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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

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14 ANTELOPE VALLEY GROUNDWATER | BC 325201
CASES.

15

(. Judicial Council Coordination
Proceeding No. 4408)

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**CERTAIN PUBLIC WATER
SUPPLIERS' OPPOSITION TO WILLIS
CLASS' MOTION TO WITHDRAW
BASED ON CONFLICT OF INTEREST,
OR, IN THE ALTERNATIVE, MOTION
FOR CONTINUANCE OF THE PHASE
VI PHYSICAL SOLUTION TRIAL**

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[Exempt from filing fees pursuant to Govt. Code § 6103]

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Assigned for All Purposes To Jack Komar

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Date: August 25, 2015
Time: 10:00 a.m.
Dept: 12

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The City of Palmdale (Palmdale), the Palmdale Water District, and Los Angeles
4 County Waterworks District No. 40 (District No. 40), oppose the Willis Class motion to
5 withdraw on the grounds that there is no “dual class” in this proceeding consisting of
6 persons who own a parcel or parcels in the Basin from which water has been pumped and
7 others as to which that is not the case. Accordingly, there exists no conflict of interest of
8 counsel for either the Willis Class or the Wood class inherent in these proceedings. This is
9 so due to the fact that without an overlap, the only duty owed by either class counsel is to
10 persons who are defined as members of his own class, regardless of the ownership of
11 multiple parcels. This is clearly shown in the express language of the Willis Class orders,
12 including the Court’s Second Order Modifying the Willis Class Notice (September 2,
13 2008). The original September 11, 2007 Willis Class Certification Order defined the Willis
14 Class as “all private (i.e., non-governmental) persons and entities that own real property
15 within the Basin, as adjudicated, **that are not presently pumping water on their property**
16 and did not do so at any time during the five years preceding January 18, 2006.”). (See
17 Request for Judicial Notice, Exhibit A) (Emphasis added.) The Court later partially
18 amended this order on May 22, 2008, ordering, among other things that:

19 The Class shall exclude all property(ies) that are listed as “improved’ by the
20 Los Angeles County or Kern County Assessor’s office, unless the owners of
21 such properties declare under penalty of perjury that they do not pump water
22 on their property and did not do so during the five years preceding January
23 18, 2006. (Exhibit B, at p. 3.)

22 On September 2, 2008, the order was amended for a second time, upon motion of the
23 Public Water Suppliers. At that time, the Court unequivocally ruled out the existence of
24 “dual class” persons as follows:

25 The Class previously certified by the Court requires modification **to ensure**
26 **that it does not overlap** with the Class of Small Pumpers certified by the
27 Court on August 11, 2008. Hence the Willis Class should exclude all persons
28 or entities to the extent they own a property within the Basin on which they
have ever pumped water. (See Exhibit C attached hereto) (emphasis added.)

The record in this case demonstrates that there is no ambiguity in the definition of

1 the Willis Class, which has always excluded those parties who have pumped groundwater
2 from any parcel overlying the Basin. The Willis Class therefore cannot include members of
3 the Wood Class. Accordingly, the motion should be denied.

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5 **II. ARGUMENT**

6 *A. Under the Final Court Order the Willis Class Cannot Include Members of the*
7 *Wood Class*

8 The Willis Class definition was modified by order dated September 2, 2008,
9 pursuant to a motion by the Public Water Suppliers (Exhibit D). The purpose of the motion
10 was to make the time frame in the Willis class definition consistent with that of the Wood
11 Class, in order to ensure a comprehensive adjudication for purposes of the McCarran
12 Amendment. (*Id.* at 1:2-4.) The motion suggested two alternatives. The one that was
13 adopted by the court was to modify the class definitions for both the Willis and the Wood
14 Classes: “The Willis Class to include *landowners* who have never pumped groundwater;
15 and the Wood Class to include *landowners* who have pumped groundwater.” (*Id.* at 2:10-
16 17) (emphasis added.) The motion referred only to the class members (landowners) and not
17 to their properties. There was never a suggestion that a landowner could occupy a position
18 in both classes.

19 Nor did that suggestion come up at the hearing on the class definitions. (A copy of
20 the relevant portions of the transcript of the August 11, 2008 hearing is attached as Exhibit
21 E). The court addressed several issues in the hearing, mostly relating to the definition of
22 the Wood Class. With respect to the Willis Class definition, Mr. Zlotnick, representing that
23 class, stated that he did not oppose the modification proposed by the Public Water
24 Suppliers. (Exhibit E, at 23:25-24:1.) District No. 40 attorney Mr. Dunn articulated the
25 suggested modification as follows:

26 I propose the following: That there be two classes certified by the court. The Wood
27 class represented by Mr. McLachlan would be all landowners in the basin in either
28 county who pump 25-acre feet or less or regardless if they are in public water
suppliers service area or not. The other class -- this is general. The other class would
be the Willis class, and these would be people who have never pumped. (Exhibit E,
at 24:13-22.)

1 It is apparent from both the motion and the discussion in the transcript that the court
2 intended to define the classes by reference to persons, not properties. The September 2,
3 2008 order states expressly that “the Willis Class should exclude all persons or entities to
4 the extent they own a property within the Basin on which they have ever pumped water.”
5 (Exhibit C, Order at p. 2, Ins. 7-8.) Based on this express finding, the Court later ordered
6 that “The Willis Class shall exclude all persons to the extent they own properties within the
7 Basin on which they have pumped water at any time.” (*Id.*, Order at p. 3, Ins. 5-6.) When
8 viewed in context, there is no ambiguity in the phrase “to the extent of” contained in the
9 order by which that phrase could be construed to overlap the classes.

10 Further, on December 16, 2008, the Court approved the form of the Willis Class
11 Notice to provide that parties cannot be a Willis class member if: “You pump groundwater
12 on your property or have ever pumped water on your property.” (Exhibit F, at attached Ex.
13 A.) The pleadings, the reporter’s transcript, and the Court’s express findings in its
14 September 2, 2008 order, also support the conclusion that those parties who pump
15 groundwater are not members of the Willis Class, and cannot be members of a hybrid “dual
16 class”, as posited by the Willis Class counsel.

17 *B. The Willis Class of Non Pumper Parties has always excluded the Owners of*
18 *Improved Properties*

19 While looking to improved property parcels, the Court has always considered the
20 Willis Class to be based on identifiable parties, not properties. For this reason the Court
21 excluded the *owners* of improved properties from the Willis Class, only because such
22 owners were assumed to pump groundwater to service those improvements, subject to proof
23 that that was not true. The Court’s May 22, 2008 order identified the *class of non-pumper*
24 *parties* (non-pumpers) based on property ownership and provides:

25 The Class of non-pumpers is ascertainable through the analysis performed by
26 the Suppliers’ expert, William E. Leever, Jr., as set forth in his Declaration
27 dated May 1, 2008. It is reasonable to assume that the owners of all parcels
28 listed as improved by the county assessors’ offices, which are outside the
service areas of the water providers, pump groundwater for use of their
parcels. (Exhibit B, at p. 3:3-7.)

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C. *Taken to its Logical Extension, the Dual Class Leads to Strange Results*


The consequence of attempting to create a dual class would lead to strange results. For example, a party could claim that as to a specific parcel of land containing a well which is a portion of a farm consisting of several parcels, he is a member of the Wood Class. At the same time, the same party could claim that as to any other parcels constituting the farm, he is a member of the Willis Class, because that other land is “dormant” in that it never contained a well, whether or not it received well-water. In fact, a definition of a “dormant parcel” never has been discussed or adjudicated. Is it every parcel not containing a well? Or, does it include parcels served with an off site well? Does it matter if the parcels are contiguous? These results and questions have rightfully been avoided by the clear demarcation separating Willis class members from Wood class members.

III. CONCLUSION

The Court should deny the Willis Class motion.

Dated: July 27, 2015

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By: 

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