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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

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

Plaintiffs,

v.

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

Defendants.

RELATED CASE TO JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

REPLY BRIEF IN SUPPORT OF MOTION TO ENFORCE DUE PROCESS RIGHTS OF THE WILLIS CLASS

Date: June 15, 2015
Time: 1:30 PM
Place: Santa Clara County Superior Court, 191 N. 1st St., San Jose, CA 95113, Dept. 1
Judge: Hon. Judge Komar

The Stipulating Parties concede that they could satisfy the Due Process Clause by naming the landowners in the Willis Class as defendants in an adversary pleading and providing notice of such a pleading. Indeed, the Stipulating Parties identify no reason why the Due Process Clause need be violated in the present case. The Stipulating Parties simply believe that it would be more convenient, as well as in their interests, to deprive the Willis Class of their due process rights by dispensing with an adversary pleading against these landowners and notice thereof. It is surely easier to deprive the Willis Class of their rights by ignoring due process. But the Constitution rightfully does not permit such a course, either generally or in the present case.

This Court must accordingly refuse to enter the provisions of the Stipulation for Entry of Judgment and Proposed Physical Solution ("SPPS") that purport to bind the Willis Class, or, in the alternative, require the Stipulating Parties to file an adversary pleading against the Willis Class and provide notice of such a pleading prior to any hearing on the proposed SPPS.

A. <u>The Absence of a Pleading Against the Willis Class Violates Due Process</u>.

The Stipulating Parties concede -- as they must -- that they have never filed an adversary pleading against the Willis Class, that these landowners have never been named as a defendant, and that no pleading has ever asserted against the Willis Class the entitlements now claimed in the proposed SPPS. The Stipulating Parties advance three arguments in support of their novel claim that the Constitution does not require the filing of an adversary pleading against the Willis Class before these landowners may be deprived of their property rights. These arguments lack merit.

The Stipulating Parties first contend that an adversary pleading is not required because the SPPS does not "completely extinguish" the water rights of the Willis Class. This contention is frivolous. The SPPS allocates the entire native safe yield ("NSY") to the Stipulating Parties, with none allocated to the Willis Class. SPPS, § 5. The landowners in the Willis Class currently have the right pump an amount of water on their property for free and to sell it to others if they choose;

by contrast, the SPPS states that the Willis Class must obtain prior permission to pump which may or may not be granted, must pay for any water they obtain, and can never sell it to others. SPPS, ¶¶5.1.10, 9.2.2, 18.5.13. Even assuming *arguendo* that the Willis Class' rights are not "completely extinguished," under any definition, the SPPS limits the property rights of the Willis Class. This requires an adversary pleading and due process. The Constitution is not satisfied merely because only some, rather than all, property rights are taken away. *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 542 (deprivation of "any significant property interest" requires an adversary pleading and notice under the Due Process Clause); *Connecticut v. Doehr* (1991) 501 U.S. 1, 12 (expressly rejecting claim that the Due Process Clause applies only to extinguishments of rights and holding it applicable to "even [] temporary or partial impairments to property rights").

The Stipulating Parties next argue that an adversary pleading is not required because water rights are *inter se*. But the Supreme Court has expressly and repeatedly rejected this argument. *Robinson v. Hanrahan* (1972) 409 U.S. 38, 38 (notice required by Due Process Clause does not vary in *in rem* or other *inter se* actions); *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 312-13 (Due Process Clause applies equally to *in rem* or *inter se* proceedings). The California Supreme Court has similarly indicated that *inter se* water actions, like all others, are constrained by the Due Process Clause. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1249 n.13 (noting that such actions require "the same notice or due process protections afforded [to] riparian owners"). Stipulating Parties cannot cite a single case holding the Due Process Clause inapplicable to water rights cases. That is because no such case does, or could, exist.

Nor would the unprecedented legal principle advanced by Stipulating Parties make any sense. Stipulating Parties contend that any lawsuit that seeks a physical solution and names Landowners X and Y as defendants by necessary implication names Landowner Z as well, despite the fact that Z is not in fact named as a defendant. But were this true, when would Z be required

to answer the complaint? When could Z's default be taken? How would Z, as a nonparty, be entitled either to discovery or to participate at trial? How would Z obtain the individualized notice of the lawsuit required by the Due Process Clause? *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 312-13. Lawsuits identify the defendants for a reason. The presence of "invisible" defendants would make a morass of California practice and procedure.

Simply put, there is no authority whatsoever for the claim by the Stipulating Parties that the Due Process Clause requires an accusatory pleading naming the defendants and providing notice of the particular relief requested against them in every single lawsuit *other* than water rights actions. Lawsuits that name X and Y as defendants may result in a judgment that deprives X and Y of rights. But it can neither deprive nor purport to deprive Z of rights. To hold otherwise would violate the Constitution.

Stipulating Parties finally argue that the landowners in the Willis Class received adequate notice that their water rights might be limited. As discussed at length, this is untrue. But it is also irrelevant. The Due Process Clause requires notice and an accusatory pleading against the defendant. Even if a lawsuit against X and Y expressly states that plaintiff wants to take property from Z, unless Z is actually named as a defendant, this request is a nullity. Plaintiffs cannot deprive a person of her rights, or obtain a judgment against her, without the filing of an accusatory pleading naming this individual as a party. That Z may know about a lawsuit against X and Y is irrelevant. Regardless of this knowledge, such an action can only bind X and Y, not Z. *Taylor v. Sturgell* (2008) 553 U.S. 880, 889-906 (unanimously holding that the Due Process Clause prohibits binding nonparties notwithstanding their actual knowledge of a lawsuit).

The Due Process Clause and Article I, Section 7 of the California Constitution require the filing of an accusatory pleading against the defendant before such a party can be deprived of its rights. This has not yet transpired here. The SPPS cannot purport to extinguish the rights of the

Willis Class. The Due Process Clause requires the Stipulating Parties to file an adversary pleading against the Willis Class and provide adequate notice thereof prior to any hearing on the proposed SPPS. This Court should, and must, enforce this provision of the Constitution.

B. The Absence of Adequate Notice to the Willis Class Violates Due Process.

Stipulating Parties again concede, as they must, that the Due Process Clause also requires advance individualized notice to the Willis Class that clearly explains the rights to which they will be deprived upon entry of the SPPS. *Johnson v. Alma Investment Co.* (1975) 47 Cal.App.3d 155, 159-62; *Julen v. Larson* (1972) 25 Cal.App.3d 325, 327-28. Stipulating Parties contend that the Willis Class in fact received such notice. This is untrue.

The sole notice relied upon by the Stipulating Parties is the notice sent to the Willis Class in 2010. But this notice is constitutionally insufficient to authorize the SPPS for two distinct reasons.

First, this notice was sent only *after* the period for opting out had expired, and hence does not satisfy the Due Process Clause. Stipulating Parties concede that the notice sent to the Willis Class in 2008 expressly stated that *only claims against the PWS were at issue*, and in no way notified the class (or even hinted) that their water rights might be taken away as a result of this action. *See* Willis Class Notice at 1. It was on this basis that the landowners in the Willis Class elected to persist in the class (or to opt out). It is thus this notice that defines the scope of the litigation and the nature of any rights that might be taken away from the class. Because the pre-opt out notice in 2008 indisputably did not notify the landowners of the Willis Class – much less notify them in clear, unambiguous language – of the provisions the SPPS now seeks to impose upon them, the Due Process Clause bars entry of such a judgment. Notice given after the opportunity to opt out no longer exists is irrelevant; the landowners in the Willis Class were entitled to know at the outset what was at issue in this litigation, not merely after their continued participation in this action

had already been induced by a notice that expressly stated that they would maintain a right to pump water and that only claims against the PWS were at issue.

The subsequent Notice of Settlement expressly told the Willis Class in 2010 that they could no longer opt out. Willis Settlement Notice at 3-4. This Notice could successfully resolve the claims of the Willis Class against the PWS, since the original notice adequately advised the landowners that their claims vis-à-vis *these* landowners might be at issue. But it cannot authorize a deprivation of property rights that were not noticed when the class members were given the right to opt out. The Due Process Clause accordingly prohibits entry of the SPPS regardless of the contents of the subsequent, post-opt out notice provided in 2010.

Moreover, even if the Due Process Clause somehow permitted the notice made in 2010 to be considered, entry of the SPPS would still be impermissible. This notice expressly informed the landowners in the Willis Class that they "have rights to produce groundwater from the Basin's Native Safe Yield." Willis Settlement Notice at 3. But the SPPS deprives them of that right. The 2010 notice further expressly informed the Willis Class, in bold print: "**17. MAY I PUMP WATER ON MY PROPERTY?** *Yes.*" *Id.* at 6. But the SPPS states that the Willis Class *cannot* pump, allocates to the Class *none* of the NSY, and instead requires them to obtain permission from the Stipulating Parties if they wish to pump water on their own property – which permission may or may not be granted.

Nor does the notice in 2010 inform the Willis Class of *any* of the numerous provisions of the SPPS that the Stipulating Parties now wish to impose upon them. At an absolute minimum, the subsequent 2010 notice comes nowhere close to satisfying the requirement of the Due Process Clause that notice be given in language understandable to the average person that clearly advises the defendant of the requested relief at issue. *Julen v. Larson* (1972) 25 Cal.App.3d 325, 327-28; *Molski v. Gleich* (9th Cir. 2003) 318 F.3d 937, 951-53. Nowhere does the 2010 notice advise the

Willis Class that if the settlement is approved, they will no longer be allowed to pump water on their own property, and that the entire NSY will be allocated to the Stipulating Parties. Indeed, were such notice to have been given, it would undoubtedly have raised an outcry. The absence of such a response is a telling indicator of the inadequacy of the 2010 notice – even if considered in isolation – to inform the landowners of the Willis Class of the provisions that the SPPS now seeks to impose against them. Moreover, Willis Class Counsel never would have approved a settlement that stated Willis Class Members had no right to pump from the Native Safe Yield and that they may or may not be given permission from the PWS-controlled Watermaster to pump groundwater from their property.

The Willis Class was entitled under the Due Process Clause to notice of the precise relief at issue and to an opportunity to opt out if they did not wish to be a part of this action. The Willis Class received such notice in 2008, and this notice expressly advised them that only their claims against the PWS were at issue. The Due Process Clause accordingly permits *only* those claims against the PWS to be resolved absent subsequent notice and an opportunity to opt out. That has not yet transpired. Accordingly, regardless of the contents of the 2010 notice, and regardless of whether the SPPS is consistent with the 2010 notice, the Due Process Clause precludes the entry of the SPPS. The landowners in the Willis Class have simply not yet received the individualized notice of these provisions required by bedrock principles of the Fourteenth Amendment.

C. <u>This Motion Is Not Premature</u>.

The Stipulating Parties finally assert that the present motion is "premature" because the SPPS had not yet been entered and no trial has yet taken place. This contention is meritless.

When a party is not properly named as a defendant, or has not received adequate notice, the proper remedy is to grant relief *well in advance* of any trial and/or entry of judgment. *Hartford v. Superior Court* (1956) 47 Cal.2d 447, 451-56; *Miller v. Superior Court* (1978) 22 Cal.3d 923, 944.

This rule makes eminent sense. Violation of the Due Process Clause by failing to provide adequate notice is a continuing offense. Every day that a party is forced to defend itself in such an action multiplies the constitutional violation.

Moreover, forcing a party to defend itself on the merits involves a substantial undertaking. The prosecution of a party who has not received adequate notice, or against whom an adversary proceeding has not been filed, violates the Constitution. It is insufficient answer to such a charge to say that the party can simply show up at trial and defend himself. The Due Process Clause instead requires the judiciary to promptly terminate such a constitutionally infirm proceeding, and to not compel the party to participate in a process that violates the Constitution. That is precisely the relief that the Willis Class seeks.

The Stipulating Parties have not filed an accusatory pleading against the Willis Class. The Stipulating Parties have not provided the members of this class with individualized notice of the provisions of the SPPS and an opportunity to opt out. The Willis Class is not required to wait until trial to enforce these critical constitutional liberties. Just as a defendant who is given improper notice of a lawsuit (*e.g.,* who is improperly served), or who is improperly joined, is entitled to *immediately* move to dismiss such an action, so too is the Willis Class entitled to the relief it seeks herein, without being compelled to participate in proceedings later this year that violate the Constitution.

The Stipulating Parties seek relief against the Willis Class that is barred by the Due Process Clause. The Willis Class is entitled to obtain a dismissal of such relief now. The Willis Class cannot be compelled to participate further in these proceedings without violating the Constitution.

D. **The Imposition of a Physical Solution by this Court Cannot Eviscerate the Due Process Rights of the Willis Class.**

The Public Water Suppliers repeatedly refer to the fact that the Willis Class agreed to be part of a physical solution as a basis to impose *any* change in substantive rights agreed upon in the

Willis Settlement Agreement. The Willis Class agreed to be part of a physical solution that ***incorporates*** and ***merges*** the valuable and substantive rights gained in the Willis Settlement Agreement and Willis Judgment into the physical solution. Because the SPPS unequivocally fails to incorporate and merge the Willis Class' rights into the SPPS, the Due Process Rights of the Willis Class are not satisfied by the prior agreement of the Willis Class to be subject to a physical solution. Moreover, although the Willis Class agreed to be bound by later factual findings by the Court regarding the Native Safe Yield or the length of the Transition Period (Paragraph VIII.C. of Willis Settlement Agreement), such agreement regarding factual findings does not equate with an agreement to be bound by later modifications to substantive rights of the Willis Class without Due Process (such as the correlative right to pump groundwater from the NSY free of replacement assessment).

Any argument from the Public Water Suppliers that the Willis Class Members' share of the Native Safe Yield can be zero under the Willis Settlement Agreement is utterly without merit and, indeed, sanctionable. In awarding attorneys' fees to Willis Class Counsel as the "prevailing party" pursuant to C.C.P. Section 1021.5, this Court ruled correctly and obviously that the Willis Settlement Agreement had conferred "substantial benefits" on the Willis Class:

> By eliminating the Public Water Suppliers' prescription claims and maintaining correlative rights to portions of the Basin's native yield, the Willis Class members achieved a large part of their ultimate goal - to protect their right to use groundwater in the future and to maintain the value of their properties. Under these circumstances, they must be considered "successful parties" for purposes of Code of Civil Procedure § 1021.5.

Order Awarding Attorneys' Fees at 5:1-5 (Exh. E to Motion to Enforce Settlement Agreement).

The Willis Settlement Agreement, the Willis Judgment, and the Court's Order Awarding Attorneys' Fees would all be rendered absolutely meaningless if the Willis Class' "share" of the Native Safe Yield could be zero under the Physical Solution adopted by the Court. Such an absurd interpretation by the Public Water Suppliers of these legally-enforceable documents makes a

mockery of the judicial system and the Willis Class Members' rights under the Due Process Clause of the U.S. Constitution.

CONCLUSION

The Stipulating Parties have not yet filed an accusatory pleading against the Willis Class nor provided the constitutionally required individualized notice of the provisions of the SPPS to the landowners of the Willis Class. This Court must accordingly refuse to enter the provisions of the SPPS that purport to bind the Willis Class, or, in the alternative, require the Stipulating Parties to file an adversary pleading against the Willis Class and provide adequate notice thereof prior to any hearing on the proposed SPPS.

Dated: June 8, 2015

Respectfully submitted,

/s/ Ralph B. Kalfayan

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