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

10 **ANTELOPE VALLEY GROUNDWATER**  
11 **CASES**

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

15 *Plaintiffs,*

16 v.

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

24 *Defendants.*  
25  
26  
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28

RELATED CASE TO JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' OBJECTIONS TO  
CLAIMS OF PRESCRIPTION BY THE  
PUBLIC WATER SUPPLIERS IN PHASE  
VI PROCEEDINGS**

Date: November 4, 2015

Time: 9:00 a.m.

Dept.: 1

Judge: Honorable Jack Komar  
Coordination Trial Judge

1 **INTRODUCTION**

2 The Willis Class submits the following objections to claims of prescription by the Public  
3 Water Suppliers in the Phase VI/Physical Solution Trial. As a matter of law, no party, including  
4 Defendant Public Water Suppliers, can obtain water rights by prescription against overlying  
5 landowners who have never pumped in the past. Moreover, pumping by landowners in the Basin  
6 has exceeded the Native Safe Yield for decades, thereby negating the claims of prescription by the  
7 Public Water Suppliers. For each of these reasons, the Court should deny all claims of prescription  
8 against any dormant unexercised landowner.

9 In addition, as to Members of the Non-Pumper Willis Class, the Public Water Suppliers  
10 agreed in the Willis Class Stipulation of Settlement that the Willis Class Members have an  
11 Overlying Right to a correlative share of the 85% of the Federally Adjusted Native Safe Yield. The  
12 Public Water Suppliers also agreed to not take any positions or enter into any agreements that are  
13 inconsistent or with the exercise of the Willis Class Members Overlying Right to produce and use  
14 their correlative share of the 85% of the Basin’s Federally Adjusted Native Safe Yield. (See Willis  
15 Class Stipulation of Settlement Section IV.D.2, page 10.) To the extent that the Public Water  
16 Suppliers use a portion of the unused Federal Reserve Water Right, such use constitutes  
17 prescription against the Willis Class’ water rights and reduces the Non-Pumper/Willis Class rights  
18 to less than 85% of the Federally Adjusted Native Safe Yield; thus, such a provision is in violation  
19 the Public Water Suppliers’ covenants in the Willis Class Stipulation of Settlement. Finally, as to  
20 the Willis Class, the Public Water Suppliers have Released all claims of prescription against the  
21 Willis Class in the Stipulation of Settlement and resulting 2011 Amended Final Judgment.

22 **As a Matter of Law, the Public Water Suppliers Cannot Obtain Prescriptive Rights Against**  
23 **Dormant Landowners**

24 Under California law, the Public Water Suppliers cannot obtain prescriptive rights against  
25 dormant landowners, including the Non-Pumper Willis Class. As the Supreme Court stated in *Los*  
26 *Angeles v. San Fernando*, 14 Cal.3d 199 (1975), any prescriptive rights obtained by appropriators  
27 (which there, as here, were municipal water suppliers and public utility water companies) “would  
28 not necessarily impair the private defendants’ rights to groundwater for *new* overlying uses for

1 which the need has not yet come into existence during the prescriptive period.” *Id.* at 293, fn. 100  
2 (emphasis in original).

3 The Supreme Court’s comment in *San Fernando* was the basis for the Court of Appeal’s  
4 later holding in *Wright v. Goleta Water District*, 174 Cal.App.3d 74 (1985). The *Wright* court held  
5 that a trial court, in deciding “a groundwater dispute among private parties and public entities,”  
6 may not “define or otherwise limit future groundwater rights of an overlying owner who has not  
7 yet exercised those rights.” *Id.* at 78.

8 Subsequently, in *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000), the  
9 Supreme Court expanded on these concepts, stating as follows: “Because the court cannot fix or  
10 absolutely ascertain the quantity of water required for future use at any given time, *a trial court*  
11 *should declare prospective uses paramount to the appropriator’s rights, so the appropriator cannot*  
12 *gain prescriptive rights in the use.” Id.* at 1243 (emphasis added). The *Barstow* Court expressly  
13 approved of both footnote 100 from *San Fernando* and the *Wright* court’s holding that, in contrast  
14 to riparian rights, “the trial court could not define or otherwise limit an overlying owner’s future  
15 unexercised groundwater rights . . .” *Id.* at 1248-49.

16 The impropriety of limiting “an overlying owner’s future unexercised groundwater rights”  
17 is inherent in the Constitution’s mandate that “the water resources of the State be put to beneficial  
18 use to the fullest extent of which they are capable . . .” Cal. Const. Art. 10, § 2. Because it is  
19 impossible to know how such future uses should be properly allocated, it is improper to “limit an  
20 overlying owner’s future unexercised groundwater rights . . .” *Barstow, supra*, at 1248-49.

21 As the Court of Appeal held in *Tehachapi-Cummings County Water Dist. v. Armstrong*, 49  
22 Cal.App.3d 992 (1975): “The right of overlying owners to a judgment declaring their water rights  
23 and protecting them in the *prospective* beneficial use is clear even though substantial present  
24 damage is not shown.” *Id.* at 998. As the court then commented:  
25

26 As between overlying owners, the rights . . . are correlative,  
27 i.e., they are mutual and reciprocal. This means that each has a common right  
28 to take all that he can beneficially use on his land if the quantity is sufficient;  
if the quantity is insufficient, each is limited to his proportionate fair share of the  
total amount available based upon his reasonable need. ***The proportionate***

1 *share of each owner is predicated not on his past use over a specified period*  
2 *of time, nor on the time he commenced pumping, but solely on his current*  
3 *reasonable and beneficial need for water.*

3 *Id.* at 1001 (citations omitted and emphasis added).

4 In short, as a matter of law, the Public Water Suppliers cannot obtain prescriptive rights  
5 against future, presently unexercised, overlying rights.

6 **Landowners' Self-Help Defeats Claims of Prescription**

7 The Antelope Valley Basin has been in overdraft and the landowners have been pumping  
8 in excess of the Native Safe Yield for decades. These facts are not in dispute. On page 10, lines  
9 11 to 17, of the Public Water Suppliers' Opposition to Willis Class' Second Motion to Enforce  
10 Settlement, the PWS state:

11  
12 In the case at bar, the Court found that pumping has been above the safe yield for  
13 over fifty years and that landowner self-help pumping was over 300,000 acre feet for  
14 decades. Thus, landowner self-help pumping alone has exceeded the native safe yield.  
15 (Dunn Decl., Ex. "A" [Scalmanini Trial Testimony] at 310:1-7, 312:6-12; Ex. "C"  
16 [Statement of Decision Phase Three Trial] at 6:1-4 ["Since 1951[] there is evidence of  
17 periods of substantial pumping . . . coinciding with periods of drought, with almost  
18 continuous lowering of water levels and severe subsidence in some areas extending to the  
19 present time"].)

20 Because the landowners have been pumping the entire Native Safe Yield during the period  
21 of overdraft, the Public Water Suppliers cannot gain, as a matter of law, rights by prescription.  
22 Their pumping did not interfere with the pumping by landowners. As such, the critical element of  
23 adversity is not present. The Court in *City of Barstow* (page 1241) re-affirmed the principle that  
24 prescriptive rights, "may be interrupted without resort to the legal process if the owners engage in  
25 self-help and retain their rights by continuing to pump nonsurplus water." *City of Barstow, supra*,  
26 23 Cal.4th at 1241. Further, relying on the so-called self help doctrine, courts have held that  
27 overlying users retain their rights against potential prescription by virtue of their own pumping.  
28 *San Fernando, supra*, at 293 fn. 101; *Hi-Desert County Water District v Blue Skies Country Club*,  
23 Cal.App.4th 1723, 1731 (1994). Because the entire Native Safe Yield was pumped by the

1 landowners, the landowners have preserved their rights to the entire supply and the Public Water  
2 Suppliers cannot gain new rights to the supply.

3 **PWS' Claims of Prescription Violate the Willis Settlement Agreement**

4 As to Members of the Non-Pumper Willis Class, the Public Water Suppliers agreed in the  
5 Willis Class Stipulation of Settlement that the Willis Class Members have an Overlying Right to a  
6 correlative share of the 85% of the Federally Adjusted Native Safe Yield. The Public Water  
7 Suppliers also agreed to not take any positions or enter into any agreements that are inconsistent or  
8 with the exercise of the Willis Class Members Overlying Right to produce and use their correlative  
9 share of the 85% of the Basin's Federally Adjusted Native Safe Yield. (See Willis Class Stipulation  
10 of Settlement Section IV.D.2, page 10.) To the extent that the Public Water Suppliers use a portion

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1 of the Unused Federal Reserve Water Right, such use constitutes prescription against the Willis  
2 Class' water rights and reduces the Non-Pumper/Willis Class rights to less than 85% of the  
3 Federally Adjusted Native Safe Yield; thus, such a provision is in violation the Public Water  
4 Suppliers' covenants in the Willis Settlement Agreement. In addition, as to the Willis Class, the  
5 Public Water Suppliers have Released all claims of prescription against the Willis Class in the  
6 Stipulation of Settlement and resulting 2011 Amended Final Judgment. Therefore, the Public  
7 Water Suppliers are prohibited from using any of the Unused Federal Reserve Right as the SPPS  
8 currently provides.

9  
10 **CONCLUSION**

11 For all the foregoing reasons, all claims of prescription by the Public Water Suppliers  
12 against the Non-Pumper Willis Class must be denied.

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14 Dated: November 3, 2015

Respectfully submitted,

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17  
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