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

10 ANTELOPE VALLEY
11 GROUNDWATER CASES

12 This Pleading Relates to Included Action:
REBECCA LEE WILLIS and DAVID
13 ESTRADA, on behalf of themselves and
all others similarly situated,

14 *Plaintiffs,*

15
16 v.

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

25 *Defendants.*
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RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**NOTICE OF MOTION AND MOTION TO
ADMIT WILLIS CLASS' ALTERNATIVE
PROPOSED PHYSICAL SOLUTIONS INTO
EVIDENCE**

Date: August 3, 2015
Time: 10:00 am
Place:

Superior Court of California
County of Los Angeles
111 North Hill Street, Room 222
Los Angeles, Ca 90012

Judge: Hon. Judge Komar

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on August 3, 2015, at 10:00 a.m. or as soon thereafter as
3 the matter may be heard before the Honorable Judge Komar, Superior Court of California,
4 County of Los Angeles, 111 North Hill Street, Los Angeles, CA 90012, Room 222 on the 2nd
5 Floor of the Mosk Courthouse, the undersigned law firm, Class Counsel for the Willis Class, will
6 and hereby does move to admit Willis Class' Alternative Proposed Physical Solutions ("APPS")
7 into evidence and for an Order for Court-Appointed Expert to assist the Court in evaluating the
8 APPS.

9 This Motion is based on this Notice, the attached Motion to Admit Willis Class'
10 Alternative Proposed Physical Solutions into Evidence and Related Motion for Court-Appointed
11 Expert, the Declaration of Ralph B. Kalfayan, and such other and further evidence as may be
12 presented at the hearing. More specifically, the Motion to Admit Willis Class' APPS into
13 Evidence is based on the California Supreme Court's decision in *City of Lodi v. E. Bay Mun. Util.*
14 *Dist.*, 7 Cal.2d 316 (1936). The Related Motion for Court-Appointed expert is based on the
15 Court's inherent authority to appoint experts to assist the Court at any time in any action pursuant
16 to California Evidence Code Section 730.

17 **The Willis Class' Groundwater Rights Must be Incorporated into the Physical**
18 **Solution Adopted by this Court**

19 The Willis Class fully understands that groundwater in the Antelope Valley is not
20 "limitless" and that the right to pump groundwater will be more limited for all landowners and
21 PWS than in areas of California where there is not an overdraft situation in existence. However,
22 the fact that the Antelope Valley Basin is in a state of overdraft due to excessive pumping by the
23 current pumpers as well as uncontrollable factors such as record low rainfall does not and cannot
24 allow the Stipulating Parties or this Court to strip away the rights of the Willis Class conferred by
25 the Willis Judgment and controlling California law. Rather, the Willis Class' water rights,
26 domestic or otherwise, must be incorporated into the Physical Solution so that Willis Class
27 Members receive their fair share of the NSY. Not an unlimited share, but a fair share. Zero
28 percent of the NSY allocated to the Willis Class in the SPPS is not a "fair share" by any stretch of
the imagination and is unconscionable on its face. Consequently, the Court cannot adopt the

1 SPPS filed on March 4, 2015, as is under any circumstances without directly violating the Willis
2 Judgment and controlling California law.

3 As the Willis Class' Opposition Brief conclusively demonstrates, the Stipulated Proposed
4 Physical Solution ("SPPS") does not recognize or include the vested groundwater rights of the
5 Willis Class. Further, the SPPS is inconsistent with the Willis Class' priority rights to pump
6 groundwater for domestic and human uses. The Court therefore must look to alternative physical
7 solutions to carry out its duties in reaching a comprehensive adjudication for the Antelope Valley
8 Basin. Indeed, the California Supreme Court has ruled that the trial court must admit evidence
9 regarding possible physical solutions even where, as here, certain parties object or attempt to
10 prevent the trial court from considering alternative physical solutions:

11 Other suggestions as to possible physical solutions were made during the trial. The
12 trial court apparently took the view that none of them could be enforced by it
13 unless the interested parties both agreed thereto. That is not the law. Since the
14 adoption of the 1928 constitutional amendment, **it is not only within the power,**
15 **but it is also the duty of the trial court to admit evidence relating to possible**
16 **physical solutions**, and if none is satisfactory to it to suggest on its own motion
17 such physical solution. (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, [3
18 *Cal.2d 489, 574 (1935)*].) The court possesses the power to enforce such solution
19 regardless of whether the parties agree.

20 *City of Lodi v. E. Bay Mun. Util. Dist.*, 7 Cal. 2d 316, 341 (1936) (emphasis supplied).

21 Thus, under California law, it is of no consequence that the Stipulating Parties have
22 shamelessly attempted to force this Court to accept the SPPS "as is . . .or else" when they stated
23 in the SPPS that: "If the Court does not approve the Judgment as presented . . . then this
24 Stipulation is *void ab initio* . . .". See, Stipulation for Entry of Judgment and Physical Solution, ¶
25 4. Despite the statement in the SPPS, this Court has the power to suggest alternative physical
26 solutions, if necessary, and the duty to accept alternative physical solutions presented by non-
27 stipulating parties to ensure that all parties' rights to groundwater are properly incorporated into
28 the Physical Solution ultimately adopted by the Court.

After *Lodi*, the California Supreme Court in *City of Barstow* provided more specific
guidance to trial courts for achieving legally viable physical solutions:

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1 **First**, the doctrine of correlative rights is the governing rule for overlying uses of
2 groundwater. (*City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1241
3 (2000)). This means, “in disputes among overlying landowners, all have equal
4 rights. If the supply of water is insufficient for all needs, each user is entitled to a
5 fair share and just proportion of the water.” (Arthur L. Littleworth & Eric L.
6 Garner, *California Water II* 75 (2nd ed. 2007)). **Second**, there are no senior
7 overlying users who gain priority by being the first to pump groundwater.
8 (*Tehachapi-Cummings Cnty. Water Dist. v. Armstrong*, 49 Cal.App.3d 992, 1001
9 (1975)). **Third**, the substantial enjoyment of a prior right must be protected.
10 (*Peabody v. City of Vallejo*, 2 Cal.2d 351, 383-4 (1935)). **Fourth**, the physical
11 solution may not change priorities or eliminate vested rights without first
12 considering them in relation to the reasonable use doctrine. “Although it is clear
13 that a trial court may impose a physical solution to achieve a practical allocation of
14 water to competing interests, the solution’s general purpose cannot simply ignore
15 the priority rights of the parties asserting them. **In ordering a physical solution,**
16 **therefore, a court may neither change priorities among the water rights**
17 **holders nor eliminate vested rights in applying the solution** without first
18 considering them in relation to the reasonable use doctrine.” (*City of Barstow*, 23
19 Cal.4th at 1250). **Fifth**, any physical solution must be fair to all parties who have
20 vested overlying water rights. (*Id.*) **Sixth**, the physical solution may not
21 unreasonably burden a party. (*Id.*)

22 *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000) (emphasis supplied).

23 The Willis Class offers the following Alternative Proposed Physical Solutions for the
24 Court’s consideration as sanctioned by the California Supreme Court in *City of Lodi*.

25 **Alternative Proposed Physical Solutions That Follow Legal Priorities**

26 **A. The Tulare Plan**

27 The first alternative proposed physical solution follows the Supreme Court’s approach in
28 the case of *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal.2d 489 (1935). Discussing the
Constitutional Amendment, the *Tulare* Court said:

 The new doctrine not only protects the actual reasonable beneficial uses of the
riparian but also the **prospective reasonable beneficial uses of the riparian**. As
to such future or prospective reasonable beneficial uses, it is quite obvious that the
quantity of water so required for such uses cannot be fixed in amount until
the need for such use arises. Therefore, as to such uses, the trial court, in its
findings and judgment, should declare **such prospective uses paramount to any**
right of the appropriator. By such declaratory judgment, the rights of the
riparian will be fully protected against the appropriative use ripening into a right
by prescription, but, until the riparian needs the water, the appropriator may use it,
thus, at all times, putting all of the available water to beneficial uses. The trial
court might well, by appropriate provisions in its judgment, retain jurisdiction over
the cause, so that when a riparian claims the need for water, the right to which was
awarded him under such a declaratory decree, the trial court may determine

1 whether the proposed new use, under all the circumstances, is a reasonable
2 beneficial use and, if so, the quantity required for such use.

3 *Id.* at 525. (emphasis supplied).

4 The Court in the Santa Maria adjudication adopted the same approach and said:

5 The overlying right extends to the landowners' "present **and prospective**"
6 reasonable beneficial use upon the land and, therefore, that is the right, less the
7 volume lost to prescription, preserved by self-help. **Quantification of the**
8 **overlying right is not necessary because there is no present need to allocate**
9 **the native supply.** Accordingly, appellants are entitled to a declaration that their
overlying rights are prior to all but the prescriptive rights proved by Santa Maria
and GSWC.

10 *City of Santa Maria*, 211 Cal.App.4th at 300 (emphasis supplied).

11 Below is a chart of the Tulare Plan as applied to the Antelope Valley Basin:

<u>Party</u>	<u>Allocation</u>	<u>De Minimis</u>	<u>Cost</u>	<u>Term</u>	<u>Transfer</u>
Federal	7,600		Free	Perm	No
State	207		Free	Perm	No
PWS	11,205		Free	Perm	No
Present Pumpers	59,482		Free	Annual	No
Wood Class	3,806	5,710	Free	Annual	No
Willis Class	TBD	11,205	Free	Annual	No
Total	<u>82,300</u>	<u>16,915</u>			

18 The allocation to all private landowners under this approach would be flexible and
19 adjustable. The Watermaster would determine the private parties' reasonable and beneficial uses
20 on an annual basis and accommodate new uses as they arose. The Court would retain broad
21 jurisdiction to review the Watermaster determinations. Unused Federal rights are allocated to
22 private overlying landowners. The PWS are limited to their allocation as provided under the
23 Willis Class Judgment. The PWS are barred by the Judgment from asserting any prescriptive
24 rights as against the Willis Class. Thus, unlike the Santa Maria adjudication, no volume of
25 prospective water use by the Willis Class will be lost to prescription. Willis Class Members have
26 an equivalent *de minimus* use exemption up to the amount conferred on the PWS. *See*
27 Declaration of Eric Garner in Support of Motion For Preliminary Approval of The Wood Class
28 Settlement dated May 2, 2011 (hereinafter "Garner Declaration"), attached as Exhibit G.

1 **The Chino Basin Plan**

2 The second proposal is based on the *Chino Basin Municipal Water District v. City of*
3 *Chino, et al.* case. (1978) San Bernardino Superior Court, No. RCV 51010. The Chino Basin
4 Judgment (Physical Solution) is attached as Exhibit H. The solution that worked for the parties in
5 the Chino Basin case can be described as a “Three Pool Model.” Like Antelope Valley, the
6 Chino Basin is a single connected aquifer that is not hydrologically separated in any meaningful
7 way. Despite this, the court broke up the groundwater into distinct pools or quantities that would
8 be available for different groups to use. There were three pools: Overlying (Agricultural) Pool;
9 Overlying (Non-agricultural) Pool; and the Appropriative Pool. Each of the parties to the
10 litigation was fit into one of the three pools and was allowed to access the water allocated to the
11 pool, subject to a reasonable and beneficial use. If the pumping within a pool exceeded its
12 allocation, then either the parties in the pool would have their water use reduced or would have to
13 pay a replacement fee.

14 Below is a Chart of the Chino Basin Plan as applied to the Antelope Valley Basin:

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<u>Party</u>		<u>Allocation</u>	<u>Cost</u>	<u>Term</u>	<u>Transfer</u>
Federal		7,600	Free	Perm	No
State		207	Free	Perm	No
PWS	15%	11,205	Free	Perm	No
Overlying Pool	85%	63,288	Free	Annual	No
Total		<u>82,300</u>			

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22 There are two overlying pools in this case, one for the PWS/Federal/State and one for the
23 overlying landowners. On an annual basis, the Watermaster determines the appropriate
24 allocations within each pool and assigns the water rights accordingly. All parties are subject to
25 reasonable and beneficial use constitutional standards. Any unused Federal water right is
26 committed to the overlying landowner pool. Additional pumping would require payment of a
27 replacement fee. As Willis Class Members come online, they would be accommodated within the
28 overlying landowner pool. *De minimis* domestic use exemption applies to any pumping under 1.2

1 AFY as suggested by the testimony of Mr. Eric Garner. See Garner Declaration attached as
2 Exhibit G.

3 **The Antelope Valley Accord**

4 The third proposal is based on the proposed Antelope Valley Accord. This proposal was
5 agreed to by nearly all the parties to the Antelope Valley adjudication, with the notable exception
6 of District 40. The Federal government, most of the PWS, and almost all landowners, including
7 the Wood Class, approved this proposal. The Antelope Valley Accord is attached as Exhibit I.
8 But for District 40's refusal, this proposal would have been submitted to this Court for approval.
9 The Willis Class endorsed this proposal before it entered into the Stipulation of Settlement with
10 the Public Water Suppliers.

11 Charted, the Antelope Valley Accord Plan would look like this:

Party	Members	Acres	Unit AFY	Allocation	Cap	Acre-Feet	Cost	Term	Transfer
Federal						7,600	Free	Permanent	Yes
State						207	Free	Permanent	No
PWS						11,205	Free	Permanent	No
OL Pumpers						59,482	Free	Permanent	Yes
Wood Class						3,806	Free	Permanent	Yes
Willis under 20 acre	63,227	335,030			11,205	-	De minimis	Permanent	No
Willis over 20 acres	4,321	196,874	0.10	19,687	19,687	-	Free	Permanent	Yes
Total	67,548	531,904		19,687	30,892	82,300			

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19 The Willis Class' allocation is defined based on acreage. There are two groups of Willis
20 Class Members: those with 20 acres or less and those with more than 20 acres. The Willis Class
21 is capped at 30,892 AFY free of replacement assessment.

22 **The Tiered Allocation Plan**

23 This plan takes into consideration the demographics of the Willis Class and provides for
24 their water use in accordance with their property ownership. Charted, this plan would look like
25 this:
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Party	Acreage	Parcels	Ave Acres	Acres	AF/Acre	Allocation	Cap	Acre-Feet	Cost	Term	Transfer
Federal								7,600	Free	Perm	No
State								207	Free	Perm	No
PWS								11,205	Free	Perm	No
Pumpers								59,482	Free	Perm	yes
Wood								3,806	Free	Perm	yes
Willis	Under 5	49,070	2.5	122,675	1.00	19,628.00	5,602.50	-	D	Perm	no
Willis	Under 20	14,157	10	141,570	0.10	14,157.00	5,602.50	-	D	Perm	no
Willis	Under 100	3,683	50	184,150	0.10	18,415.00	18,415.00	-	Free	Perm	yes
Willis	Over 100	638	100	63,800	0.10	6,380.00	6,380.00	-	Free	Perm	yes
Total		67,548		512,195		58,580	36,000	82,300			

The Willis Class would benefit from a *de minimis* use exemption equivalent to the 15% of the NSY conferred upon the PWS. All overlying landowners could use the Willis Class allocation until the Willis Class comes online. Once a Willis Class Member starts to pump, they are then entitled to their fair allocation of the NSY. A chart of the size of Willis Class members and the acreage owned is attached as Exhibit J.

The SPPS

By way of comparison, below is a chart of the proposed terms in the SPPS:

Type	Party	AF	De Minimis	Cost	Term	Transfer	Value @\$500	@\$7,500
Public	Federal	7,600		Free	Perm	No	3,800,000	57,000,000
Public	State	207		Free	Perm	No	103,500	1,552,500
Public	PWS	12,345		Free	Perm	No	6,172,500	92,587,500
Private	Pumpers	58,342		Free	Perm	YES	29,170,800	437,562,000
Private	Wood	3,806	5,710	Free	Perm	No	1,903,200	28,548,000
Private	Willis	-	-	PAY*		No	-	-
	Total	82,300	5,710				41,150,000	617,250,000

*If Approved

Under the SPPS, all Stipulating Parties, including the PWS, receive a permanent, non-reducible, overlying production right collectively worth over \$600,000,000. See Kalfayan Declaration ¶ 9. According to the Twentieth Annual Report of the Mojave Basin Area Watermaster¹ for Water Year 2012-2013 ("Report"), most recent year available, the Replacement

¹ The Mojave Basin Area adjacent to the Antelope Valley Basin is an adjudicated basin experiencing overdraft conditions.

1 Water Assessment Rate for 2013-2014 will not exceed \$448 per acre-foot. A true and correct
2 copy of relevant portions of the Report, including page 11, is attached as Exhibit K. This is the
3 minimum economic value of 82,300 AFY of water, which constitutes the NSY supply of the
4 Antelope Valley Basin. The Willis Class on the other hand, a class composed of 65,000 overlying
5 landowners, receives no benefit from the NSY. Their rights to share in the NSY are completely
6 shut out and extinguished in the SPPS. Willis Class Members must pay to import water² and must
7 overcome many rigorous and expensive requirements before they may exercise their right to
8 extract water from the Basin.³

9 In addition, most Stipulating Parties have carryover and transfer rights. Thus, parties like
10 AGWA, Bolthouse, and Diamond Farming, may sell their water right and profit from its sale at
11 the expense of Willis Class Members who must pay to pump groundwater, if and when their
12 application to pump groundwater is approved by the Watermaster. This result would be
13 completely untenable. Not only is it contrary to California law governing water rights, this result
14 would directly contravene the PWS' binding settlement agreement with the Willis Class and the
15 Court's Willis Class Judgment which expressly gave Willis Class Members the right to share in
16 the NSY free of replacement assessment.

17 Moreover, the allocation to the PWS is overstated by 1,100 AFY. Their allocation is
18 erroneously pegged to the NSY instead of what was agreed to in the Willis Class Judgment of the
19 Federally Adjusted NSY. Further, the Federal government's unused water allocation,
20 approximately 6,300 AFY, is unreasonably allocated to the PWS as opposed to the overlying
21 landowners. On average, the Federal government pumps 1,300 AFY. Their free production
22 allowance is 7,600 AFY. Kalfayan Declaration, ¶5. Left unused and transferred to the Public

23 ² Attached as Exhibit L is a news bulletin from Department of Water and Resources website dated February 10, 2015,
24 which discusses recent developments in the State that have reduced the prospect for securing imported water in the
25 future. This uncertainty is evidenced in the SPPS (See paragraphs 5.1.5.3 and 8.4.1 of the SPPS). The timing and
26 availability of water supplies in California is a significant unknown. The Willis Class would be relegated to rely on
27 this supply for their water needs in the future under the SPPS. This would be contrary to California law, patently
28 unfair, and entirely inconsistent with the Willis Class Judgment.

³ Mr. Kalfayan contacted a representative at Los Angeles County Department of Health Services by phone on or
about March 2, 2015, and learned that in order to install a well and pump groundwater, an applicant must complete
an application and pay certain fees. An L.A. County form application is attached as Exhibit M. The SPPS includes
requirements for new pumping that far exceed those required by the County. (See Paragraph 18.5.13 *et. seq.* of the
SPPS). These proposed requirements appear very unreasonable and unduly burdensome for Willis Class Members.
However, Willis Class Counsel are unable to more precisely evaluate the cost and feasibility of the standards without
a Court-appointed expert.

1 Water Suppliers are water rights of almost 6,300 AFY. Finally, the Wood Class has a *de minimis*
2 water right, while the Willis Class does not.

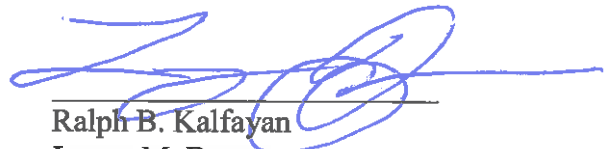
3 **The Willis Class' Groundwater Rights Must be Incorporated into the Physical**
4 **Solution Adopted by this Court and a Court-Appointed Expert is Necessary to**
5 **Ensure This Result**

6 In carrying out the Court's duty to admit evidence relating to possible physical solutions,
7 the Willis Class moves to have the Court appoint an expert who can assist the Court in fully and
8 adequately understanding the possible physical solutions submitted by the Willis Class, in
9 assessing the reasonableness of the Willis Class' future needs and in assessing whether the other
10 uses allocated under a physical solution are reasonable and beneficial. As part of the imposition
11 of a physical solution, the Court has an obligation under *City of Barstow v. Mojave Water Agency*,
12 23 Cal.4th 1224, 1250 (2000) to consider the water rights in relation to the reasonable use
13 doctrine. As lay attorneys, Willis Class Counsel are able to present the general parameters of the
14 Alternative Proposed Physical Solutions, but not the detailed scientific and logistical information
15 needed to incorporate the as-yet-undetermined future groundwater needs of the Willis Class or to
16 assess whether the proposed uses under a physical solution are reasonable and beneficial.
17 Similarly, although the Court has experience in groundwater adjudications, the Court lacks
18 expertise in the areas set forth in the proposed scope of work of Dr. Sunding of UC Berkeley.
19 Further, not one of the existing experts in this adjudication has determined the timing, amount,
20 and purpose of prospective groundwater usage by the 65,000-Member Willis Class. This type of
21 evidence can only be competently and reliably gathered and analyzed by an expert such as Dr.
22 Sunding. How can a fair and comprehensive Physical Solution be entered by this Court without
23 such evidence related to the prospective groundwater usage by the Willis Class? The answer is
24 simple: it cannot.
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1 The only way to ensure that the 65,000 Willis Class Members receive their fair share and
2 just proportion of water in accordance with the California Supreme Court's ruling in *City of*
3 *Barstow* is for the Court to appoint an expert to assist the Court in analyzing the reasonableness of
4 the future needs of the Willis Class, including the timing, amount, and purpose, and to incorporate
5 those needs into the Physical Solution ultimately adopted by the Court and to assist the Court in
6 assessing the reasonableness of the other water uses allocated under a physical solution.
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8 Dated: April 7, 2015

Respectfully submitted,

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13 Ralph B. Kalfayan
14 Lynne M. Brennan
15 KRAUSE KALFAYAN BENINK &
16 SLAVENS, LLP