,415.00	18,415.00	-	Free	Perm	yes
Willis	Over 100	638	100	63,800	0.10	6,380.00	6,380.00	-	Free	Perm	yes
Total		67,548		512,195		58,580	36,000	82,300		-	-

The Willis Class would benefit from a *de minimis* use exemption equivalent to the 15% of the NSY conferred upon the PWS. All overlying landowners could use the Willis Class allocation until the Willis Class comes online. Once a Willis Class Member starts to pump, they are then

1 entitled to their fair allocation of the NSY. A chart of the size of Willis Class members and the
2 acreage owned is attached as Exhibit J.
3
4 **The SPPS**
5 By way of comparison, below is a chart of the proposed terms in the SPPS:
6

Type	Party	AF	De Minimis	Cost	Term	Transfer	Value @$500	@$7,500
Public	Federal	7,600		Free	Perm	No	3,800,000	57,000,000
Public	State	207		Free	Perm	No	103,500	1,552,500
Public	PWS	12,345		Free	Perm	No	6,172,500	92,587,500
Private	Pumpers	58,342		Free	Perm	YES	29,170,800	437,562,000
Private	Wood	3,806	5,710	Free	Perm	No	1,903,200	28,548,000
Private	Willis	-	-	PAY*		No	-	-
	Total	82,300	5,710				41,150,000	617,250,000

*If Approved

12 Under the SPPS, all Stipulating Parties, including the PWS, receive a permanent, non-reducible,
13 overlying production right collectively worth over $600,000,000. *See* Kalfayan Declaration ¶ 9.
14 According to the Twentieth Annual Report of the Mojave Basin Area Watermaster[1] for Water Year
15 2012-2013 ("Report"), most recent year available, the Replacement Water Assessment Rate for
16 2013-2014 will not exceed $448 per acre-foot. A true and correct copy of relevant portions of the
17 Report, including page 11, is attached as Exhibit K. This is the minimum economic value of 82,300
18 AFY of water, which constitutes the NSY supply of the Antelope Valley Basin. The Willis Class
19 on the other hand, a class composed of 65,000 overlying landowners, receives no benefit from the
20 NSY. Their rights to share in the NSY are completely shut out and extinguished in the SPPS. Willis
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22
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27
28 [1] The Mojave Basin Area adjacent to the Antelope Valley Basin is an adjudicated basin experiencing overdraft conditions.

Class Members must pay to import water[2] and must overcome many rigorous and expensive requirements before they may exercise their right to extract water from the Basin. [3]

In addition, most Stipulating Parties have carryover and transfer rights. Thus, parties like AGWA, Bolthouse, and Diamond Farming, may sell their water right and profit from its sale at the expense of Willis Class Members who must pay to pump groundwater, if and when their application to pump groundwater is approved by the Watermaster. This result would be completely untenable. Not only is it contrary to California law governing water rights, this result would directly contravene the PWS' binding settlement agreement with the Willis Class and the Court's Willis Class Judgment which expressly gave Willis Class Members the right to share in the NSY free of replacement assessment.

Moreover, the allocation to the PWS is overstated by 1,100 AFY. Their allocation is erroneously pegged to the NSY instead of what was agreed to in the Willis Class Judgment of the Federally Adjusted NSY. Further, the Federal government's unused water allocation, approximately 6,300 AFY, is unreasonably allocated to the PWS as opposed to the overlying landowners. On average, the Federal government pumps 1,300 AFY. Their free production allowance is 7,600 AFY. Kalfayan Declaration, ¶5. Left unused and transferred to the Public Water Suppliers are water rights of almost 6,300 AFY. Finally, the Wood Class has a *de minimis* water right while the Willis Class does not.

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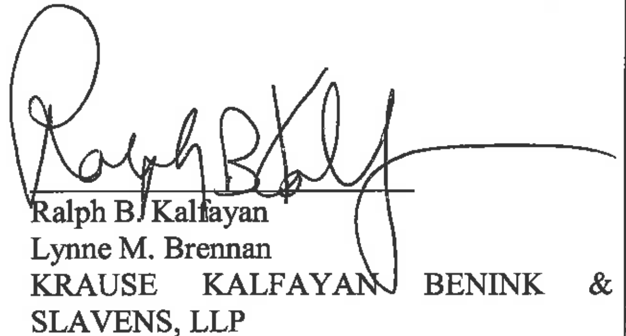
[2] Attached as Exhibit L is a news bulletin from Department of Water and Resources website dated February 10, 2015, which discusses recent developments in the State that have reduced the prospect for securing imported water in the future. This uncertainty is evidenced in the SPPS (*See* paragraphs 5.1.5.3 and 8.4.1 of the SPPS). The timing and availability of water supplies in California is a significant unknown. The Willis Class would be relegated to rely on this supply for their water needs in the future under the SPPS. This would be contrary to California law, patently unfair, and entirely inconsistent with the Willis Class Judgment.

[3] Mr. Kalfayan contacted a representative at Los Angeles County Department of Health Services by phone on or about March 2, 2015, and learned that in order to install a well and pump groundwater, an applicant must complete an application and pay certain fees. An L.A. County form application is attached as Exhibit M. The SPPS includes requirements for new pumping that far exceed those required by the County. (*See* Paragraph 18.5.13 *et. seq.* of the SPPS). These proposed requirements appear very unreasonable and unduly burdensome for Willis Class Members. However, I am unable to more precisely evaluate the cost and feasibility of the standards without a Court-appointed expert.

If the Court imposes a physical solution that permanently allocates water rights to the parties, then an impartial expert will be necessary. David Sunding, Ph.D., a distinguished Professor of Agricultural & Resource Economics at the University of California at Berkeley, has agreed to provide his expert services and quantify the likely future groundwater use of the Willis Class should the Court impose a physical solution that demands permanent quantification of all water rights. A true and correct copy of a letter dated February 13, 2015, from Dr. Sunding is attached as Exhibit N. Moreover, if the Court considers any of the APPS presented by the Willis Class as we believe it should, the Court also may request expert analysis of the timing, amount, and purpose for prospective uses of water by Willis Class Members to assist in the future administration of the Physical Solution ultimately adopted by the Court.

Dated: March 13, 2015

Respectfully submitted,



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