

1 Ralph B. Kalfayan, SBN133464  
David B. Zlotnick, SBN 195607  
2 KRAUSE, KALFAYAN, BENINK  
& SLAVENS LLP  
3 625 Broadway, Suite 635  
San Diego, CA 92101  
4 Tel: (619) 232-0331  
Fax: (619) 232-4019

5 Attorneys for Plaintiff and the Class  
6  
7  
8

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

11 **ANTELOPE VALLEY** ) JUDICIAL COUNCIL COORDINATION  
12 **GROUNDWATER CASES** ) PROCEEDING NO. 4408

13 Included Actions: Los Angeles County ) Santa Clara Case No. 1-05-CV-049053  
Waterworks District No. 40 v. Diamond ) Honorable Jack Komar, Presiding  
14 Farming Co., Superior Court of California, )  
County of Los Angeles, No. BC 32520; )

15 Los Angeles County Waterworks District No. ) **PLAINTIFF REBECCA WILLIS'**  
16 40 v. Diamond Farming Co., Superior Court of ) **CASE MANAGEMENT STATEMENT**  
California, County of Kern, Case No. S-1500- )  
17 CV-254-348; )

18 Wm. Bolthouse Farms, Inc. V. City of )  
Lancaster; Diamond Farming Co. V. City of )  
19 Lancaster; Diamond Framing Co. V. Palmdale )  
Water District; Superior Court of California, )  
20 County of Riverside, Cases No. RBC 353 840, )  
RBC 344 436, RBC 344 668; )

21 \_\_\_\_\_ )  
22 This Document Relates To: ) DATE: March 28, 2008  
TIME: 11:00 A.M.  
DEPT: 17C  
23 REBECCA LEE WILLIS, on behalf of herself ) JUDGE: Hon. Jack Komar  
and all others similarly situated, Plaintiff, ) Coordination Trial Judge

24 vs. )  
25 )  
26 **LOS ANGELES COUNTY WATERWORKS** )  
**DISTRICT NO. 40, et al; Defendants.** )

27 Case No. BC 364 553 )  
28 )

1 Class Plaintiff Rebecca Willis respectfully submits this Case Management Statement in  
2 connection with the Court's Case Management Conference scheduled for March 28, 2008.

3 Willis shares the Court's and parties' desire to move this litigation forward, but has significant  
4 concerns with respect to the propriety of the proposed amended Class Certification Order submitted  
5 by the Public Water Suppliers ("Suppliers"). Specifically, (1) there is no pleading at issue alleging  
6 the amended class definition; the class should not be expanded in this very significant fashion in the  
7 absence of an appropriate pleading; (2) there has not been an adequate showing that the "small  
8 pumper" class can and should be litigated on a class wide basis; (3) the issues proposed by the  
9 Suppliers for class treatment are overly broad; for example, the extent and effect of the "self help"  
10 exercised by small pumpers cannot properly be adjudicated on a class wide basis; and (4) there is  
11 currently no representative for the pumper class (or subclass). Further, all landowners who own  
12 more than 100 acres (most of whom have already been served) should be excluded from the class.

13 Willis proposes that the Court proceed with the merits of the adjudication while deferring  
14 the joinder of the "small pumpers," except to the extent the Suppliers or other parties at interest elect  
15 to serve them individually. The practical reality is that the small pumper group can be brought into  
16 the litigation at a later stage and their exclusion at this time will not preclude the adjudication from  
17 moving forward.

18 **A. Issues Regarding the Expansion of the Class to Include Small Pumpers.**

19 There are good reasons that the Court and parties have struggled for so long in an effort to  
20 bring the "small pumpers" into this litigation: it is truly an intractable problem. After reviewing the  
21 history of this proceeding, Willis respectfully suggests that the Court proceed with the merits of the  
22 adjudication with the parties currently before it (including the dormant landowner class) and handle  
23 the rights of the "small pumper" group at a later stage.

24 **1. There is No Pleading at Issue Alleging the Broader Class Definition.**

25 At present, there is no pleading at issue that alleges the broader class sought by the Suppliers.  
26 Although it may not be a problem to have minor distinctions between the class alleged in a pleading  
27 and that certified by the Court, the inclusion of several thousand small pumpers, in the context of  
28 a Complaint brought on behalf of dormant (non-pumping) landowners is simply too substantial a

1 change. There are several potential means to bring the small pumpers before the Court - including  
2 the suppliers serving those persons or pleading a defendant class -- but, in the absence of such a  
3 pleading, the Court should not expand the existing class to include them.

4 **2. There Has Not Been an Adequate Showing that the "Small Pumper"  
5 Class Can and Should be Litigated on a Class Wide Basis.**

6 There appear to be substantial differences among the claims and defenses of the small  
7 pumpers that may preclude certification of such a class. For example, water levels in the Basin may  
8 vary substantially from area to area, which would make proving the existence of and notice of any  
9 alleged "overdraft" (which are of course elements of the Suppliers' prescription claims) an individual  
10 inquiry, not suitable for class wide resolution. Further, certain pumpers may not have pumped in  
11 recent years, which would render notice issues distinct as to them. The Suppliers have not shown  
12 that the common questions on even these preliminary issues predominate as to the small pumpers,  
13 so as to justify class certification.

14 **3. At a Minimum, Self Help Issues Should Be Excluded from Class Wide  
15 Determination.**

16 It seems apparent that "self help" cannot be determined on a class wide basis. At a minimum,  
17 the Court should exclude that defense from the scope of any certification order. Each small pumper  
18 will necessarily have pumped differing amounts of water, over differing time periods, and for many  
19 differing purposes, some reasonable, some perhaps not. Trying to determine the existence and  
20 measure of any self help rights they may have cannot properly be decided on a class wide basis.

21 **4. There is No Representative for the Small Pumper Subclass.**

22 Fourth, there is no class representative who pumps water and whose claims may be  
23 considered typical of the claims of that (sub)class. Rebecca Willis has not pumped water. Her  
24 claims, while not necessarily in conflict with those who pump, are not typical or adequate of the  
25 claims and rights of those persons who have been pumping water over a period of time.

26 **B. Landowners Who Own Over 100 Acres Should Be Excluded from the Class.**

27 It is Plaintiff Willis' understanding that there are only approximately 650 landowners in the  
28 Basin who own properties of 100 acres or more, and that approximately 2/3 of those persons have

1 already been personally served by the Suppliers. These more substantial landowners should be  
2 excluded from any class (dormant or pumping), given the significance of their personal stakes. The  
3 Suppliers should complete service on the remaining 200 such landowners and those persons should  
4 decide whether and how they want to participate in the adjudication. There is no need or good reason  
5 to include such persons in the class. These people can readily be brought under the Court's  
6 jurisdiction.

7 **C. It is Preferable to Proceed Without Certification of a Small Pumper Class Given**  
8 **the Number of Pumpers Already Parties, Who Will Be Valid "Test Cases," and**  
9 **the Pending Mediation Efforts.**

9 Although there are certainly economies to certifying a small pumper class at this time, those  
10 economies do not override the significant due process and adequacy of representation concerns noted  
11 above. Given these circumstances, Willis believes that it would be preferable to proceed towards  
12 an adjudication of the merits issues on a "test case" basis as to the small pumper group (unless the  
13 Suppliers choose to identify and serve all such persons), especially given (1) the number of pumpers  
14 already participating in the litigation, (2) the pendency of mediation and settlement efforts, and (3)  
15 the practical reality that pumpers who own less than 100 acres could likely not afford to  
16 contest the results of the adjudication at a later date.

17 Even if settlement efforts are not successful at this time, once the Court decides the  
18 fundamental legal and factual issues before it, in the context of the pending claims, it is very likely  
19 that the remaining claims of the small pumpers can be readily resolved.

20 Willis believes that this "test case" approach to determine the issues is more appropriate than  
21 certifying a class that does not appear to satisfy the appropriate legal criteria. Of course, should the  
22 Suppliers (or any other parties in the litigation) choose to join and serve the small pumpers, that is  
23 another option. But if they cannot be included at this time, it is preferable to recognize and accept  
24 that fact rather than stretch the law in an effort to achieve a comprehensive resolution at this time.  
25 As the Supreme Court commented in City of Pasadena v. City of Alhambra (1949) 33 Cal. 2d 908:

26 The line must be drawn somewhere in order to bring the proceeding within practical  
27 bounds, and it would have been impossible to reach a solution of the problems  
28 involved and to render a valid judgment if jurisdiction to make an allocation  
depended upon the joinder of every person having some actual or potential right to

1 the water in the basin and its sources of supply.

2 Id. at 920. The same principle applies here.

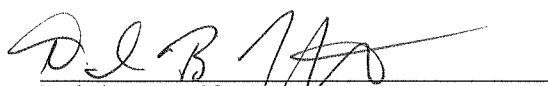
3 **D. Willis Will Submit an Appropriate Revised Certification Order By the End of**  
4 **Next Week**

5 Resolving 90% of the claims at issue in a proper manner makes more sense than overreaching  
6 in an effort to bring everyone before the Court at this time. Moreover, the remaining small pumper  
7 group can very likely be added at a later stage, either in the context of a "settlement class" or after  
8 some of the issues have been resolved by the present parties.

9 Certain minor modifications to the existing Class Certification order are necessary, however.  
10 After meeting and conferring with all interested parties, Willis proposes to submit an appropriate  
11 revised Class Certification Order by the end of next week (April 4), consistent with the above and  
12 as guided by the Court at the CMC.

13 Dated: March 26, 2008

KRAUSE KALFAYAN BENINK  
& SLAVENS LLP

16   
17 Ralph B. Kalfayan, Esq.  
18 David B. Zlotnick, Esq.

19 Attorneys for Plaintiff and the Class

1 PROOF OF SERVICE

2 I, Teri Cavazos, 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 **March 26, 2008**, I served the within document(s):

5 **PLAINTIFF REBECCA WILLIS' CASE MANAGEMENT STATEMENT**

- 6  by posting the document(s) listed above to the Santa Clara County Superior Court  
7 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 **March 26, 2008**, at San Diego, California.

21   
22 Teri Cavazos