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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 REBECCA LEE WILLIS, on behalf of herself)
11 and all others similarly situated,)

12 Plaintiff,)

13 vs.)

14 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40; CITY OF LANCASTER;)
15 CITY OF LOS ANGELES; CITY OF)
PALMDALE; PALMDALE WATER)
16 DISTRICT; LITTLEROCK CREEK)
IRRIGATION DISTRICT; PALM RANCH)
17 IRRIGATION DISTRICT; QUARTZ HILL)
WATER DISTRICT; ANTELOPE VALLEY)
18 WATER CO.; ROSAMOND COMMUNITY)
SERVICE DISTRICT; MOJAVE PUBLIC)
19 UTILITY DISTRICT; and DOES 1 through)
1,000;)

20 Defendants.)
21 _____)
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JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

PUTATIVE CLASS PLAINTIFF'S
RESPONSE TO MOTION OF PUBLIC
WATER SUPPLIERS FOR CERTIFICATION
OF DEFENDANT CLASS

Hearing:

Date: March 12, 2007
Time: 9:00 a.m.
Place: Dept. 1 (L.A. Super. Ct.)

1 Putative Class Plaintiff Rebecca Lee Willis (“Willis”) responds as follows to
2 the Public Water Suppliers’ Motion for Certification of a Defendant Class.

3
4 **I.**
INTRODUCTION

5 Class certification is appropriate in this case in order to achieve a comprehensive
6 resolution to the ground water claims in the Antelope Valley Basin. As this Court stated in
7 its November 3, 2006 Order After Hearing on Jurisdictional Boundaries: “The relief sought
8 in this coordinated case is the adjudication of the *claims of all parties who assert a right to*
9 *the ground water within the Antelope Valley basin All overlying land owners with*
10 *correlative usufructory rights and appropriators who produce water from the aquifer are*
11 *necessary parties.” Order at p.2 (emphasis added). The only real issues are (1) who should*
12 *represent the Class and (2) how the Class should be defined.*

13 Certain Public Water Suppliers have moved for certification of a Defendant Class of
14 landowners. Willis respectfully submits that a Plaintiff Class is preferable to a Defendant
15 Class, at least under the circumstances of this case, and that she would be an adequate
16 (indeed, a very good) representative of the Class of overlying landowners. With all due
17 respect to the State of California, its interests here are at least in potential conflict with the
18 interests of the Class of overlying landowners, and therefore the State would not be a proper
19 representative of the Class – a role, moreover, which the State does not seek. Willis further
20 submits that this Court should define the Class as follows:

21 All persons and entities that own land within the Basin, *excluding* (1) those
22 persons who are separately represented and participating in this litigation;
23 (2) the Municipal Suppliers and their affiliates; and (3) those persons whose
24 properties are provided water by any of the municipal purveyor defendants
(with the exception of any such persons who (a) have wells on their property,
(b) who elect to “opt in” to the Class, or (c) own other property in the Basin
which is not served by any of the municipal Suppliers.

25 Willis believes that such a definition meets the needs of the parties for an appropriately broad
26 Class that encompasses any and all real claimants to the Basin’s ground water (and therefore
27 will achieve finality) while excluding the tens of thousands of city dwellers who are provided
28

1 water by and whose interests are aligned with and adequately represented by the municipal
2 purveyors. Accordingly, Willis respectfully requests that the Court grant the Suppliers'
3 Motion, but modified in the above respects.

4 **II.**
5 **FACTUAL BACKGROUND**

6 Plaintiff Rebecca Lee Willis ("Willis") resides in Palmdale, California. Willis owns
7 approximately 10 acres of property at 200th Street West and Avenue "B" in Lancaster,
8 California, within the Basin, on which she intends to build a home and landscape nursery.
9 Plaintiff's property overlies percolating groundwater, the precise extent of which is
10 unknown. Plaintiff Willis seeks to represent a class consisting of other similarly situation
11 persons – i.e., other overlying landowners who are not already represented in this action.

12 The Defendants are persons and entities who claim rights to use groundwater from the
13 Basin, whose interests are in conflict with Plaintiff's interests and those of the Class. More
14 specifically, the Defendants are municipal water purveyors who assert prescriptive or other
15 rights to use the groundwater in the Basin.

16 The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic
17 Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert. The
18 Basin is bounded on the northwest by the Garlock fault zone at the base of the Tehachapi
19 Mountains and on the southwest by the San Andreas fault at the base of the San Gabriel
20 Mountains. The Basin is bounded on the east by ridges and low hills that form a
21 groundwater divide and on the north by various geographic features that separate it from the
22 Fremont Valley Basin.

23 Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the Basin's
24 recharge comes from runoff from the surrounding mountains and hills – in particular, from
25 the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other
26 portions of the Valley. The Basin's natural recharge averages approximately 50,000 acre feet
27 per year.

28 The Basin has two main aquifers – an upper aquifer, which is the primary source of

1 groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin
2 have been productive and have met the needs of users in conjunction with other sources of
3 water, including the State Water Project. In recent years, however, population growth and
4 agricultural demands have led to increased pumping and declining groundwater levels,
5 particularly along Highway 14. That has caused subsidence of the ground surface in certain
6 parts of the Valley. Although there is some disagreement, the Basin is either in an overdraft
7 condition or is approaching such a situation. Nonetheless, rights to the Basin's groundwater
8 have not been adjudicated and there are no present legal restrictions on pumping.

9 Various water users have instituted suit to assert rights to pump water from the Basin.
10 In particular, Defendant L.A. Waterworks District 40 and other municipal purveyors have
11 brought suit asserting that they have prescriptive rights to pump water from the Basin, which
12 they claim are paramount and superior to the overlying rights of Plaintiff and the Class.
13 Those claims threaten Plaintiff's and the Class' rights to pump water for beneficial uses on
14 their properties, rights which are paramount under the law to those of the municipal
15 purveyors. Plaintiff and the Class seek a Court Order determining their rights and awarding
16 other relief as appropriate.

17 **III.** 18 **ARGUMENT**

19 **A. The Court Should Certify a Class in This Case**

20 In their Motion for Class Certification, the Public Water Suppliers demonstrate
21 convincingly that it makes sense for the Court to certify a Class of overlying landowners in
22 this case. This Court cannot finally adjudicate the rights of such overlying landowners and
23 bring finality to this dispute unless all persons with an interest are joined in some fashion.

24 Given the fact that there are thousands of overlying landowners within the Basin, it
25 would be impracticable to join all of them; hence, this is precisely the type of situation where
26 class certification is appropriate. The real issues are (1) how should the Class be defined and
27 (2) who should represent the Class. Although the Public Suppliers have moved to certify a
28 Defendant Class of overlying landowners (which, of course, they did prior to the time Ms.

1 Willis filed her suit), it would be preferable for the Court to certify a Plaintiff Class and
2 designate her as its representative, rather than certify a defendant Class of such landowners.

3 1. The Court Has Authority to Modify the Class Definition
4 And Appoint Such Class Representative as It Deems Fit

5 In that regard, it is clear that the Court has discretion to modify the Class Definition
6 proposed by the Public Suppliers in the course of ruling on their motion, as well as appoint
7 such representative(s) as it deems appropriate.¹ The question of whether a particular action
8 meets the requirements of Section 382 of the Code of Civil Procedure is committed to the
9 sound discretion of the trial court. *Kagan v. Gibraltar Sav. & Loan* (1984) 35 Cal. 3d 582.
10 In addition, the definition and scope of the Class and the determination of proper Class
11 representatives lies within the trial court's discretion. *Hicks v. Kaufman & Broad Home*
12 *Corp.* (2001) 89 Cal. App. 4th 908. In *Hicks*, the Court of Appeal confirmed the trial court's
13 authority to decide on the appropriate contours of a Class, stating that if the court determines
14 that a proposed class definition is problematic, the court's role is not to deny certification,
15 but to "redefine the class" in an appropriate manner. *Id.* at 916. As explained below, that
16 is what this Court should do; its authority to do so cannot be questioned.

17 B A Plaintiff Class Is Preferable to A Defendant Class In this Matter.

18 Willis recognizes that a number of California cases have recognized the possibility
19 of certifying a defendant class. *See, e.g., Simons v. Horowitz* (1984) 151 Cal. App. 3d 834.
20 For several reasons, however, a Plaintiff Class would be preferable here.

21 First, certification of plaintiff classes is much more common under California law than
22 are defendant classes, and the relevant standards are far better defined. Second, certification
23 of ordinary landowners as members of a Defendant Class is likely to confuse many of them
24 and may well result in massive exclusions, which would defeat the purposes of certification.
25 Third, certification of a Defendant Class is particularly problematic where there is not a

26 ¹ Of course, if the Court wants Willis to independently file a motion for class
27 certification following the coordination of her case, she is prepared to do so. She respectfully
28 submits, however, that such a motion is not required, and that the Court can certify her as
representative of a Plaintiff Class in ruling on the pending motion of the Public Suppliers.

1 willing representative of such a Class and where the proposed representative – the State –
2 neither wants the role nor can reasonably be said to be in the same shoes as the great majority
3 of overlying landowners in the Basin. All of these considerations lead to the conclusion that
4 certifying a plaintiff class would be preferable under the circumstances here.

5 1. Willis Would Be an Adequate Representative of the Class

6 Rebecca Willis would be an adequate – indeed, a very good – representative of the
7 Class of overlying landowners. She is a member of the proposed Class and has a strong
8 interest in protecting her right to use the water underlying her property, which she intends to
9 develop as a landscape nursery. Moreover, she has demonstrated a keen interest in this
10 matter, coming to many of the hearings and reviewing many of the pleadings and other
11 papers filed in this matter. Unlike the State, which has no desire to represent the landowners
12 in the Basin, Willis wants to protect their interests, which are fully aligned with hers. In
13 short, she will be an appropriately vigorous representative of the Class.

14 Willis’ counsel – the firm of Krause, Kalfayan, Benink & Slavens LLP – is qualified
15 to act for the Class. The Krause firm has handled numerous class actions in California
16 Federal and State courts and is experienced in complex litigation. Although the firm has
17 limited experience in water adjudications, that is ameliorated by the fact that there are several
18 more experienced firms representing large overlying landowners, including some of the
19 largest agricultural firms in the State, many of whose interests overlap those of the Class.
20 Moreover, the firm is cognizant of its duty to educate itself in this area of the law and will
21 do so. Indeed, at this very time, the attorney primarily responsible for handling this matter
22 is attending the annual ABA continuing education program on water law. Accordingly, the
23 Krause firm can be relied upon to provide proper representation of the Class.

24 C. The Class Should Be Defined as Willis Proposes

25 The most complicated issue before the Court in many respects is the proper definition
26 of the Class. Willis respectfully proposes that the Class be defined as follows:

27 All persons and entities that own land within the Basin, *excluding* (1) those
28 persons who are separately represented and participating in this litigation;

1 (2) the Municipal Suppliers and their affiliates; and (3) those persons whose
2 properties are provided water by any of the Municipal Supplier defendants
3 (with the exception of any such persons who (a) have wells on their property,
4 (b) who elect to “opt in” to the Class, or (c) own other property in the Basin
5 which is not served by any of the municipal purveyors.

6 That definition adequately and properly balances the needs of the parties for a final
7 adjudication that will have *res judicata* effect as to all truly interested parties, but excludes
8 the tens of thousands of city dwellers who neither have wells nor have any intention to install
9 them. The interests of such city dwellers are really aligned with the public suppliers that
10 provide such persons with water. Moreover, such persons would only be confused by being
11 included in the Class, which would likely result in numerous headaches for the court and the
12 parties. The jurisdictional concerns raised by the United States can be resolved by affording
13 such persons the right to intervene as parties or “opt-in” to the Class and barring them from
14 later asserting rights they could have asserted in this litigation.


15 The Class, however, should include all persons who have wells (regardless of whether
16 they are within the areas served by the Municipal Suppliers) as well as all landowners within
17 the Basin who elect to opt in to the Class. That will permit a full and final resolution of this
18 controversy, which is in the best interests of all.

19 **IV.**
20 **CONCLUSION**

21 For the reasons stated above, Willis respectfully requests that the Court certify a
22 Plaintiff Class in this matter, as defined above, and designate her as Class representative.
23 The parties should meet and confer and submit an appropriate – and hopefully, agreed upon
24 – form of Order certifying such a Class.

25 Dated: February 22, 2007

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

26 
27 Ralph B. Kalfayan, Esq.
28 David B. Zlotnyk, Esq.
Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

2 I, Aimee Vignocchi, 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 **February 22, 2007**, I served the within document(s):

5 **PUTATIVE CLASS PLAINTIFF'S RESPONSE TO MOTION OF PUBLIC
6 WATER SUPPLIERS FOR C**

- 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 the
11 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 February 22, 2007, at San Diego, California.

21 
22 Aimee Vignocchi