

# **“EXHIBIT I”**

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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 )  
20 1,000; )

21 Defendants. )  
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JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4408

PLAINTIFF WILLIS' NOTICE OF  
WITHDRAWAL OF MOTION FOR CLASS  
CERTIFICATION; MEMORANDUM OF  
POINTS AND AUTHORITIES

**Hearing:**

Date: August 20, 2007  
Time: 9:00 a.m.  
Place: Dept. 1 (L.A. Super. Ct.)

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

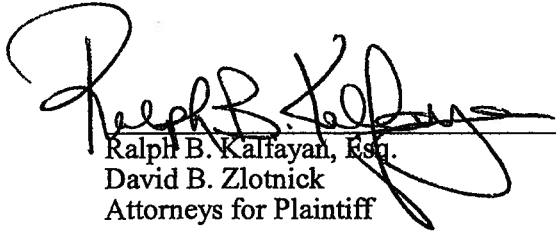
24 PLEASE TAKE NOTICE that plaintiff Rebecca Lee Willis, by and through her attorneys,  
25 HEREBY WITHDRAWS WITHOUT PREJUDICE her motion, pursuant to Section 382 of the  
26 California Code of Civil Procedure and Cal. Rules Ct., Rule 3.764, for an order certifying a plaintiff  
27 class, which is scheduled for Hearing on August 20, 2007 at 9:00 a.m. in Department 1 of the Los  
28 Angeles County Superior Court.

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This filing is made on the grounds that this matter does not satisfy the elements of C.C.P. § 382 in that there is not presently an ascertainable class or a well-defined community of interest in questions of law and fact among the members of the proposed class. In addition, a class action is not the superior means to resolve this matter, at least at this time.

Dated: August 14, 2007

KRAUSE KALFAYAN BENINK  
& SLAVENS



Ralph B. Kalfayan, Esq.  
David B. Zlotnick  
Attorneys for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Plaintiff Rebecca Lee Willis (“Willis”) respectfully submits this memorandum of points  
3 and authorities explaining her withdrawal of her pending motion for class certification. In brief,  
4 (1) the Class proposed by Willis appears not to be ascertainable; (2) the class lacks a sufficiently  
5 defined community of interest; and (3) a class action does not appear to be the superior means to  
6 resolve this dispute, at least at this time.

7 I. BACKGROUND

8 Willis instituted this action in a good faith effort to protect her interests as well as those  
9 of the numerous other small to mid-sized landowners in the Antelope Valley whose rights to use  
10 the water underlying their respective properties was threatened by this litigation. On or about  
11 July 23, 2007, Willis moved to certify a class consisting essentially of all private (i.e., non-  
12 governmental) persons and entities that own real property within the Basin, as adjudicated, that  
13 are not presently pumping water on their property and have not done so within the last two (2)  
14 years. Because Willis and proposed class counsel have reluctantly concluded that this matter  
15 does not meet the legal criteria for certification and should not at present be pursued on a class  
16 wide basis, Willis withdraws her pending motion for class certification.

17 II. ARGUMENT

18 A. The Class Proposed By Willis Is Not Ascertainable.

19 Willis proposed a class limited to “dormant” (that is, not actively pumping) overlying  
20 landowners, based on her and counsel’s belief, emanating from the past eight months of hearings  
21 in this matter, that the interests of such dormant landowners diverge from and, quite possibly,  
22 conflict with those of the active pumpers. The recent filings by the Municipal Purveyors  
23 establish that such a class of dormant landowners is not presently ascertainable; because this  
24 essential prerequisite to class certification is lacking, a class should not be certified at this time.

25 B. Counsel Have an Irreconcilable Conflict Attempting to Represent the Broader  
26 Class Proposed by the Purveyors

27 Although they recognize that the class as proposed by Willis is not ascertainable, the  
28 Purveyors propose that the Court certify a broader class composed essentially of all landowners

1 with certain defined exceptions. Counsel, however, face an irreconcilable conflict that ethically  
2 precludes them from representing such an expansive class. To be sure, all landowners have  
3 certain common interests. But those common interests are largely overshadowed by the fact that  
4 active pumpers can assert “self-help” claims that not only differ from but conflict with the claims  
5 of the dormant group. The Purveyors argue that such conflicts are only “potential;” but, the  
6 reality is that there are ongoing settlement discussions in which the interests of these disparate  
7 groups are presently in conflict. Counsel cannot ethically represent both groups in this situation  
8 and should not be forced to do so.

9 C. The Proposed Class Lacks a Well Defined Community of Interest.

10 In addition to the fact that the class is not ascertainable, Willis believes that the evidence  
11 is insufficient to demonstrate that the proposed class shares a well defined community of interest.  
12 For example, property owners in one part of the Basin may well have significantly different  
13 arguments than those in another portion of the Basin. Although the Lancaster area has  
14 experienced ground subsidence and dropping well levels, that has not occurred in many other  
15 parts of this large Basin. Until the record shows that an ascertainable class shares a clear  
16 community of interest, it would be inappropriate for the Court to certify a class here.

17 D. A Class Action Is Not Presently the Superior Means to Resolve This Dispute.

18 Equally fundamentally, Willis has concluded that class certification is not the superior  
19 means to further this dispute, at least at this time. Willis believes that the fundamental issue  
20 raised in this action is whether the existence of certain government, technical, and other  
21 publications in the public domain regarding water conditions in the Antelope Valley Basin satisfy  
22 the Municipal Purveyors’ burden of establishing the elements of notice and hostility that underlie  
23 their claims to prescriptive rights. Assuming the Municipal Purveyors prevail on that issue,  
24 Willis believes it likely that they would be entitled to certify a defendant class. If, however, the  
25 Municipal Purveyors do not prevail on that issue, the Purveyors’ burden to show that each  
26 individual class member was on notice of their prescriptive claims would seem to pose serious  
27 obstacles to class certification.

28 Willis, of course, maintains that such an individualized showing is required before the

1 Purveyors can take her water rights or those of her fellow landowners. Hence, at bottom, Willis'  
2 position on the merits is inconsistent with her seeking to certify a class and appears not to serve  
3 the interests of the absent class members. Hence, Willis cannot in good faith continue to seek  
4 class certification at this time.

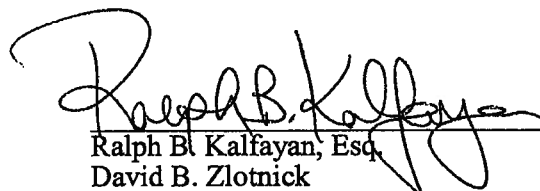
5 Willis believes that the superior way to move this matter forward is for the Court to  
6 initially decide the legal issue as to the type and nature of notice that must have been provided to  
7 overlying landowner(s) to activate the prescriptive period and meet the Purveyors' burden.  
8 Willis intends to actively participate in this litigation in an effort to defeat the Purveyors' claims  
9 of prescription as they relate to her on a "test case" basis. Once the Court resolves these legal  
10 issues, the parties and Court will be far better able to define an appropriate class, should it appear  
11 based on such a further developed record that class certification is the superior means to  
12 adjudicate this dispute.

13 III. CONCLUSION

14 For the reasons stated above, Willis withdraws her pending motion for class certification.

15 Dated: August 13, 2007

KRAUSE KALFAYAN BENINK  
& SLAVENS

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19 Ralph B. Kalfayan, Esq.  
20 David B. Zlotnick  
21 Attorneys for Plaintiff Willis

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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 August 14, 2007, I served the within document(s):

5 **PLAINTIFF WILLIS' NOTICE OF WITHDRAWAL OF MOTION FOR CLASS  
6 CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES**

- 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  
person(s) at the address(es) set forth below.
- 11  by personally delivering the document(s) listed above to the person(s) at the  
12 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  
day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on  
17 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  
is true and correct.

19 Executed on August 14, 2007, at San Diego, California.

20  
21   
22 Ashley Polyascko