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

12	COORDINATED PROCEEDING	)	JUDICIAL COUNCIL COORDINATION
13	SPECIAL TITLE (Rule 1550(b))	)	PROCEEDING NO. 4408
14	ANTELOPE VALLEY GROUNDWATER)	
15	CASES)	
16	Included Actions:	)	PLAINTIFF WILLIS' PARTIAL OBJECTION
17	REBECCA LEE WILLIS, on behalf of herself	)	TO PUBLIC WATER SUPPLIERS' MOTION
18	and all others similarly situated,	)	TO AMEND CLASS CERTIFICATION
19	Plaintiff,	)	ORDER
20	vs.)	
21	LOS ANGELES COUNTY WATERWORKS	)	Hearing:
22	DISTRICT NO. 40; et al.,	)	Date: March 3, 2008
23	Defendants.	)	Time: 10:00 a.m.
24	Los Angeles County Superior Court	)	Place: Dept. 1 (L.A. Super. Ct.)
25	Case No. BC 364 553	)	Judge: Hon. Jack Komar
26	AND RELATED ACTIONS)	

26 Class representative Rebecca Lee Willis respectfully submits this memorandum in partial
27 objection to the Public Water Supplier's Motion to Modify the Class Certification Order entered by
28 this Court on September 11, 2007 ("the September Order"). The September Order certified a class

1 consisting of Antelope Valley Basin (“Basin”) landowners who do not pump water on their
2 properties. The Suppliers now seeks to modify the definition of the Class to encompass overlying
3 landowners who pump modest amounts of water on their properties (“the Expanded Class”).

4 Plaintiff Willis generally supports the Suppliers’ Motion, but believes that the Court should
5 more narrowly define the issues as to which the Expanded Class is appropriate. In addition, Willis
6 maintains that the Order certifying the Expanded Class should expressly limit Class Counsel’s
7 settlement activities to representing the existing Class of non-pumpers. A proposed form of Order
8 embodying these limitations is attached hereto.

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10 **I.**
INTRODUCTION

11 The class action device is a procedural mechanism designed to aid the courts and litigants
12 resolve disputes involving large numbers of similarly situated persons. Class certification in this
13 case will further the traditional goals of Class litigation by (1) facilitating the Court’s handling of
14 a large number of litigants and (2) affording people with modest amounts at stake, who otherwise
15 could not afford to participate in the litigation, a means to participate collectively to protect their
16 common interests. Moreover, in this case, class certification is especially critical because there is
17 an overriding public need to achieve a truly comprehensive adjudication of the groundwater rights
18 in the Antelope Valley Basin (“the Basin”). The latter factor mandates modification of the existing
19 Class of non-pumpers to include small pumpers, at least for purposes of the preliminary issues of
20 the characteristics and yield of the Basin and opposing the prescription claims of the public water
21 suppliers, issues that are common to the Class of overlying landowners.

22 On September 11, 2007, the Court certified the following Class:

23 “All private (i.e., non-governmental) persons and entities that own real property
24 within the Basin, as adjudicated, that are not presently pumping water on their
25 property and did not do so at any time during the five years preceding January 18,
26 2006 (“the Class”). The Class includes the successors-in-interest by way of
27 purchase, gift, inheritance, or otherwise of such landowners.

28 The Class excludes the defendants herein, any person, firm, trust, corporation,
or other entity in which any defendant has a controlling interest or which is related
to or affiliated with any of the defendants, and the representatives, heirs, affiliates,
successors-in-interest or assigns of any such excluded party. The Class also excludes
all persons to the extent their properties are connected to a municipal water system,
public utility, or mutual water company from which they receive or are able to

1 receive water service, as well as owners of properties within the service areas
2 of the foregoing water purveyors as to which there is a water system agreement
3 or water service agreement providing for the provision of water service by such
4 purveyors.”

5 Over the course of the last several hearings in this matter, the parties and Court have engaged
6 in extensive discussions regarding (1) the need to move this litigation forward towards trial of certain
7 preliminary issues and (2) the need to have a comprehensive adjudication of water rights in the
8 Basin, which is binding on the large number of overlying landowners who pump relatively modest
9 amounts of water on their properties. Although the parties hoped that a “small pumper” would step
10 forward to represent that group, that has not happened. Given that fact, the public interest in
11 achieving a complete and binding adjudication of the water rights in the Basin requires modifying
12 the existing Class and expanding it to include all overlying landowners not presently in the litigation,
13 at least for purposes of adjudicating the preliminary issues of the characteristics of the Basin and the
14 prescription claims of the public water suppliers.

15 There are a very large number of overlying landowners in the Basin. Generally speaking,
16 there are three types of such landowners who are not presently participating in the litigation – (1)
17 persons who live on very small tracts (generally within the cities) and get their water from the
18 Municipal Suppliers; (2) persons who own somewhat larger tracts and do not pump groundwater on
19 their property (essentially the existing Willis Class); and (3) owners of small and modest sized tracts
20 who have pumped modest amounts of water on their properties. The first group identified above
21 should not be brought into this litigation as the likelihood of those persons drilling a well and
22 materially impacting the Basin’s water levels is so remote that it can and should be disregarded.¹
23 The second group is encompassed by the existing Class Certification Order. But the third group
24 identified above must be brought into this litigation in order to have a comprehensive and binding
25 resolution. The parties have identified only two ways to bring such persons into this litigation – class
26 certification or individually serving this large group of modest sized landowners. As discussed

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28 ¹ The only exception would be if the Court concluded that it must assert jurisdiction
over such persons under the McCarran Amendment. Willis expresses no opinion on that.

1 below, individually serving those persons would simply delay and complicate this already protracted
2 and complex case.

3 **II.**
4 **ARGUMENT**

5 A. **MODIFICATION OF A CLASS CERTIFICATION ORDER IS AUTHORIZED**

6 It is well established that the Court may modify a Class Certification Order during the
7 pendency of the litigation, when that is appropriate. California Rule of Court 3.764(a) provides that
8 “any party may file a motion to . . . [a]mend or modify an order certifying a class.” As explained
9 below, such modification is appropriate here.

10 B. **MODIFICATION OF THE CLASS DEFINITION IS IMPERATIVE TO ADVANCE THIS
LITIGATION.**

11 There are two fundamental facts that warrant modification of the Class to include overlying
12 landowners who pump modest amounts of water on their parcels. First and foremost, all parties
13 share an overriding interest in achieving a comprehensive resolution that determines rights to use
14 the Basin’s groundwater. The only practical way to achieve that is by modifying the proposed Class.
15 Serving thousands of small pumpers is not a practical alternative. It would take an extraordinary
16 amount of time and effort to identify and serve such persons, and the litigation would be greatly
17 delayed and become even more difficult to manage with the addition of those many new parties.

18 Second, as a practical matter, the great majority of those persons cannot afford to participate
19 individually in this complex and expensive litigation. Thus, it is not in their interests any more than
20 it is in the existing parties’ interests to serve them individually. Of course, any such persons who
21 wish to participate individually can and will opt out of the Class. But Class certification affords
22 them the opportunity to participate collectively in this complicated and expensive case.

23 In short, it is clear that modifying the definition of the Class serves the Court’s and parties’
24 (and indeed, the public’s) interests in achieving a comprehensive resolution of water rights in the
25 Basin and facilitating the Court’s handling of many similar claims; at the same time, certification
26 affords modest landowners a mechanism to participate in a case which involves important interests,
27 but which would be prohibitively expensive for most of them to litigate on an individual basis.

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1 C. AT LEAST AS TO THE PRELIMINARY ISSUES IN THIS LITIGATION,
2 THERE ARE NO CONFLICTS AMONG THE MEMBERS OF THE MODIFIED
3 CLASS.

4 Although the interests of the “small pumpers” may diverge from those of the non-pumpers
5 at some point, at least for purposes of the preliminary issues regarding the characteristics of the Basin
6 and opposing the Supplier’s prescription claims, their interests are common. It is well established
7 that a Court can certify a Class for resolution of specific issues, where, as here, that makes sense.
8 Court Rule 3.765 expressly provides that “[w]hen appropriate, an action may be maintained as a
9 class action limited to particular issues.”

10 Plaintiff recognizes that the interests of the small pumpers may diverge from those of the
11 non-pumpers at later stages of this litigation. Further, Plaintiff Willis agrees that she and her counsel
12 should not represent the small pumper group for purposes of any settlement negotiations.
13 Accordingly, the accompanying proposed Order narrowly defines the issues that are appropriate for
14 decision on a class wide basis.

15 Moreover, it is highly relevant that there are many large landowners who pump groundwater
16 who are actively participating in this litigation. To the extent the interests of the small pumpers
17 diverge from those of the non-pumpers, the reality is that the “pumper interests” are already being
18 aggressively advanced and protected. Thus, there is no need for Class counsel to represent those
19 persons in settlement negotiations. The interests of pumpers are already well represented in such
20 negotiations and the small pumpers in the Class will presumably be treated similarly to other
21 pumpers. Further, to the extent that the Court deems it necessary, it can appoint separate counsel
22 to represent the pumpers in any such negotiations.

23 It is well established that “only a conflict that goes to the very subject matter of the litigation
24 will defeat a party’s claim of representative status.” *Richmond, supra*, 29 Cal.3d at 470. At least as
25 to the preliminary issues before the Court – defining the characteristics of the Basin and opposing
26 the Suppliers’ prescription claims – there is no such conflict. There is no evidence that Willis has
27 any conflicting interests which go to the very subject matter of this action. Moreover, Willis intends
28 to vigorously prosecute the claims on behalf of the class.

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1 D. THE SUPPLIERS' MOTION IS TOO BROAD


2 The Suppliers' Motion is too broad in three respects. First, the Suppliers seek to modify the
3 Class definition as to issues beyond the preliminary matters discussed above. Some of the later
4 issues may present actual conflicts between the pumper and non-pumper groups. There is no reason
5 to certify a Class now as to those later issues. Hopefully, a representative of the "small pumpers"
6 will step forward before the Court reaches those issues. Second, the Suppliers' Motion should
7 exclude from the class those persons who are presently participating in this litigation through
8 counsel. Because those persons are already participating in this matter and generally have a more
9 significant stake, they need not and should not be included in the revised Class. Third, as discussed
10 above, Willis maintains that she and her counsel should not represent the "small pumpers" in any
11 settlement negotiations. The potential for conflicts in that setting is too significant.

12 **IV.**
13 **CONCLUSION**

14 For the reasons stated above, the Court should grant the Suppliers' Motion to Modify the
15 Class Certification Order, but should limit the breadth of the certification ruling in accord with
16 Willis' comments above, as reflected in the attached Proposed Order.

17 Dated: February 15, 2008

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

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

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28 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 15, 2008**, I served the within document(s):

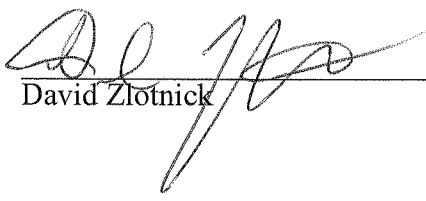
PLAINTIFF WILLIS' PARTIAL OBJECTION TO PUBLIC WATER SUPPLIERS' MOTION TO AMEND CLASS CERTIFICATION ORDER

- 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 15, 2008**, at San Diego, California.



David Zlotnick