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

10 COORDINATED PROCEEDING) JUDICIAL COUNCIL COORDINATION
11 SPECIAL TITLE (Rule 1550(b))) PROCEEDING NO. 4408
12 ANTELOPE VALLEY GROUNDWATER)
CASES)
13 Included Actions:)
14 REBECCA LEE WILLIS, on behalf of herself) NOTICE OF MOTION AND MOTION FOR
15 and all others similarly situated,) LEAVE TO FILE SECOND AMENDED
16 Plaintiff,) COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES
17 vs.)
18 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40; et al.,)
19 Defendants.) **Hearing:**
20 Date: March 3, 2008
Los Angeles County Superior Court) Time: 10:00 a.m.
21 Case No. BC 364 553) Place: Dept. 1 (L.A. Super. Ct.)
22 Judge: Hon. Jack Komar
23 AND RELATED ACTIONS)

24 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that, on March 3, 2008, at 10:00 a.m., or as soon thereafter as the
26 matter can be heard, in Department 1 of this Court, located at 110 North Hill Street, Los Angeles,
27 California 90012, Plaintiff Rebecca Willis, by and through her attorneys, will move this Court for
28 an ORDER granting her leave to file a Second Amended Class Action Complaint in the form

1 attached hereto as Exhibit A.

2 The sole change in the Second Amended Complaint is to expand the definition of the Class
3 to read as follows:

4 all private (i.e., non-governmental) persons and entities that own real property within
5 the Basin, as adjudicated, that are not presently represented by counsel in this litigation.
6 The Class *includes* the successors and assigns of Class members who become owners
7 of property in the Basin at a later date. The Class *excludes* the defendants herein, any
8 person, firm, trust, corporation, or other entity in which any defendant has a
9 controlling interest or which is related to or affiliated with any of the defendants, and
10 the representatives, heirs, successors-in-interest or assigns of any such excluded party.

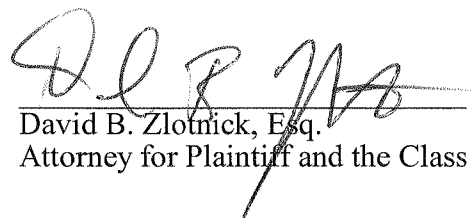
11 Willis stresses that she may seek to certify a Class that is narrower than the above definition.
12 However, because the appropriate contours of the Class are still under discussion and consideration,
13 both by the parties and the Court, Willis believes it appropriate to amend her Complaint to plead the
14 broadest possible Class definition.

15 As discussed below, this motion is made on the grounds that good cause exists for granting
16 Plaintiff leave to amend. Moreover, granting leave to amend will not prejudice the rights of any of
17 the defendants, given the stage of the litigation.

18 This motion is based on this Notice of Motion and Motion and the accompanying
19 Memorandum of Points and Authorities, and on the papers and records on file herein, and on
20 such oral and documentary evidence as may be presented at the hearing of the motion.

21 Dated: February 8, 2008

KRAUSE KALFAYAN BENINK &
SLAVENS LLP

22 
23 _____
24 David B. Zlotnick, Esq.
25 Attorney for Plaintiff and the Class
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **A. It Is In Furtherance Of Justice To Allow Plaintiff To Amend Her Complaint**

3 This Court “may, in furtherance of justice, and on such terms as may be proper, allow a
4 party to amend any pleading or proceeding.” Code.Civ.Proc. §473. It is established judicial
5 policy to resolve all disputes between the parties on their merits, and to liberally allow
6 amendments to the pleadings to put all disputes at issue at the time of trial. *See, Vogel v. Thrifty*
7 *Drug Co.*, (1954) 43 Cal.2d 184, 188 (“It is a basic rule of pleading in this state that amendments
8 shall be liberally allowed so that all issues material to the just and complete disposition of a
9 cause may be expeditiously litigated”); *See also, Wilson v. Turner Resilient Floors* (1949) 89
10 Cal.App.2d 589; *In re Herbst’s Estate* (1938) 26 Cal.App.2d 249.

11 "While a motion to permit an amendment to a pleading to be filed is one addressed
12 to the discretion of the court, the exercise of this discretion must be sound and
13 reasonable and not arbitrary or capricious. And it is a rare case in which 'a court will
14 be justified in refusing a party leave to amend his pleadings so that he may properly
15 present his case.' If the motion to amend is timely made and the granting of the
16 motion will not prejudice the opposing party, it is error to refuse permission to
17 amend and where the refusal also results in a party being deprived of the right
18 to assert a meritorious cause of action or a meritorious defense, it is not only error
19 but an abuse of discretion.

20 *California Cas. Gen. Ins. Co. v. Superior Ct* (1985) 173 Cal.App.3d 274, 278 (citations omitted).

21 In this case, the parties and Court have wrestled for over a year to find an appropriate
22 means to bring all interested persons within the Court’s jurisdiction, so that this matter will result
23 in a binding and lasting resolution of rights to the Basin’s water rights. Otherwise, the time and
24 money of all parties and the Court will have been wasted; and, more importantly, the Basin’s
25 water rights will continue to be unresolved.

26 This Court may in its sound discretion allow plaintiff to amend her complaint, regardless
27 of the stage of the litigation. *See, Hirsa v. Superior Ct.*, (1981) 118 Cal.App.3d 486, 488-489
28 (“Trial courts are vested with the discretion to allow amendments to pleadings in furtherance of
justice . . . that trial courts are to liberally permit such amendments, at any stage of the
proceeding, has been established policy of this state . . . resting on the fundamental policy that
cases should be decided on their merits.”). Given the stage of this case, no party in interest will
be prejudiced by Plaintiff’s amendment to her complaint. Therefore, because granting the
motion for leave to file Plaintiff’s First Amended Complaint will not prejudice any party to this

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action and leave to amend will further the interests of justice, this Court should grant Plaintiff leave to file a first amended complaint. *See, California Cas. Gen. Ins. Co.* 173 Cal.App.3d at 278.


Plaintiff has proposed the broadest possible Class definition in her Second Amended Complaint, but thinks it very likely that she will seek to certify a narrower Class. Plaintiff believes that it makes sense to define the proposed Class broadly in her pleading and then let the Class certification process determine what narrowing of the parameters may be appropriate.

III.
CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court grant her motion for leave to file a Second Amended Complaint in the form submitted with her motion.

Dated: February 8, 2008

KRAUSE KALFAYAN BENINK &
SLAVENS LLP



David B. Zlotnick, Esq.
Attorney for Plaintiff and the Class

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING No. 4408
) Santa Clara Case No. 1-05-CV-049053
) Assigned to The Honorable Jack Komar
)
)

14 This Pleading Relates to Included Action:
15 REBECCA LEE WILLIS, on behalf of herself
and all others similarly situated,
16
Plaintiff,

) [PROPOSED] SECOND AMENDED CLASS
) ACTION COMPLAINT FOR
) DECLARATORY AND INJUNCTIVE
) RELIEF SEEKING ADJUDICATION OF
) WATER RIGHTS
)
)

17 vs.

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

24 Defendants.
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26 Plaintiff, Rebecca Lee Willis, by her counsel, alleges for her Second Amended Complain
27 as follows:
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I.
NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and the class consisting of all other private landowners in the Antelope Valley, excluding those presently represented by counsel in this litigation, seeking (1) a judicial determination of their rights to use the groundwater in the Antelope Valley Groundwater Basin (“the Basin”) and (2) an injunction restraining the Defendant public water suppliers from taking groundwater from the Basin in derogation of the rights of Plaintiff and the Class. In addition, Plaintiff reserves her right to obtain just compensation for herself and the Class to the extent any of the government entity defendants restrict Plaintiff’s or the Class’s rights as overlying landowners to use the Basin’s groundwater. This action is necessary in that the basin is currently in a state of overdraft – i.e., the annual use of basin groundwater exceeds the average annual natural recharge from precipitation and other sources, largely, if not entirely, due to the Defendants’ acts in taking large amounts of water from the Basin. Hence, groundwater levels in the Basin are gradually becoming lower to the detriment of Plaintiff and others similarly situated.

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II.
JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to the Sections 526 and 1060 of the California Code of Civil Procedure (“CCP”).

3. 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, venue is proper under the Judicial Council’s coordination order.

4. A real and actual controversy exists between Plaintiff and the Class and the Defendants with respect to their respective rights to use the Basin’s groundwater.

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III.
THE PARTIES

5. Plaintiff Rebecca Lee Willis (“Willis” or “Plaintiff”) resides in Palmdale, California. Willis owns approximately 10 acres of property at 200th Street West and Avenue “B” in Lancaster, California, within the Basin, on which she intends to build a home and landscape nursery. Plaintiff’s

1 property overlies percolating groundwater, the precise extent of which is unknown.

2 6. Defendants are persons and entities who claim rights to use groundwater from the
3 Basin, whose interests are in conflict with Plaintiff's interests. They are as follows:

4 A. Defendant Los Angeles County Waterworks District No. 40 is a public agency
5 governed by the Los Angeles County Board of Supervisors that drills and pumps water in the Basin
6 and sells such water to the public in portions of the Antelope Valley.

7 B. Defendant City of Lancaster is a municipal corporation that pumps and/or provides
8 groundwater from the Basin.

9 C. Defendant City of Palmdale is a municipal corporation that pumps and/or provides
10 groundwater from the Basin.

11 D. Defendant Quartz Hill Water District is a public agency that pumps and/or provides
12 groundwater from the Basin.

13 E. Defendant Palmdale Water District is a public agency that pumps and/or provides
14 groundwater from the Basin.

15 F. Defendant Rosamond Community Services District is an entity that pumps and/or
16 provides groundwater from the Basin.

17 G. Doe Defendants 1 through 1,000. Plaintiff alleges on information and belief that at
18 at relevant times Doe Defendants 1 through 1000, inclusive, are persons or entities who either are
19 currently taking or providing water from the Basin or claim rights to take groundwater from the
20 Basin that are adverse to Plaintiff's and the Class's rights to take and use that water. Plaintiff is
21 presently unaware of the true names and identities of those persons sued herein as Doe Defendants
22 1 through 1000 and therefore sues these Defendants by these fictitious names. Plaintiff will amend
23 this Complaint to allege the Doe Defendants' legal names and capacities when that information is
24 ascertained.

25 **IV.**
26 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

27 7. The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic
28 Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert. The Basin

1 is bounded on the northwest by the Garlock fault zone at the base of the Tehachapi Mountains and
2 on the southwest by the San Andreas fault at the base of the San Gabriel Mountains. The Basin is
3 bounded on the east by ridges and low hills that form a groundwater divide and on the north by
4 various geographic features that separate it from the Fremont Valley Basin.

5 8. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the Basin's
6 recharge comes from runoff from the surrounding mountains and hills – in particular, from the San
7 Gabriel and Tehachapi Mountains and from hills and ridges surrounding other portions of the Valley.
8 The Basin's natural recharge averages approximately 48,000 acre feet per year.

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

13 10. In recent years, however, population growth and agricultural demands have led to
14 increased pumping and declining groundwater levels, particularly along Highway 14. That has
15 caused subsidence of the ground surface in certain parts of the Valley. Although the Basin is in an
16 overdraft condition, rights to the Basin's groundwater have not been adjudicated and there are no
17 present legal restrictions on pumping. Each of the Defendants is pumping water from the Basin
18 and/or claims an interest in the Basin's groundwater.

19 11. Various water users have instituted suit to assert rights to pump water from the Basin.
20 In particular, Defendant L.A. Waterworks District 40 and other municipal purveyors have brought
21 suit asserting that they have prescriptive rights to pump water from the Basin, which they claim are
22 paramount and superior to the overlying rights of Plaintiff and the Class. Those claims threaten
23 Plaintiff's right to pump and use the water underlying her property. Moreover, by taking water in
24 reliance on those erroneous claims, Defendants have decreased the amount of available water in the
25 Basin and made it more difficult for Plaintiff and the Class to use that water.

26 **V.**
27 **CLASS ACTION ALLEGATIONS**

28 12. Plaintiff brings this action on behalf of the class of all private (i.e., non-governmental)

1 persons and entities that own real property within the Basin, as adjudicated, that are not presently
2 represented by counsel in this litigation. The Class *includes* the successors and assigns of Class
3 members who become owners of property in the Basin at a later date. The Class *excludes* the
4 defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a
5 controlling interest or which is related to or affiliated with any of the defendants, and the
6 representatives, heirs, successors-in-interest or assigns of any such excluded party.

7 13. The Class is so numerous that joinder of all members is impracticable. Plaintiff's
8 claims are typical of the claims of the members of the Class. Plaintiff and members of the Class
9 share a common interest in protecting their right to use the Basin's water from competing claims,
10 including those asserted by Defendants.

11 14. Plaintiff will fairly and adequately protect the interests of the members of the Class
12 and Plaintiff has no interests which are contrary to or in conflict with those of the Class members
13 she seeks to represent. Plaintiff has retained competent counsel experienced in class action litigation
14 to ensure such protection.

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

19 16. There are common question of law and fact as to all members of the Class, which
20 predominate over any questions affecting solely individual members of the Class.

21 **VI.**
22 **FIRST CAUSE OF ACTION**
23 **(For Declaratory Relief Against All Defendants)**

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

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

1 as overlying landowners to make reasonable use of the Basin's groundwater.

2 28. Plaintiff and the Class have no adequate remedy at law.

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

6 **VII.**
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays that this Court enter judgment on her behalf and on behalf
9 of the Class against all Defendants, jointly and severally, as follows:

10 1. Determining that the instant action is a proper class action maintainable under
11 Section 382 of the Code of Civil Procedure;

12 2. Declaring that Plaintiff's and the Class's overlying rights to use water from the
13 Basin are superior and have priority vis-a-vis all non-overlying users and purveyors;

14 3. Apportioning water rights from the Basin in a fair and equitable manner and
15 enjoining any and all uses inconsistent with such apportionment;

16 4. Granting a preliminary and permanent injunction restraining Defendants from
17 taking groundwater from the Basin; and

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

21 Dated: _____, 2008

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

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Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.

26 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

I, David Zlotnick, 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 625 Broadway, Suite 635, San Diego, California, 92101. On **February 8, 2008**, I served the within document(s):

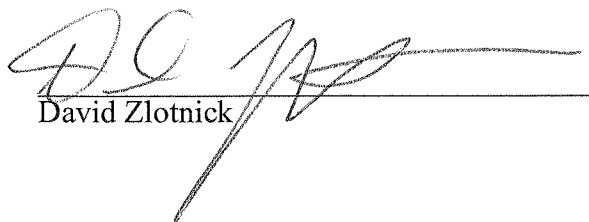
[PROPOSED] ORDER GOVERNING CLASS NOTICE

- 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 San Diego, California addressed as set forth below:
- by causing personal delivery by Cal Express 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 UPS 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 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.

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

Executed on **February 8, 2008**, at San Diego, California.



David Zlotnick