

1 of the foregoing water purveyors as to which there is a water system agreement
2 or water service agreement providing for the provision of water service by such
purveyors.”

3 NOW, THEREFORE, having considered and reviewed the Motion to Modify, the points and
4 authorities in support thereof, the responsive papers filed by other parties, and having considered the
5 file in this matter and the arguments presented at the hearing on the Motion and in connection with
6 prior Class Certification proceedings, and good cause appearing thereon; THE COURT FINDS AS
7 FOLLOWS:

8 1. In order to achieve a comprehensive, binding, and lasting adjudication of the water
9 rights at issue in this matter, it is important that, to the extent possible, all present or potential users
10 of groundwater within the Antelope Valley Basin be made parties to this proceeding. The Willis
11 Class previously certified encompasses the bulk of the property in the Basin that is not owned by one
12 of the present parties to this litigation.

13 2. The Class previously certified by the Court requires modification in the following
14 respects: First, the Class should exclude all persons or entities who are already participating in this
15 litigation (other than Class Plaintiff Willis) unless those persons affirmatively choose to join the
16 Class. In addition, the exclusion from the Class of persons whose properties are connected to
17 municipal water systems, public utilities, and mutual water companies should be limited to those
18 properties that actually receive water service from such an entity.

19 3. The Class of private landowners set forth below satisfies all of the requirements of
20 Section 382 of the California Code of Civil Procedure and due process.

21 4. The proposed Class is so numerous that joinder of all members would be
22 impracticable.

23 5. The claims asserted on behalf of Plaintiff Willis are typical of those asserted on
24 behalf of the absent Class members.

25 6. The claims asserted on behalf of the Class raise common issues of fact and law, which
26 predominate over any individual issues.

27 7. Willis is an adequate representative of the Class in that she is actively asserting her
28 rights and those of the absent Class members; and there is no adversity or conflict between Willis’

1 claims and those of the Class with respect to those issues.

2 8. Willis' counsel is adequate and capable to represent the Class.

3 9. The Class of non-pumpers is ascertainable through the analysis performed by the
4 Suppliers' expert, William E. Leever, Jr., as set forth in his Declaration dated May 1, 2008. It is
5 reasonable to assume that the owners of all parcels listed as improved by the county assessors'
6 offices, which are outside the service areas of the water providers, pump groundwater for use of their
7 parcels.

8 10. Class certification is the superior means to adjudicate this matter, especially in light
9 of the need to obtain a comprehensive adjudication of water rights that is binding on all landowners
10 within the Basin.

11 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

12 1. The Court hereby modifies its prior Class Certification order in the following
13 respects:

14 A. The Class shall exclude all persons who are already participating in this
15 litigation (other than Plaintiff Willis), but any such persons may "opt in" to the Class to the extent
16 they otherwise fall within the Class definition.

17 B. The following sentence of the Court's September 11, 2007 Class Certification
18 Order is stricken:

19 "The Class also excludes all persons to the extent their properties are connected to a
20 municipal water system, public utility, or mutual water company from which they receive
21 or are able to receive water service, as well as owners of properties within the service areas
of the foregoing water purveyors as to which there is a water system agreement or water
service agreement providing for the provision of water service by such purveyors."

22 C. The Class excludes all persons who only own property(ies) within the Basin
23 that are connected to *and* receive water service from a municipal supplier, public utility, or mutual
24 water company.

25 D. The Class shall exclude all property(ies) that are listed as "improved" by the
26 Los Angeles County or Kern County Assessor's office, unless the owners of such properties declare
27 under penalty of perjury that they do not pump water on their property and did not do so during the
28 five years preceding January 18, 2006.

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2. The Court’s prior Class Certification Order remains in full force and effect in all other respects.

3. On or before _____, 2008, L.A. County Waterworks District No. 40 shall compile a list of Class Members and propose a means for disseminating the Class Notice to such persons, which it shall post on the case website.

4. The Court provisionally approves the attached form of Notice to be sent to the Class.

IT IS SO ORDERED.

Dated: May ____, 2008

HON. JACK KOMAR
JUDGE OF THE SUPERIOR COURT

ARE YOU A MEMBER OF THE CLASS?

You have been designated as a possible class member because records show that you may own property in the Antelope Valley. The class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin, with certain exceptions set out below. A map of the Basin is attached to this notice.

You are NOT in the Class if you fall within one of the categories set forth below. **BUT YOUR RIGHTS MAY BE AFFECTED UNLESS YOU RETURN THE ATTACHED RESPONSE FORM AND MAKE CLEAR THAT YOU ARE NOT IN THE CLASS. HENCE, IT IS IMPORTANT THAT YOU RETURN THE RESPONSE FORM AS PROMPTLY AS POSSIBLE, EVEN IF YOU ARE NOT A CLASS MEMBER.**

You are NOT in the Class if your property within the Antelope Valley Basin falls within any of the following categories:

1. You pump groundwater on your property or have done so at any time since January 18, 2001; *or*
2. Your property is connected to *and* receives water from a public water system, public utility or mutual water company; *or*
3. You are already a party to this litigation (but, in that event, you may elect to join the Class).

WHAT IS THE CASE ABOUT?

Under California law, property owners have a right to pump and use groundwater (water underneath the surface) on their land. In this case, however, the naturally available supply of water in the Basin may not be adequate to satisfy everyone who wants to use that water. Plaintiff Willis brought this action to protect her right and that of other Antelope Valley landowners to pump and use the water under their properties and to obtain compensation for any wrongful taking of their property rights. She claims that she and other landowners have water rights which are superior to the rights of certain public water suppliers (listed as defendants on page 1) to use that water. The public water suppliers claim that their historical pumping has given them superior water rights. If the public water suppliers win, your rights to use the groundwater under your property may be cut back.

In other words, the Willis Class Action asks the Court to rule that private land owners in the Antelope Valley who do not presently pump water on their properties retain the right to use the water underlying their properties. The Court has not yet ruled on these claims.

WHAT DO YOU NEED TO DO?

YOU ARE REQUIRED TO COMPLETE AND RETURN the attached RESPONSE FORM by _____, 2008. All persons who receive this Notice should return that form, so that the parties and Court will know whether you are a class member.

If you are a Class Member (any private (i.e., non-governmental) person or entity who owns property within the Antelope Valley Basin and who does not fall within any of the exclusions set forth above), you have the right to remain in the Class or exclude yourself from the Class. You should complete and return the attached response form stating whether you wish to (a) remain in the Class or (b) exclude yourself from the Class.

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If you remain in the Class

- You will be bound by the decision in the case, whether favorable or unfavorable.
- Plaintiff Willis and her attorneys will act as your representatives in this case, and you will not personally be obligated to pay any fees or costs out of your pocket.
- You *may*, but need not, hire your own lawyer at your own expense to represent you.

If you exclude yourself from the Class,

- You will not be bound by any decision that affects the Class.
- But you may be added to the lawsuit as an individual defendant, and you may have to represent yourself or hire a lawyer to represent you.

Please complete and return the attached response form no later than _____, 2008 to the following:

Antelope Valley Groundwater Litigation
P.O. BOX _____
_____, CA

WHERE CAN YOU GET ADDITIONAL INFORMATION?

The amended complaint and certain other documents from the litigation are available at **www._____**. In addition, that website has a list of answers to certain other questions you may have. That website has an e-mail address for you to obtain further information if you have questions. That website will be updated from time to time to advise you of the status of this litigation. Or you may call the following number for information: _____. Also, all of the documents filed in the case are available on the court's website at <http://www.scefiling.org/cases/casehome.jsp?caseld=19>.

PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK'S OFFICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR OWN COUNSEL, VISIT THE WEB SITES LISTED ABOVE, OR WRITE TO CLASS COUNSEL AT THE ADDRESS ABOVE.

Dated: _____, 2008

BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA FOR THE COUNTY OF LOS ANGELES

[EXHIBIT A WILL BE THE MAP SHOWING THE BASIN (as set out in the Court's ruling).]

ANTELOPE VALLEY GROUNDWATER LITIGATION RESPONSE FORM

[SELF MAILER]

PLEASE COMPLETE AND RETURN A SEPARATE FORM FOR EACH SEPARATE PROPERTY YOU OWN WITHIN THE BASIN IN ORDER TO FULLY PROTECT YOUR RIGHTS.

PLEASE CHECK THE APPROPRIATE BOXES BELOW AND RETURN THIS MAILER AS SOON AS POSSIBLE AND IN ANY EVENT BEFORE _____, 2008. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR COUNSEL OR VISIT THE FOLLOWING WEB SITE, WHICH HAS INSTRUCTIONS ON HOW YOU SHOULD COMPLETE THIS FORM: _____. PLEASE CHECK ONLY ONE BOX FOR EACH ITEM. PLEASE THEN SIGN, FOLD, AND RETURN THE FORM.

1. I OWN ___ DO NOT OWN ___ PROPERTY WITHIN THE ANTELOPE VALLEY BASIN (AS SHOWN ON EXHIBIT A, ABOVE)

IF YOU ANSWERED NO, PLEASE PROVIDE THE CONTACT INFORMATION REQUESTED BELOW. THEN, SIGN AND DATE BELOW AND RETURN THIS FORM.

*IF YOU ANSWERED YES, PLEASE CHECK **ONE** ANSWER FOR EACH STATEMENT BELOW.*

2. I AM ___ AM NOT ___ PRESENTLY PUMPING GROUNDWATER ON MY PROPERTY.

3. I (or the prior owners of my property) HAVE ___ HAVE NOT ___ PUMPED GROUNDWATER ON MY PROPERTY AT ANY TIME SINCE JANUARY 18, 2001.

4. **PLEASE SELECT ONE OF THE FOLLOWING:**

A. I WANT TO REMAIN IN THE CLASS. _____

B. I WANT TO EXCLUDE MYSELF FROM THE CLASS. _____

C. I AM A PARTY BUT WISH TO JOIN THE CLASS. I UNDERSTAND THAT BY JOINING THE CLASS I MAY BE GIVING UP THE RIGHTS I OTHERWISE WOULD HAVE TO CONTROL THE POSITIONS TAKEN ON MY BEHALF IN THIS LITIGATION. _____.

ASSESSOR'S PARCEL NUMBER AND ADDRESS OR LEGAL DESCRIPTION OF YOUR PROPERTY IN THE BASIN: _____

THE ABOVE PROPERTY TOTALS APPROXIMATELY _____ ACRES.

PRINT YOUR NAME: _____

SIGNATURE: _____

MAILING ADDRESS: _____

CITY, STATE, ZIP CODE: _____

Telephone Number: _____

1 **PROOF OF SERVICE**

2 I, Ashley Polyascko, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,
California, 92101. On **May 20, 2008**, I served the within document(s):

5 **PLAINTIFF WILLIS' [PROPOSED] ORDER MODIFYING CLASS DEFINITION**
6 **AND ALLOWING PARTIES TO OPT IN TO THE PLAINTIFF CLASS**

7 by posting the document(s) listed above to the Santa Clara County Superior Court
website in regard to the Antelope Valley Groundwater matter.

8 by placing the document(s) listed above in a sealed envelope with postage thereon
9 fully prepaid, in the United States mail at San Diego, California addressed as set
forth below:

10 by causing personal delivery by Cal Express of the document(s) listed above to
11 the person(s) at the address(es) set forth below.


12 by personally delivering the document(s) listed above to the person(s) at the
address(es) set forth below.

13 I caused such envelope to be delivered via overnight delivery addressed as
14 indicated on the attached service list. Such envelope was deposited for delivery
by UPS following the firm's ordinary business practices.

15 I am readily familiar with the firm's practice of collection and processing correspondence
16 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
17 day with the 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.

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

20 Executed on May 20, 2008, at San Diego, California.

21 
22 Ashley Polyascko