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*Exempt from filing fee pursuant to
Gov't. Code Section 6103*

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ANTELOPE VALLEY-EAST KERN WATER AGENCY
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 Coordination Proceeding
13 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding
No. 4408

14 **ANTELOPE VALLEY**
15 **GROUNDWATER CASES**

Santa Clara Case No.
1-05-CV-049053
The Honorable Jack Komar, Dept.17

16 **Included Actions:**

**DECLARATION OF LELAND
McELHANEY IN SUPPORT OF
OVERLIERS' OPPOSITION TO
WILLIS CLASS MOTION FOR COSTS
AND ATTORNEY FEES**

17 Los Angeles County Waterworks District
18 No. 40 vs. Diamond Farming Company, a
19 corporation, Superior Court of California,
County of Los Angeles, Case No.
BC325201;

Date: April 1, 2016
Time: 1:30 p.m.
Dept.: TBD, San Jose

20 Los Angeles County Waterworks District
21 No. 40 vs. Diamond Farming Company, a
22 corporation., Superior Court of California,
County of Kern, Case No. S-1500-CV-254-
348;

23 Wm. Bolthouse Farms, Inc. vs. City of
24 Lancaster, Diamond Farming Company, a
25 corporation, vs. City of Lancaster, Diamond
26 Farming Company, a corporation vs.
Palmdale Water District, Superior Court of
California, County of Riverside, Case Nos.
RIC 353840, RIC 344436, RIC 344668.

27
28 **DECLARATION OF LELAND McELHANEY IN SUPPORT OF OVERLIERS' OPPOSITION TO WILLIS
CLASS MOTION FOR COSTS AND ATTORNEY FEES**

1 Leland P. McElhaney declares and states:

2 1. I am an attorney at law duly licensed to practice in all courts of the State of California,
3 and a principal in the law firm of Brunick, McElhaney & Kennedy PLC, counsel of record for
4 cross-complainant, the Antelope Valley East Kern Water Agency in these consolidated
5 proceedings. I have personal knowledge of all of the matters set forth herein and, if called as
6 a witness, I could and would testify competently thereto.

7 2. Attached as Exhibit 2 hereto is a true copy of CLASS PLAINTIFF'S RESPONSE TO
8 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S BRIEF RE EQUITABLE
9 APPORTIONMENT OF WILLIS CLASS FEE AWARD, dated March 15, 2011, which the
10 Overliers' Opposition Brief references at page 5, lines 4-14 thereof.

11 3. Attached as Exhibit 3 hereto is a true copy of the Court's February 19, 2010
12 Consolidation Order, which is referenced in the Overliers' Opposition Brief at page 3, lines 25-
13 28.

14 4. Attached as Exhibit 4 hereto is a true copy of the Court's May 4, 2011, ORDER AFTER
15 HEARING ON MOTION BY PLAINTIFF REBECCA LEE WILLIS AND THE CLASS FOR
16 ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND CLASS
17 REPRESENTATIVE INCENTIVE AWARD, which is referenced in the Overliers' Opposition
18 Brief at page 6, lines 13-20, and at page 9, lines 18-27.

19 5. Attached as Exhibit 5 hereto is a true copy of the FINAL JUDGMENT APPROVING
20 WILLIS CLASS ACTION SETTLEMENT, dated May 12, 2011, which is referenced in the
21 Overliers' Opposition Brief at page 6, line 21 to page 7, line 2.

22 6. Attached as Exhibit 6 hereto is a true copy of the WILLIS CLASS'
23 PHASE VI/PHYSICAL SOLUTION TRIAL BRIEF, dated September 22, 2015, which is
24 referenced in the Overliers' Opposition Brief at page 7, lines 7-26.

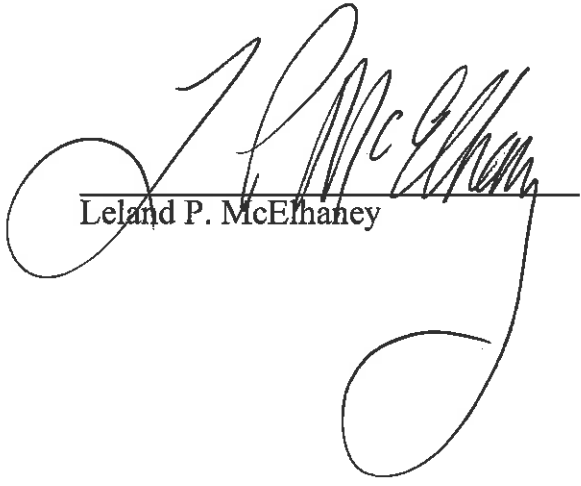
25 III

26 III

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28 **DECLARATION OF LELAND McELHANEY IN SUPPORT OF OVERLIERS' OPPOSITION TO WILLIS
CLASS MOTION FOR COSTS AND ATTORNEY FEES**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in San Bernardino, California, on March 15, 2015.



Leland P. McElhane

EXHIBIT 2

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David B. Zlotnick, SBN 195607
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5 Attorneys for Plaintiff and the Class
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408

13 This Pleading Relates to Included Action:
14 REBECCA LEE WILLIS, on behalf of
15 herself and all others similarly situated,

) CASE NO. BC 364553

16 Plaintiff,

) **CLASS PLAINTIFF'S RESPONSE TO LOS**
) **ANGELES COUNTY WATERWORKS**
) **DISTRICT NO. 40'S BRIEF RE**
) **EQUITABLE APPORTIONMENT OF**
) **WILLIS CLASS FEE AWARD**

17 vs.

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

) Date: March 22, 2011
) Time: 9:00 a.m.
) Dept: 15 (CCW)
) Judge: Hon. Jack Komar
Coordination Trial Judge

24 Defendants.
25

26 Class Plaintiff, Rebecca Lee Willis, respectfully submits this memorandum of points and
27 authorities in response to Los Angeles County Waterworks District No. 40's Brief re Equitable
28

1 Apportionment of Willis Class Fee Award (the "Apportionment Brief").

2 Willis agrees with the arguments made by Copa De Oro in its Memorandum in
3 Opposition to the Apportionment Brief. Willis affirms that she only sought fees from the
4 Defendant Public Water Suppliers ("Defendants") and related entities that have asserted claims
5 to prescriptive rights vis-à-vis the Willis Class. Those are the only parties directly adverse to the
6 Class in this litigation, and the only parties against whom fees may properly be awarded under
7 Section 1021.5 of the Code of Civil Procedure. The landowners are not analogous to the "real
8 parties in interest" as to whom the courts have imposed responsibility for such fees.

10 Willis files this memorandum simply to clarify two important points: first, District 40's
11 Brief is procedurally improper. Issues as to the proper allocation of any fee award are distinct
12 from the issues raised by Plaintiff Motion seeking an award of fees and expenses. If District 40
13 wishes to raise the allocation issue, it should do so through a proper motion, briefed in accord
14 with the Code.

15 Second, although the Court may apportion a fee award among the various Defendants, it
16 is not required to do so. In that event, all Defendants should be held jointly and severally liable
17 for any fee award. *See Friends of the Trails v. Blasius* (2000) 78 Cal. Ap. 4th 810, 837. They
18 could then attempt to agree among themselves as to a proper allocation or seek appropriate relief
19 from the Court if they could not agree.

21 For the foregoing reasons, Plaintiff respectfully requests that the Court grant her fee
22 petition and award the fees and costs she requested jointly and severally against all Defendants to
23 the Willis action.

24 Dated: March 15, 2011

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/Ralph B. Kalfayan

Ralph B. Kalfayan, Esq.

David B. Zlotnick, Esq.

Attorneys for Plaintiff and the Class

EXHIBIT 3

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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER
CASES

ORDER TRANSFERRING AND
CONSOLIDATING ACTIONS FOR
ALL PURPOSES

Included Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Hearing Date(s): February 5, 2010
October 13, 2009
August 17, 2009
Time: 9:00 a.m.
Location: Department 1, LASC

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Judge: Honorable Jack Komar

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

2
3 The City of Palmdale, Rosamond Community Services District, Los Angeles County
4 Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
5 California Water Service Company, Quartz hill District, City of Lancaster, and Palmdale Water
6 District (collectively, "Public Water Suppliers") filed Motions to consolidate all of the
7 coordinated matter presently pending before the Court. The motions were heard on August 17,
8 2009 and, at the conclusion of the hearing, the Court orally stated its intent to grant the motions
9 and directed the parties to meet and confer concerning a form of order and to present to the
10 Court a proposed order granting the motion. Subsequently, proposed orders and written
11 arguments were filed and a hearing on the form of the order was held on February 5, 2010.

12 All of the included actions are complex and were ordered coordinated under the
13 provisions of Code of Civil Procedure Section 401.1. To the extent the actions were filed, or
14 were being heard in courts other than this Court, the Order of Coordination required the transfer
15 of the cases to this court for all purposes.

16 The Complaints and Cross-Complaints all include, in one form or other, declaratory
17 relief causes of action seeking determinations of the right to draw ground water from the
18 Antelope Valley basin. These claims are central to every action pending before the Court. In a
19 single aquifer, all water rights are said to be correlative to all other water rights in the aquifer.
20 A determination of an individual party's water rights (whether by an action to quiet title or one
21 for declaratory relief) cannot be decided in the abstract but must also take into consideration all
22 other water rights within a single aquifer.¹ All actions pending, therefore, of necessity involve
23 common issues of law and fact relating to the determination of the relative rights to withdraw
24 water from the Antelope Valley Groundwater Basin in the Antelope Valley and all parties to
25 the litigation claiming water rights are necessary parties to the Court adjudicating a binding
26 determination of those rights. Thus, it appears to the Court that consolidation is not only
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¹ In an earlier phase of the proceedings, the court found as a matter of fact that the area within the jurisdictional boundaries of the valley constituted a single aquifer.

1 necessary but desirable. Entering separate judgments would not permit the court to enforce the
2 judgments once they are entered without transferring each case back to this Court.

3 It is argued by several parties that consolidating the cases will require litigating against
4 parties they did not sue and would subject them to potential costs and fees in actions to which
5 they were not parties. However, the only cause of action that would affect all parties to the
6 consolidation are the declaratory relief causes of action which seek a declaration of water rights
7 (by definition, correlative rights). If the basin is in overdraft (a fact still to be established), the
8 Court in each declaratory relief proceeding would of necessity have to look at the totality of
9 pumping by all parties, evaluate the rights of all parties who are producing water from the
10 aquifer, determine whether injunctive relief was required, and determine what solution equity
11 and statutory law required (including a potential physical solution). All other causes of action
12 could only result in remedies involving the parties who were parties to the causes of action.
13 Costs and fees could only be assessed for or against parties who were involved in particular
14 actions.

15 Consolidation will allow for the entry of single statements of decision in subsequent
16 phases specifying the identity of the parties who are subject to the particular provisions and a
17 single judgment resulting in a comprehensive adjudication of rights to water from the Antelope
18 Valley Groundwater Basin which, among other things, is intended to satisfy the requirements
19 of the McCarran Amendment, 43 U.S.C. § 666.

20 The United States is the largest land owner in the Antelope Valley and claims reserved
21 water rights under federal law. The United States was made a party defendant in this action so
22 that the declaratory relief actions could result in a complete adjudication. No party objected to
23 the participation of the United States in these coordinated actions. There is jurisdiction over the
24 United States only if authorized by Congress. The McCarran Amendment provides a limited
25 waiver of immunity for joinder in *comprehensive* adjudications of all rights to a given water
26 source. In order for there to be a *comprehensive* adjudication all parties who have a water
27 rights claim must be joined in the action and the judgment must bind all the parties. Without
28 consolidation there is risk that the United States might attempt to withdraw from the

1 proceedings for lack of a comprehensive judgment. It may be that coordination itself might
2 permit a single comprehensive judgment but consolidation would eliminate any risk of
3 uncertainty. Consolidation of the water rights claims will result in a comprehensive
4 adjudication and a judgment that will affect all the parties. Complete consolidation will permit
5 these matters to proceed as an *inter se* adjudication of the rights of all the parties to these
6 consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin.

7 While there is a dearth of case law on the issue of consolidation in coordinated cases, it
8 does seem that Code of Civil Procedure Section 1048 applies in these cases and authorizes a
9 consolidation that will result in a final judgment. The California Rules of Court 3.451 requires
10 active management by the coordination trial judge and specifically provides for separate and
11 joint trials of causes of action and issues, as the court in its discretion might order.

12 Pursuant to Rule 3.545(d) of the Rules of Court, certified copies of the judgments
13 bearing the original case numbers of the cases must be entered in the courts where the cases
14 were being heard immediately prior to coordination and unless the coordination judge orders
15 otherwise, the judgments are enforced in those original jurisdictions. However, Rule 3.545(d)
16 empowers the court to provide for the court in which post judgment proceedings will occur and
17 to provide for the court in which any ancillary proceedings will be heard. In this case, that court
18 should be the coordination court in order to ensure proper enforcement of the judgment or
19 judgments.

20 This order of consolidation will not preclude any parties from settling any or all claims
21 between or among them, as long as any such settlement expressly provides for the Court to
22 retain jurisdiction over the settling parties for purposes of entering a judgment resolving all
23 claims to the rights to withdraw groundwater from the Antelope Valley Groundwater Basin as
24 well as the creation of a physical solution if such is required upon a proper finding by the
25 Court. Upon appropriate motion and the opportunity for all parties in interest to be heard, the
26 Court may enter a final judgment approving any settlements, including the *Willis and Wood*
27 class settlements, that finally determine all cognizable claims for relief among the settling
28 parties for purposes of incorporating and merging the settlements into a comprehensive single

1 judgment containing such a declaration of water rights and a physical solution. Any such
2 settlement can only affect the parties to the settlement and cannot have any affect on the rights
3 and duties of any party who is not a party to any such settlement. Complete consolidation shall
4 not preclude or impair any class' right to seek the entry of a final judgment after settlement.

5 Therefore it is ordered as follows:

6 Except as otherwise stated below the motion to transfer and to consolidate for all
7 purposes is **GRANTED**.

8 1. To the extent not previously transferred as a result of the Judicial Council's
9 order of coordination, all matter presently pending under the Judicial Council
10 Coordination Proceeding No. 4408 are ordered transferred from the Riverside
11 County Superior Court and Kern County Superior Court to the Los Angeles
12 County Superior Court, the Honorable Jack Komar, judge presiding by special
13 assignment.

14 2. The following actions are consolidated for all purposes because declaratory
15 relief concerning rights to the ground water in the single aquifer is central to
16 each proceeding:

- 17 a. *Wm. Bolthouse Farms, Inc. v. City of Lancaster, et al.*, Riverside County
18 Superior Court, Case No. RIC 353840;
- 19 b. *Diamond Farming Co., et al. v. City of Lancaster, et al.*, Riverside County
20 Superior Court, Case No. RIC 3444436;
- 21 c. *Diamond Farming Co. v. Palmdale Water District, et al.*, Riverside County
22 Superior Court, Case No. RIC 344668;
- 23 d. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
24 *al.*, Kern County Superior Court, Case No. S-1500-CV-254-348;
- 25 e. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
26 *al.*, Los Angeles County Superior Court, Case No. BC 325201;
- 27 f. *Rebecca Lee Willis, et al. v. Los Angeles County Waterworks District No. 40,*
28 *et al.*, Los Angeles County Superior Court, Case No. BC 364553;

1 g. *Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40, et*
2 *al.*, Los Angeles County Superior Court, Case No. BC 391869; and

3 h. And all cross-complaints filed in any of the above-referenced actions.

4 3. The action entitled *Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust v.*
5 *Wm. Bolthouse Farms, Inc.*, Los Angeles County Superior Court, Case No. 1-
6 05-CV-049053, is not consolidated, but shall remain related and coordinated
7 with the actions and cross-actions referenced in paragraph 3 above.

8 4. The Court has ordered a Case Management Conference at which it will hear
9 arguments concerning the order in which common issues will be heard and to
10 set the matter for further trial. It is the Court's present intent to first schedule
11 trial on the common issues relating to declaratory relief which will include the
12 determination of overall condition of groundwater basin:

13 1. Safe Yield

14 2. Overdraft

15 5. The determination of rights to withdraw groundwater, and claims to
16 prescription, issues affecting appropriation, municipal/domestic priority, rights
17 to imported water/storage rights, return flow rights, reasonable and beneficial
18 use of water, recycled water, quiet title, export of water, determination of
19 federal reserved right to water and physical solution may follow.

20 6. The following described causes of action for damages and other declaratory
21 relief will proceed after the determination of the issues identified in paragraphs
22 4 and 5 above. Any waiver of immunity by the United States under the
23 McCarran Amendment does not extend to these claims; jurisdiction over the
24 United States does not attach to these claims or causes of action alleging these
25 claims, and any determination on these claims shall not bind or otherwise
26 adversely affect the rights of the United States:

27 a) Conversion

28 b) Nuisance


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- c) 42 U.S.C. § 1983
- d) Takings/Inverse Condemnation
- e) Trespass

7. Any claim to declaratory relief regarding basin boundaries has been determined by the Court by Order dated November 6, 2008. To the extent any current party was not a party at the time of the determination of this issue, that party may seek to reopen or, consistent with the order, move to amend the basin boundary.

SO ORDERED.

Dated: FEB 19 2010



Hon. Jack Komar
Judge of the Superior Court

EXHIBIT 4

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARING ON
MOTION BY PLAINTIFF
REBECCA LEE WILLIS AND THE
CLASS FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES
AND CLASS REPRESENTATIVE
INCENTIVE AWARD**

Hearing Date(s): March 22, 2011
Time: 10:00 a.m.
Location: Central Civil West

Judge: Honorable Jack Komar

2
3 Plaintiff Rebecca Lee Willis and the Class have entered into a stipulation of settlement
4 with defendants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale
5 Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill
6 Water District, California Water Service Company, Rosamond Community Service District,
7 Phelan Piñon Hills Community Services District, Desert Lake Community Services District,
8 and North Edwards Water District (collectively, the "Settling Defendants").

9 On November 18, 2010, the Court granted Plaintiff's motion for preliminary approval of
10 class action settlement and on March 1, 2011, the Court granted final approval of the settlement.
11 Plaintiff and the Willis Class now move for an award of attorneys' fees, reimbursement of
12 expenses, and an incentive award for lead plaintiff Rebecca Lee Willis.

13 On March 22, 2011, at 10:00 a.m., the Court heard oral argument on the motion seeking
14 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 as a prevailing party in its action
15 against the Public Water Suppliers based on the settlement between the parties. The Willis
16 Class asserts that its attorneys have collectively spent approximately 5,293.9 hours of time on
17 the case from late 2006 through December 31, 2010 on a contingency basis and have incurred
18 unreimbursed expenses of over \$86,000, of which over \$64,000 were out of pocket costs.

19 The Willis Class's counsel state that the attorneys' collective lodestar, including work
20 spent by counsel and by clerks and paralegals and a consultant, is \$2,300,618. The Willis Class
21 requests a multiplier of 1.5, for a total fee request of \$3,450,927. The Willis Class
22 acknowledges that certain of its \$86,000 in expenses are not recoverable and seeks an award of
23 \$65,057.68 in costs. The Willis Class also requests the Court's approval to give plaintiff
24 Rebecca Willis an incentive payment of \$10,000, which would come out of the attorneys' fee
25 award.

26 The various opposing parties assert a myriad of reasons why the motion should be
27 denied in its entirety or the amount awarded significantly reduced, including that the fees are
28 unreasonable, that the settlement does not achieve a significant benefit for the class, that the

1 class should not be considered a prevailing party since it did not prevail on all causes of action,
2 that the class did not enforce an important public right, and that the public interest was not
3 represented by the Willis Class but rather was represented by the public and other water
4 producers.

5 The City of Lancaster additionally contends that the motion should be denied in its
6 entirety as it relates to Lancaster because (1) Lancaster does not claim prescriptive rights and
7 dismissed its claim for prescription long ago, and (2) Lancaster has not signed the settlement
8 agreement and therefore the Willis Class cannot be considered a "prevailing party" on any
9 claim involving Lancaster.

10 Palmdale did not file a written opposition but contended at oral argument that any
11 determination of benefit was premature and the request for fees should be continued to a later
12 date when the final resolution and the benefits to the class became clear.

13 At the conclusion of the oral argument on the motion, the Court ordered counsel for the
14 Willis Class to file a declaration from Ms. Willis setting forth her participation in the case in
15 justification of an incentive award within thirty days and ordered the matter submitted upon
16 receipt of such declaration.

17 Therefore, the Willis incentive award declaration having been filed, and good cause
18 appearing, the Court makes the following order.

19
20 **ORDER**

21 **Entitlement to Attorneys' Fees**

22
23 The Willis Class seeks attorneys' fees pursuant to Code of Civil Procedure § 1021.5.
24 Section 1021.5 is a codification of the private attorney general doctrine adopted by the
25 California Supreme Court in *Serrano v. Priest* (1977) 20 Cal.3d 25 [141 Cal.Rptr. 315, 569
26 P.2d 1303] (Serrano III). This section allows an award of attorneys' fees to "a successful party"
27 in an action which has resulted in the enforcement of an important right affecting the public
28 interest if: a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the

1 general public or a large class of persons, the necessity and financial burden of private
2 enforcement make the award appropriate, and such fees should not in the interest of justice be
3 paid out of any recovery. (Code Civ. Proc. § 1021.5; *Press v. Lucky Stores, Inc.* (1983) 34
4 Cal.3d 311, 317-318 [193 Cal.Rptr. 900, 667 P.2d 704].)

5
6 The fundamental objective of the private attorney general theory is to encourage
7 suits effecting a strong public policy by awarding substantial attorney fees to
8 those whose successful efforts obtain benefits for a broad class of citizens.
9 (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933
10 [154 Cal.Rptr. 503, 593 P.2d 200].) Without a vehicle for award of attorney
11 fees, private actions to enforce important public policies will frequently be
12 infeasible. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142 [185 Cal.Rptr. 232, 649
13 P.2d 874].)

14 The decision to award attorney fees rests initially with the trial court: utilizing
15 its traditional equitable discretion, the trial court must “realistically assess the
16 litigation and determine, from a practical perspective,” whether the statutory
17 criteria have been met. (*Baggett v. Gates, supra*, 32 Cal.3d 128, 142; *Mandicino*
18 *v. Maggard* (1989) 210 Cal.App.3d 1413, 1416 [258 Cal.Rptr. 917].)

19 (*Hull v. Rossi* (1993) 13 Cal. App. 4th 1763, 1766-1767.)

20 Section 1021.5 states, in relevant part:

21 Upon motion, a court may award attorneys’ fees to a successful party against
22 one or more opposing parties in any action which has resulted in the
23 enforcement of an important right affecting the public interest if: (a) a
24 significant benefit, whether pecuniary or nonpecuniary, has been conferred on
25 the general public or a large class of persons, (b) the necessity and financial
26 burden of private enforcement, or of enforcement by one public entity against
27 another public entity, are such as to make the award appropriate, and (c) such
28 fees should not in the interest of justice be paid out of the recovery, if any.

29 The first step in establishing whether the Willis Class is entitled to fees pursuant to
30 Section 1021.5 is a determination of whether the Willis Class is a “successful party.”

31 Although it is true that the Willis Class did not obtain all of the relief they requested in
32 their pleadings, a trial court need not rule in favor of petitioners on every single issue litigated
33 for petitions to be “successful” within the meaning of section 1021.5. (*Hull v. Rossi, supra*, 13

Antelope Valley Groundwater Litigation (Consolidated Cases)

Los Angeles County Superior Court, Lead Case No. BC 325 201

Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and The Class for Attorneys’ Fees, Reimbursement of Expenses and Class Representative Incentive Award

1 Cal. App. 4th at p. 1768.) By eliminating the Public Water Suppliers' prescription claims and
2 maintaining correlative rights to portions of the Basin's native yield, the Willis Class members
3 achieved a large part of their ultimate goal – to protect their right to use groundwater in the
4 future and to maintain the value of their properties. Under these circumstances, they must be
5 considered "successful parties" for purposes of Code of Civil Procedure § 1021.5.

6 However, the Willis Class is not a successful party with regard to Lancaster. Lancaster
7 ultimately made no claim on dormant owners' water rights so that it was not acting adversely to
8 the class. Moreover, Lancaster is not a signatory to the settlement. Consequently, the Willis
9 Class has not prevailed in any way against Lancaster at this point in the litigation. Therefore,
10 Lancaster is not responsible for any part of the fees to be paid to the Willis Class.

11 The next step in the Section 1021.5 analysis is a determination of whether a significant
12 benefit, pecuniary or nonpecuniary, has been conferred on the general public or a large class of
13 persons. There can be no dispute that the Willis Class is a large class of persons as it is made
14 up of approximately 70,000 class members. As for the benefit conferred, although the Willis
15 Class did not recover any monetary payment, it was successful in achieving a significant benefit
16 by preventing the Public Water Suppliers from proceeding on their prescription claims and by
17 maintaining certain correlative rights to the reasonable and beneficial use of water underlying
18 their land. By virtue of the Willis Class Action (and the Woods Class Action), the Court is able
19 to adjudicate the claims of virtually all groundwater users in the entire Antelope Valley which
20 adheres to the benefit of every resident and property owner in the adjudication area. Without
21 virtually all such users as part of the adjudication, the Court could not have complied with the
22 McCarran Amendment which was necessary to maintain jurisdiction over the federal
23 government (purportedly the largest land owner and a very large water user) which was
24 necessary to adjudicate all correlative rights in the basin.

25 Even without the federal government involvement, without the filing of the class action,
26 it would have been impossible to adjudicate the rights of all persons owning property and water
27 rights within the valley. The impossibility of 70,000 individual claims by land owners to water
28 rights being adjudicated in any other fashion needs little further discussion. The inability of the

1 judicial system to conduct such adjudication in any other way is beyond argument. The benefit
2 to all class members is clear and the benefit to all others living or owning property in the
3 Antelope Valley is enormous - all water rights will ultimately be established and if necessary
4 (as alleged) the reasonable and beneficial use of the water will be preserved for all under the
5 California Constitution.

6 The Willis Class has not received any direct pecuniary benefit. The burden on any
7 individual class member to maintain this action would have been significantly higher than any
8 potential benefit to that class member. Only by banding together in a class action were the
9 members of the Willis Class able to litigate this case.

10 In sum, the Willis Class has met the requirements of Code of Civil Procedure § 1021.5
11 and is entitled to attorneys' fees.

12
13 **Amount of Attorneys' Fees**

14
15 "The starting point of every fee award, once it is recognized that the court's role
16 in equity is to provide just compensation for the attorney, must be a calculation
17 of the attorney's services in terms of the time he has expended on the case.
18 Anchoring the analysis to this concept is the only way of approaching the
19 problem that can claim objectivity, a claim which is obviously vital to the
20 prestige of the bar and the courts."

21 (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48, fn. 23, quoting *City of Detroit v.*
Grinnell Corp. (2d Cir. 1974) 495 F.2d 448, 470.)

22
23 [T]he fee setting inquiry in California ordinarily begins with the "lodestar," i.e.,
24 the number of hours reasonably expended multiplied by the reasonable hourly
25 rate. "California courts have consistently held that a computation of time spent
26 on a case and the reasonable value of that time is fundamental to a
27 determination of an appropriate attorneys' fee award." [Citation.] The
28 reasonable hourly rate is that prevailing in the community for similar work.
[Citations.] The lodestar figure may then be adjusted, based on consideration of
factors specific to the case, in order to fix the fee at the fair market value for the
legal services provided.

1 (Plcm Group v. Drexler (2000) 22 Cal. 4th 1084, 1095.)

2 Factors to be considered in adjusting the lodestar figure include:

3 (1) The novelty and difficulty of the questions involved, and
4 the skill displayed in presenting them;

5 (2) The extent to which the nature of the litigation precluded
6 other employment by the attorneys;

7 (3) The contingent nature of the fee award, both from the point
8 of view of eventual victory on the merits and the point of view
9 of establishing eligibility for an award;

10 (4) The fact that an award against the state would ultimately
11 fall upon the taxpayers;

12 (5) The fact that the attorneys in question received public and
13 charitable funding for the purpose of bringing law suits of the
14 character here involved;

15 (6) The fact that the monies awarded would inure not to the
16 individual benefit of the attorneys involved but the
17 organizations by which they are employed; and

18 (7) The fact that in the court's view the two law firms involved
19 had approximately an equal share in the success of the
20 litigation.

21 (See *Serrano III*, *supra*, 20 Cal.3d at p. 49.)

22 Other factors that may be considered include the benefits obtained or results achieved,
23 the promptness of the settlement, and the amount of attorneys' fees typically negotiated in
24 comparable litigation. (See *Lealao v. Benefit Cal.* (2000) 82 Cal.App.4th 19, 40, 47, 52.)

25 "If . . . a plaintiff has achieved only partial or limited success, the product of
26 hours reasonably expended on the litigation as a whole times a reasonable
27 hourly rate may be an excessive amount. This will be true even where the
28 plaintiff's claims were interrelated, nonfrivolous, and raised in good faith.
Congress has not authorized an award of fees whenever it was reasonable for a
plaintiff to bring a lawsuit or whenever conscientious counsel tried the case with
devotion and skill. Again, the most critical factor is the degree of success
obtained.

1
2 "There is no precise rule or formula for making these determinations. The [trial]
3 court may attempt to identify specific hours that should be eliminated, or it may
4 simply reduce the award to account for the limited success. The court
5 necessarily has discretion in making this equitable judgment...."

6 (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 247-248, quoting *Hensley v.*
7 *Eckerhart* (1983) 461 U.S. 424, 436-437, 439-440.)

8
9 The Willis Class argues that its counsel's lodestar of \$2,300,618 is reasonable given the
10 complexity of the case. The Opposing Parties contend that the amount of time expended by
11 Class Counsel was excessive and, in many instances, unnecessary. While it is possible to use
12 hindsight to look back and determine that effort expended by Class Counsel on a particular
13 issue or motion might have been unnecessary, that does not mean that Class Counsel is not
14 entitled to fees for that work. Absent circumstances rendering the award unjust, an attorneys'
15 fee award should ordinarily include compensation for all the hours *reasonably* spent, including
16 those relating solely to the fee. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133.) Further, the
17 trial court has broad authority to determine the amount of a reasonable fee. (*Id.* at p. 1095.) A
18 trial court may make its own determination of the value of the services contrary to, or without
19 the necessity for, expert testimony. (*Id.* at p. 1096.) Therefore, the Court can use its knowledge
20 of the case and the efforts of Class Counsel to determine an equitable fee award.

21 Although an attorneys' fee award is generally based on the lodestar amount, in this
22 instance there are several factors that weigh in favor of reducing the lodestar amount. First,
23 even though the Willis Class obtained significant relief in this action, the Willis Class did not
24 prevail on a number of causes of action and was unsuccessful in recovering any direct monetary
25 benefit. Second, the fee award in this case will ultimately fall on taxpayers. Moreover, as
26 pointed out by the Opposing Parties, some taxpayers are also ratepayers of various public
27 agencies and would, in effect, have to pay their portion of the fee award twice. Additionally,
28 although nobody can dispute that this is a complicated case, Class Counsel did not come into
the case with much, if any, expertise in water law and properly associated other counsel with

1 such expertise. Then, additional time was spent by counsel educating themselves, thereby
2 increasing fees somewhat beyond what appears reasonable necessary. Also, in reviewing the
3 time spent on certain law and motion matters, it appears that an unnecessary amount of time
4 was spent by counsel on various matters, in particular pleading matters, involving well settled
5 legal principles. Moreover, by "block billing," counsel have made it impossible for the Court to
6 analyze the time spent on the various functions performed by each counsel.¹

7 This case included many parties who were not directly adverse to the Willis Class
8 because they were not part of the Willis Class's action, many of whom had a common interest
9 in defending against prescription. The Public Water Suppliers should not be required to pay
10 attorneys' fees that were generated as a result of actions taken by non-parties to the Willis
11 Class's action.

12 The Willis Class asserts that it is only seeking fees from the parties that have asserted
13 claims to prescriptive rights. Los Angeles County Waterworks District No. 40 ("District 40")
14 requests that the attorneys' fee award should be apportioned among each party that pumps from
15 the Basin due to the involvement of those parties in this case even though those parties are not
16 named as defendants in the Willis Class's action. If the Court were to order that other parties
17 must also pay fees, the Court would be going beyond the scope of the requested relief.
18 Moreover, in the Court's consolidation order, the Court states that "[c]osts and fees could only
19 be assessed for or against parties who were involved in particular actions." (Order Transferring
20 and Consolidating Actions for all Purposes, p. 3:13-14.) Such other parties are not parties to the
21 settlement; the adjudication as it relates to them is ongoing and the Willis Class cannot be
22 considered a prevailing party as to them. Accordingly, any fee award that is granted at this
23 point may only be awarded against the parties to the settlement.

24 Regarding Class Counsel's billing rates, Class Counsel have provided evidence that
25 their billing rates are reasonable. The lodestar was based on hourly rates of \$400 per hour for
26 Ralph B. Kalfayan, \$450 per hour for David B. Zlotnick, and lesser amounts for associates who
27

28 ¹ Block Billing involves showing various functions performed lumping together time expended without indicating
how much time is allotted to each function.

1 worked on the case. These rates are reasonable. The Court notes, however, that in at least one
2 case (Greg James) a higher billing rate was used because this was a contingent fee case. The
3 fact that this is a contingent fee case should not be counted twice as a factor for raising the
4 amount of the award – in the hourly rate charged and in the multiplier awarded.

5 This Court has presided over this case since the order of coordination and is familiar
6 with the work of counsel for all parties, the complexity of the various issues, and the time
7 necessarily involved in effectively representing the Willis Class. The Court has carefully
8 reviewed all of the time claimed in the lodestar computation. The principal cause of action
9 brought on behalf of the class was the declaratory relief cause of action which concededly was
10 defensive in substance. Importantly, the fees should reflect the necessity of bringing the action
11 to protect the class members' water rights against the claim of prescriptive rights by the Public
12 Water Producers. However, the lodestar should also be reduced to account for the fact that the
13 fees requested include fees incurred as a result of the involvement of parties that are not parties
14 to the Willis Class's case. The lodestar should also be reduced based on the following other
15 factors: the Willis Class did not prevail on a number of causes of action and was unsuccessful in
16 recovering any direct monetary benefit; the fee award in this case will ultimately fall on
17 taxpayers; and Class Counsel did not come into the case with much, if any, expertise in water
18 law and appear to have spent more time educating themselves than would otherwise be
19 necessary.

20 Accordingly, in reviewing all the time spent by counsel and others, considering the time
21 accorded to various of the issues by relative import and consequence, it is the decision of the
22 Court that reasonable attorneys' fees for the class in this matter is the sum of \$1,839,494.

23 Costs

24
25
26 The Willis Class seeks an award of \$65,057.68 in costs. District 40 argues that Code of
27 Civil Procedure § 1021.5 only authorizes recovery of attorneys' fees, not costs. District 40 is
28 correct. (See *Benson v. Kwikset Corp.* (2007) 152 Cal. App. 4th 1254, 1283.) Costs are

1 authorized, however, by Code of Civil Procedure §§ 1032 and 1033.5. (Code Civ. Proc.
2 §§ 1032 and 1033.5; see also *Benson v. Kwikset Corp.*, *supra*, 152 Cal. App. 4th at p. 1283.)
3 No party has moved to tax the costs requested by the Willis Class. Moreover, the costs
4 requested appear to have been reasonably necessary. Accordingly, the Willis Class's request
5 for costs is GRANTED.

6
7 **Incentive Award**

8 The Willis Class seeks to give lead plaintiff Rebecca Lee Willis an incentive award of
9 \$10,000 to be paid out of the attorneys' fee award. Based upon the declaration submitted by
10 Ms. Willis, the Court finds that an incentive award is justified. This class action would not
11 likely have been initiated but for her involvement in this case. Counsel are authorized to pay
12 her an incentive award in the sum of \$10,000 from the attorneys' fee award.

13
14 **CONCLUSION**

15
16 The Willis Class's request for costs is GRANTED.

17
18 Lead plaintiff Rebecca Lee Willis may be awarded an incentive payment in the sum of
19 \$10,000 to be paid by counsel out of attorneys' fees awarded.

20
21 Attorneys' fees in the sum of \$1,839,494 are awarded to counsel for the Willis Class
22 against Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water
23 District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water
24 District, California Water Service Company, Rosamond Community Service District, Phelan

25 //

26 //

27 //

1 Pifion Hills Community Services District, Desert Lake Community Services District, and North
2 Edwards Water District.

3
4 SO ORDERED.

5
6
7 Dated: 5-4-2011

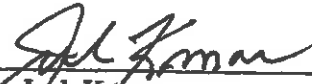

8 _____
9 Hon. Jack Komar
10 Judge of the Superior Court
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EXHIBIT 5

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ANTELOPE VALLEY GROUNDWATER CASES)	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408
This Pleading Relates to Included Action: REBECCA LEE WILLIS , on behalf of herself and all others similarly situated,)	CASE NO. BC 364553
Plaintiff,)	PROPOSED FINAL JUDGMENT APPROVING WILLIS CLASS ACTION SETTLEMENT
vs.)	
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;)	Date: Time: Dept: Judge: Hon. Jack Komar Coordination Trial Judge
Defendants.)	

This matter has come before the Court on the Motion of Plaintiff Rebecca Lee Willis (Willis) for Final Approval of the Proposed Class Action Settlement between and among Rebecca Lee Willis and the Willis Class, on the one hand; and Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company,

1 Rosamond Community Service District, Phelan Pinon Hills Community Services District, Desert
2 Lake Community Services District, and North Edwards Water District (collectively, the "Settling
3 Defendants"), on the other hand.

4 By Order dated November 18, 2010, this Court granted Plaintiff's Motion for
5 Preliminary Approval of the Proposed Settlement of this action and directed the sending of
6 Notice to the Willis Class. After considering all arguments and submissions for and against final
7 approval of the proposed settlement, and being fully advised in the premises, **IT IS HEREBY**
8 **ORDERED, ADJUDGED AND DECREED AS FOLLOWS, PURSUANT TO SECTIONS**
9 **382 AND 664.6 OF THE CODE OF CIVIL PROCEDURE:**
10

11 1. For over 10 years, a number of actions have been pending in the Los Angeles
12 County Superior Court and other California courts seeking an adjudication of various parties'
13 respective rights to the groundwater underlying the Antelope Valley Groundwater Basin (the
14 "Basin").

15 2. A number of cases raising such issues were coordinated by a July 11, 2005 Order
16 of the Judicial Council and assigned to the Honorable Jack Komar of the Superior Court for the
17 County of Santa Clara (the "Court").

18 3. The Court held an initial phase of trial on October 2006 with respect to the
19 boundaries of the Basin and issued an Order on November 3, 2006 defining the Basin for
20 purposes of the litigation.
21

22 4. The Willis Class Action was filed on or about January 11, 2007 to contest certain
23 public entities' claims that those entities had obtained prescriptive rights to a portion of the
24 Basin's groundwater. The Willis case was subsequently coordinated with the Coordinated
25 Cases.
26

27 5. By Order dated September 11, 2007, the Court certified the Willis Class. As
28

1 amended by Orders dated May 22, 2008 and September 2, 2008, the Willis Class is defined as
2 follows:

3 "All private (i.e., non-governmental) persons and entities that own real
4 property within the Basin, as adjudicated, that are not presently pumping
5 water on their property and have not done so at any prior time ("the Class").
6 The Class includes the successors-in-interest by way of purchase, gift,
inheritance, or otherwise of such landowners.

7 The Class excludes the defendants herein, any person, firm, trust,
8 corporation, or other entity in which any defendant has a controlling interest
9 or which is related to or affiliated with any of the defendants, and the
10 representatives, heirs, affiliates, successors-in-interest or assigns of any such
11 excluded party. The Class also excludes all persons to the extent their
12 properties are connected and receive service from a municipal water system,
13 public utility, or mutual water company. The Class shall [further] exclude
all property(ies) that are listed as 'improved' by the Los Angeles County or
Kern County Assesor's' office, unless the owners of such properties declare
under penalty of perjury that they do not pump and have never pumped
water on those properties."

14 6. Notice of the Pendency of this action was sent to the Willis Class in or about
15 January 1, 2009 and the opt-out period (as extended) expired on August 30, 2009. Certain
16 persons who opted out were subsequently permitted to rejoin the Class.

17 7. The persons listed on Exhibit 1 hereto validly excluded themselves from the Class
18 in accordance with this Court's prior Orders (and have not re-joined the Class) and are not bound
19 by the Settlement or this Judgment.

20 8. Counsel for the Willis Class engaged in settlement discussions with Defendants'
21 counsel during mid 2009. On September 2, 2009, counsel participated in a mediation session
22 before the Honorable Ronald Robie. That mediation resulted in an agreement in principle
23 among counsel for the Settling Parties to settle the litigation between and among their
24 respective clients, subject to appropriate approvals.

25 9. By Order dated October 28, 2009, the Court stated its intent to consolidate the
26 various Actions that were coordinated as part of JCCP No. 4008, including the Willis action. On
27 February 19, 2010, the Court entered an Order Transferring and Consolidating [the Coordinated]

1 Actions for All Purposes. As provided in the Consolidation Order, this Final Judgment shall not
2 be construed to prejudice the rights of any of the Non-Settling Parties in the Consolidated
3 Actions nor shall it prejudice the claims and defenses that the Settling Parties may assert with
4 respect to such Non-Settling Parties.

5 10. By Order dated November 18, 2010, this Court granted preliminary approval to
6 the proposed settlement of this action and directed that Notice of the Proposed Settlement be sent
7 to the Class.

8 11. Notice of the Proposed Settlement has been sent to the Willis Class by first class
9 mail in accordance with the Court's Preliminary Approval Order. Such Notice fully and
10 accurately informed the Class of all material terms of the proposed settlement and the
11 opportunity to object to or comment on the Settlement. The Notice was given in an adequate and
12 sufficient manner, constituted the best notice practicable under the circumstances, and satisfied
13 due process.

14 12. The Settling Parties and each class member have irrevocably submitted to the
15 jurisdiction of this Court for any suit, action, proceeding or dispute arising out of the Settlement
16 Agreement.

17 13. It is in the best interests of the parties and the Class Members and consistent with
18 principles of judicial economy that any dispute between any class member (including any dispute
19 as to whether any person is a class member) and any Settling Defendant which is in any way
20 related to the applicability or scope of the Settlement Agreement or the Final Judgment should be
21 presented to this Court for resolution.

22 14. The Stipulation of Settlement submitted by the Settling Parties is hereby finally
23 approved as fair, reasonable, and in the best interests of the Class, and the parties are directed to
24 consummate the Settlement in accordance with its terms.

25 15. The Complaint in the Willis Action shall be deemed dismissed with prejudice as
26 soon as this Final Judgment becomes effective under the terms of the Settlement Stipulation.

27 16. For purposes of this Final Judgment, "Released Parties" means Plaintiff Rebecca
28

1 Lee Willis and the Willis Class, as well as Defendants Los Angeles County Waterworks District
2 No. 40; The City of Palmdale; Palmdale Water District; Littlerock Creek Irrigation District; Palm
3 Ranch Irrigation District; Quartz Hill Water District; California Water Service Company;
4 Rosamond Community Service District; Phelan Pinon Hills Community Services District; Desert
5 Lake Community Services District; and North Edwards Water District.

6 17. The Court hereby orders that the Released Parties are released and forever
7 discharged from the Released Claims as more specifically provided in the Stipulation of
8 Settlement.

9 18. The Class members and their heirs, executors, administrators, successors, and
10 assigns are hereby permanently barred and enjoined from instituting, commencing, prosecuting,
11 or continuing to prosecute, either directly or indirectly, any Released Claim against any of the
12 Released Parties in any forum, other than claims to enforce the terms of the Settlement. Each
13 Class member may hereafter discover facts other than or different from those which he or she
14 knows or believes to be true with respect to the Released Claims. Nevertheless, each member of
15 the Class (except those who timely opted out) waive and fully, finally and forever settle and
16 release, upon the Settlement Agreement becoming final, any known or unknown, suspected or
17 unsuspected, contingent or noncontingent Released Claim, whether or not concealed or hidden,
18 without regard to the subsequent discovery or existence of such different or additional facts.

19 19. The Settling Defendants and their heirs, executors, administrators, successors, and
20 assigns are hereby permanently barred and enjoined from instituting, commencing, prosecuting,
21 or continuing to prosecute, either directly or indirectly, any Released Claim against any of the
22 Class Members in any forum, other than claims to enforce the terms of the Settlement. Each
23 Settling Defendant may hereafter discover facts other than or different from those which he or
24 she knows or believes to be true with respect to the Released Claims. Nevertheless, each Settling
25 Defendant waives and fully, finally and forever settles and releases, upon the Settlement
26 Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or
27 noncontingent Released Claim, whether or not concealed or hidden, without regard to the

1 subsequent discovery or existence of such different or additional facts.

2 20. Without affecting the finality of this Judgment, the Court hereby reserves and
3 retains jurisdiction over this Settlement, including the administration and consummation of the
4 Settlement, as well as any action or proceeding brought to enforce the Settlement. In addition,
5 without affecting the finality of this Judgment, the Court retains jurisdiction over the Parties for
6 purposes of incorporating and merging this Judgment into a physical solution or other Judgment
7 that may ultimately be entered in the Consolidated Actions. The Settling Parties are hereby
8 deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit,
9 action, proceeding or dispute arising out of or relating to this Judgment or the Settlement.

10 21. The Court retains jurisdiction to consider an application by Plaintiff and Class
11 Counsel for an award of attorneys' fees and reimbursement of costs, as well as an incentive
12 award to the Representative Plaintiff, as well as any other collateral matters. Any such matters
13 shall be addressed by separate Order, and the Court retains jurisdiction to enter such further
14 Orders.

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Date: MAY 12, 2011

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Judge of the Superior Court
HON. JACK KOMAR

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EXHIBIT 6

1 Ralph B. Kalfayan (SBN 133464)
Lynne M. Brennan (SBN 149131)
2 KRAUSE KALFAYAN BENINK &
SLAVENS, LLP
3 550 West C Street, Suite 530
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4 Tel: (619) 232-0331
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5 Class Counsel for the Willis Class
6
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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

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

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

**WILLIS CLASS' PHASE VI/PHYSICAL
SOLUTION TRIAL BRIEF**

15 *Plaintiffs,*

Date: September 28, 2015
Time: 9:00 AM
Place: Superior Court of California, County of
Los Angeles, 111 North Hill Street, Los Angeles,
CA 90012, Room 222
Judge: Hon. Jack Komar

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;

Defendants.

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- 1 6. The Settling Defendants *will not take any positions or enter into any agreements* that are
2 inconsistent with the exercise of the Willis Class Members' right to produce and use their
3 correlative share of 85% of the Basin's Federally Adjusted Native Safe Yield. ¶ IV.D.2.
- 4 7. In no event shall this Agreement require the Willis Class Members to give to the Settling
5 Defendants more than 15% of any rights to use the Basin's groundwater that they may
6 obtain by way of settlement or judgment. ¶ IV.D.2.a.
- 7 8. The Settling Parties acknowledge and agree that they all have the right to recapture Return
8 Flows from Imported Water that they put to reasonable and beneficial use in the Basin,
9 consistent with California law. The Settling Parties will not be subject to any Replacement
10 Assessment for their production of an amount equal to the Return Flows from Imported
11 Water that they put to reasonable and beneficial use in the Basin. ¶ IV.D.4.a.
- 12 9. The Settling Parties agree to be part of such a Physical Solution to the extent it is consistent
13 with the terms of this Stipulation... ¶ V.B.
- 14 10. The Settling Parties recognize that not all parties to the Coordinated Actions have entered
15 into this Stipulation and that a trial may be necessary as against non-settling parties. The
16 Settling Parties *agree to cooperate and coordinate their efforts in any such trial or hearing*
17 *so as to obtain entry of judgment consistent with the terms of this Stipulation; . . .* ¶ VIII.B.
- 18 11. The Settling Defendants are permanently barred and enjoined from . . .prosecuting, or
19 continuing to prosecute, either directly or indirectly, any Released Claim against any of the
20 Class Members. . . . ¶ 19.

21 The following terms of the SPPS are directly contradicted by the Willis Judgment and by
22 California law and must be modified by this Court:

- 23 1. The total of the Production Rights decreed in this Judgment equals the Native Safe Yield.
24 *SPPS, ¶ 3.5.32 (Exh B)*
 - 25 a. The entire Native Safe Yield is allocated to the appropriators, current pumpers, the
26 Small Pumper Class, and the Federal Government. These allocations are contained
27 in Exhibits 3 and 4 to the SPPS. No part of the Native Safe Yield is available to the
28 Non-Pumper Class in the future. The Stipulating Parties listed in Exhibits 3 and 4 to
the SPPS have been permanently allocated the entire Native Safe Yield of 82,300
AF. There are no terms contained in the SPPS whereby a Willis Class Member ever
gains the right to pump groundwater from the Native Safe Yield. The Public Water
Suppliers unequivocally agreed in the Willis Settlement Agreement that the Willis
Class had the right to pump groundwater from the Native Safe Yield and further
agreed not to enter into any agreements that were inconsistent with this right. Thus,
the Public Water Suppliers breached the Willis Settlement Agreement when they
signed the SPPS.

1 2. Production Rights Claimed by Non-Stipulating Parties. Any claim to a right to Produce
2 Groundwater from the Basin by a Non-Stipulating Party shall be subject to procedural or
3 legal objection by any Stipulating Party [includes Defendant Public Water Suppliers].
4 *SPPS*, ¶ 5.1.10 (Exh. C)

5 a. Public Water Suppliers are a “Stipulating Party” to the *SPPS*, however, they have
6 no right to object, either procedurally or substantively, to Willis Class Members’
7 right to pump groundwater from the Basin.

8 3. The Non-Pumper Class Stipulation of Settlement, executed by its signatories and approved
9 by the Court in the Non-Pumper Class Judgment, specifically provides for imposition of a
10 Replacement Water Assessment on Non-Pumper Class members. . . .
11 *SPPS*, ¶ 9.2.1

12 a. The Public Water Suppliers agreed that the Willis Class has the right to pump up to
13 85% of the Native Safe Yield free of replacement assessment.

14 4. Evidence presented to the Court demonstrates that Production by one or more Public Water
15 Suppliers satisfies the elements of prescription and that Production by overlying landowners
16 during portion(s) of the prescriptive period exceeded the Native Safe Yield. At the time of
17 this Judgment the entire Native Safe Yield is being applied to reasonable and beneficial uses
18 in the Basin. Members of the Non-Pumper Class do not and have never Produced
19 Groundwater for reasonable beneficial use as of the date of this Judgment. Pursuant to
20 *Pasadena v. Alhambra* (1949) 33 Cal 2d 908, 931-32 and other applicable law, the
21 failure of the Non-Pumper Class members to Produce any Groundwater under the
22 facts here modifies their rights to Produce Groundwater except as provided in this
23 Judgment. Because this is a comprehensive adjudication pursuant to the McCarran
24 Amendment, consistent with the California Supreme Court decisions, including *In Re*
25 *Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339, this Court makes the
26 following findings: (1) certainty fosters reasonable and beneficial use of water and is called
27 for by the mandate of Article X, section 2; (2) because of this mandate for certainty and in
28 furtherance of the Physical Solution, any New Production, including that by a member of
the Non-Pumper Class must comply with the New Production Application Procedure
specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-Pumper Class
has established a Production Right to the reasonable and beneficial use of Groundwater
based on their unexercised claim of right to Produce Groundwater; (4) if in the future a
member of the Non-Pumper Class proposes to Produce Groundwater for reasonable and
beneficial use, the Watermaster as part of the New Production Application Procedure, has
the authority to determine whether such a member has established that the proposed New
Production is a reasonable and beneficial use in the context of other existing uses of
Groundwater and then-current Basin conditions; and (5) the Watermaster's determinations
as to the approval, scope, nature and priority of any New Production is reasonably necessary
to the promotion of the State's interest in fostering the most reasonable and beneficial use of
its scarce water resources. All provisions of this Judgment regarding the administration, use
and enforcement of the Replacement Water Assessment shall apply to each Non-Pumper
Class member that Produces Groundwater. . . . The Court finds that this Judgment is
consistent with the Non-Pumper Stipulation of Settlement and Judgment.
SPPS, ¶ 9.2.2 (emphasis supplied).

1
2 a. In addition to the fact that this term is legally and factually invalid, the Public
3 Water Suppliers are precluded from entering into an agreement that states that the
4 Willis Class does not have the right to pump groundwater from the Native Safe
5 Yield.

6 **5. New Production Procedure [Applicable to all Willis Class Members]**

7the Watermaster Engineer has authority to recommend that the application for New
8 Production be denied, or approved on condition of payment of a Replacement Water
9 Assessment. *SPPS*, ¶ 18.5.13

10 a. Even assuming that a Willis Class Member has the financial resources and time to
11 comply with the onerous and expensive requirements to apply for the right to
12 pump groundwater, there is no guarantee that the Willis Class Member's
13 application will be approved. Further, even if approved, the Willis Class Member
14 must still pay a Replacement Water Assessment. Therefore, this SPPS term
15 constitutes a breach of the Willis Settlement Agreement because the Public Water
16 Suppliers agreed that the Willis Class has the right to pump up to 85% of the
17 Native Safe Yield free of replacement assessment.

18
19 6. All Parties or Person(s) seeking approval from the Watermaster to commence New
20 Production of Groundwater shall submit a written application to the Watermaster Engineer
21 which shall include the following: . . . Written confirmation that applicant has complied with
22 CEQA, preparation of water conservation plan, an economic impact report, a physical
23 impact report, a statement from an engineer that production will not cause Material Injury
24 et

25 a. These regulations effectively extinguish the Willis Class Members' right to pump
26 when the Public Water Suppliers agreed that Class Members have a right to pump
27 from the Native Safe Yield.

28 7. In the event the United States does not Produce its entire 7,600 acre-feet in any given Year,
the unused amount in any Year will be allocated to the Non-Overlying Production Rights
holders... *SPPS*, ¶ 5.1.4.1

a. The Public Water Suppliers agreed not to exceed 15% of the Federally Adjusted
Native Safe Yield which was defined as the Native Safe Yield less the actual annual
production of the United States' during the prior year pursuant to its Federal Reserve
Right.

THE SPPS IS NOT CONSISTENT WITH THE WILLIS JUDGMENT

The SPPS is not consistent with the Willis Judgment in many fundamental and material
ways.

1 First, the SPPS modifies and abrogates the correlative water rights of the Willis Class from
2 the NSY. Current pumpers and appropriators are permanently allocated the entire NSY free of
3 replacement assessment, but not to the Willis Class. As demonstrated by expert witness Rod Smith,
4 the entire NSY of 82,300 is allocated to Overlying producers, Small Pumper Class, Federal Reserve
5 rights, State of California, and Non-Overlying Production. No portion of the NSY is reserved for
6 the Willis Class. In order for Willis Class members to have any right to pump under the SPPS, they
7 must pay a replacement water assessment. This allocation violates the Willis Judgment.
8

9 The Willis Judgment provides that Willis Class members have “an Overlying Right to a
10 correlative share of 85% of the Federally Adjusted Native Safe Yield for reasonable and beneficial
11 uses on their overlying lands free of replacement water assessment.” ¶ IV.D.2 of the Willis
12 Judgment. “Pumping of the Settling Parties’ share of the Native Safe Yield is not subject to any
13 Replacement Assessment.” ¶ IV.D.2 of the Willis Judgment. “The Settling Parties agree that the
14 Settling Defendants and the Willis Class Members each have rights to produce groundwater from
15 the Basin’s Federally Adjusted Native Safe Yield.” ¶ IV.D. of the Willis Judgment.
16

17 In the Willis Judgment, the Public Water Suppliers agreed that the Willis Class have a
18 correlative share of the Federally Adjusted Native Safe Yield free of replacement water assessment.
19 The SPPS on the other hand takes away the correlative rights of the Class from the NSY.
20

21 Second, under the SPPS, the Public Water Suppliers have been allocated a portion of the
22 NSY that is far greater than the 15% they agreed to in the Willis Judgment. It does so by transferring
23 any unused Federal Reserve rights to the Public Water Suppliers. ¶ 5.1.4.1 of the SPPS. The unused
24 Federal Reserve rights amounts to an additional 6,540.82 AFY in 2011 or 6,367.00 AFY in 2012
25 of the NSY. Page 4 of Rod Smith Report. This is because while the Federal Reserve right is 7,600
26 AFY, actual production by the United States is far less. In 2011 and 2012, the United States
27 produced only 1,246.09 AFY and 1,450.59 AFY from the aquifer. The difference between the
28

1 Federal Reserve rights and the amount of water actually produced by the United States however
2 must remain in the correlative rights pool under the Willis Judgment.

3 The Willis Judgment provides that the Public Water Suppliers “collectively have the right
4 to produce up to 15% of the Basin’s Federally Adjusted Native Safe Yield free of Replacement
5 Assessment.” ¶ IV.D.1 of the Willis Judgment. The Willis judgment further provides that “In no
6 event shall this Agreement require Willis Class Members to give to the Settling Defendants more
7 than 15% of any rights to use the Basin’s groundwater that they may obtain by way of settlement
8 or judgment.” ¶ IV.D.2. of the Willis Judgment. The Basin’s Adjusted Native Safe Yield is defined
9 in the Willis Judgment as the Basin’s Native Safe Yield less the actual annual production of the
10 United States’ during the prior year pursuant to its Federal Reserve right. ¶ III.H. of the Willis
11 Judgment.
12 Judgment.

13
14 Thus SPPS over-allocates the NSY to the Public Water Suppliers. Per the report of Mr.
15 Smith, the economic benefit from this allocation is worth \$106 million.

16 Third, the SPPS imposes a legal and financial impediments on the right of the Willis Class
17 members to pump in the future which regulations effectively extinguishes their right to pump in the
18 future. The SPPS provides that any New Production must include a written application to the
19 Watermaster engineer which shall include the following: (1) payment of all costs of the engineer;
20 (2) summary of source of supply and manner of delivery; (3) maps; (4) copy of well permits; (5)
21 written confirmation of land use entitlements; (6) written confirmation of CEQA requirements; (7)
22 water conservation plan; (8) economic impact report; (9) physical impact report; (10) no material
23 injury report; (11) agreement to pay replacement water assessment; (12) any other information
24 which the Watermaster Engineer may require. ¶ 18.5.13 of the SPPS. These regulations impose a
25 material financial burden on Willis Class members and extinguishes their right to pump.
26
27
28

1 The Public Water Suppliers agreed in the Willis Judgment to permit the Willis Class
2 members to share in the NSY free of replacement assessment. The Willis judgment provides that
3 the Willis Class “have an Overlying Right to a correlative share of 85% of the Federally Adjusted
4 Native Safe Yield for reasonable and beneficial uses on their overlying land free of any
5 Replacement Assessment.” ¶ IV.D.2 The regulations in the SPPS not only impose a financial
6 obligation on Willis Class members to pay for replacement water but it also effectively burdens
7 their right to pump in the future to the point of extinguishment.
8

9 THE SPPS VIOLATES CALIFORNIA LAW

10 The SPPS redefines the unexercised overlying water right of Willis Class in contravention
11 of California law and the Willis Judgment:
12

13 California law has long-recognized that those who own real property that overlies an aquifer
14 have a shared first priority right to pump native groundwater within the safe yield as needed
15 to supply reasonable and beneficial uses on their overlying lands. The proposed judgment
16 is contrary to this fundamental principle, because it would strip the members of the Willis
17 Class of all of the benefits of this correlative first priority status. It purports to do so based
18 on the fact that the Willis Class members have not exercised their overlying groundwater
rights. See ¶ 9.2.2. Yet, California law expressly provides that, absent a specific and
individualized determination of unreasonable use, overlying landowners have correlative
first priority rights both for their active reasonable beneficial uses and for their future
reasonable and beneficial uses unless those “paramount rights” have been displaced by
prescription.

19 In addition, the SPPS places an unreasonable burden on Willis Class Members to prove
20 availability of water to fulfill new overlying uses on the members of the Willis Class, unreasonably
21 vests discretion in a partial Watermaster to decide whether members of the Willis Class may
22 exercise their overlying right, imposes unreasonable and discriminatory requirements before
23 pumping, and subjects the Class to the Replacement Water Assessment.
24

25 Specifically, paragraph 18.5.13.1 of the SPPS requires that any new production must satisfy
26 twelve criteria which include the submission of a water conservation plan, an economic impact
27 report, a physical impact report, and a written statement by a licensed engineer that the new
28 production will not cause material injury. If the Watermaster determines that imported water is

1 available and the applicant has satisfied the twelve criteria then the Watermaster may approve the
2 new production. There is no requirement for the Watermaster to grant approval; rather, the decision
3 is within their discretion. These regulations and broad Watermaster discretion contrasts sharply
4 with the Willis Judgment and the agreement of the Public Water Suppliers to respect the correlative
5 water rights of the Willis Class.
6

7 The problem with the restrictions on new pumping and a proposed Replacement Water
8 Assessment is that they discriminate against the Non-Pumper Class.

9 The proposed judgment allows some groundwater right holders—the existing overlying and
10 appropriative users—to exercise the lion's share of their rights free of compliance with the
11 foregoing criteria and free of charges for replacement water. In contrast, the proposed judgment
12 denies the Willis Class members the right to exercise *any* portion of their overlying rights unless
13 they fulfill the regulatory and financial requirements from which the existing users are exempt *and*
14 they obtain discretionary permission from the Watermaster to engage in new production.¹ This
15 strips the Willis Class members of their correlative status vis-à-vis other overlying landowners and
16 of their priority vis-à-vis the appropriators.

17 As described in *Barstow* and other cases, overlying landowners have shared (i.e.,
18 correlative) first priority rights to the native safe yield of the aquifer. Therefore, in an overdrafted
19 basin, if there is insufficient surplus water available to fulfill the new overlying use (given existing
20 reasonable and beneficial uses), the new overlying user is nevertheless entitled to pump
21 groundwater. The lawful means of ensuring that the new pumping does not cause aggregate
22 withdrawals to exceed the native safe yield is to curtail pumping by the most junior appropriator to
23 make water available to the new overlying user, because the latter has senior rights. The only valid
24 exception to this rule of priority would be where the junior appropriator (or some other party)
25 proves that the new overlying pumping and use would be unreasonable. As the Supreme Court
26 emphasized in *Barstow*, in an overdrafted groundwater basin, “overlying use is paramount, and the
27 rights of the appropriator must yield to the rights of the . . . overlying owner.” 23 Cal. 4th at 1243.

28 Similarly, California law does not permit the imposition of pumping charges on new
production by overlying landowners to the exclusion of those groundwater right holders with equal
or lesser legal priority. The proposed judgment's requirement that members of the Willis Class pay
a Replacement Water Assessment for the exercise of any portion of their correlative first priority
right subordinates their rights below those active overlying landowners with whom they share that
first priority, as well as below the appropriators against whom they hold superior rights. This too
violates the Supreme Court's directive in *Barstow* that “an equitable physical solution must
preserve water right priorities to the extent those priorities do not lead to unreasonable use.” *Id.*

The Mojave Basin adjudication has not placed similar limits on new groundwater pumping:

The judgment and physical solution for the Mojave Basin “places no limits on the amount
of water a party can withdraw. Instead, each party is allotted a certain quantity of water—

¹ As described in the Expert Report submitted by Dr. Rodney T. Smith, the new production permit application requirements are likely to be prohibitively expensive for many of the Willis Class members who may seek to exercise their overlying groundwater rights in the future. These requirements also go well beyond any regulatory requirements applicable to new groundwater pumping under existing law.

1 a 'free production allowance' based on its prior use—which it can use at no cost. When a
2 party uses water in excess of its free production allowance, it is charged a fee to purchase
3 'replacement' water for that subarea." *Id.* at 1235. The physical solution "also sets a 'base
annual production' amount for each party, determined by the producer's maximum annual
production for the five-year period from 1986 to 1990."

4 Furthermore, the California Supreme Court in *City of Barstow v Mojave* contradicts the
5 SPPS. It would not be lawful for a trial court to discount or ignore the correlative priority of
6 overlying groundwater rights, both active and prospective. A Court may not charge overlying
7 landowners a replacement water assessment for exercising water rights absent consent to the
8 physical solution. This point is particularly important given the Willis Judgment. Although water
9 uses must be reasonable, the Court does not have authority to make categorical determinations of
10 reasonable use that alter existing correlative priority of overlying groundwater right holders nor a
11 categorical finding that all use by Willis Class members is unreasonable:
12

13 The application of these principles to the present cases demonstrates why the proposed
14 judgment and physical solution violates the correlative first priority rights of the members
15 of the Willis Class. Existing producers—overlying and appropriative—are entitled to pump
16 groundwater up to the limits of their respective production rights without having to prove
17 that water is available for their uses in light of all other competing demands on the native
18 safe yield; and they are exempt from the twelve permitting criteria of paragraph 18.5.13.1.
19 See Proposed Judgment ¶¶ 5.1.1.1, 5.1.1.2, 5.1.3 & 5.1.6. Existing production also is free
20 of replacement water charges. *Id.* ¶ 9.2. Under the proposed judgment, however, the
21 members of the Non-Pumper Class must satisfy the twelve standards set forth in paragraph
18.5.13.1. They must prove the reasonableness of their extraction and use of groundwater
"in the context of all other uses of Groundwater in the Basin at the time of the application,
including whether all of the Native Safe Yield is then currently being used reasonably and
beneficially." *Id.* ¶ 18.5.13. They must obtain permission from the Watermaster—
permission that may or may not be granted, even if these conditions are fulfilled. *Id.* ¶¶
9.2.2 & 18.5.13. And, they must pay the Replacement Water Assessment for the privilege
of exercising any of their overlying rights. *Id.* ¶ 9.2.1.

22 This disparate treatment of the overlying rights of the Willis Class members vis-à-vis the
23 other overlying right holders violates the former's correlative rights. And the subordination
24 of the Willis Class members' overlying rights to those of the appropriators violates the
Willis Class members' priority vis-à-vis the appropriative right holders. Both are
inconsistent with the judgment in *Barstow*.

25 Finally, the SPPS imposes financial and regulatory burdens on the Willis Class but not on
26 other overlying producers. These burdens directly conflict and contravene the agreement of the
27 Public Water Suppliers contained in the Willis Judgment. The Public Water Suppliers agreed not
28 to object and permit Willis Class members to share in the correlative pool with other overlying

1 landowners free of replacement assessment. ¶ IV.D.2 of the Willis Judgment. Not only did the
2 Public Water Suppliers agree to respect the correlative water right of the Class but they also agreed
3 not to take any position or enter into any agreement which is inconsistent with the Class' right to
4 share in the NSY free of replacement assessment. (¶ IV.D.2 of the Willis Judgment):
5

6 *In City of Santa Maria v. Adam*, 211 Cal. App. 4th 266, 288 (2012), the Court of Appeal
7 recently summarized the law that governs the rights of the members of the Willis Class in
8 this groundwater adjudication. "The full amount of the overlying right," the Court
9 emphasized, "is that required for the landowners' 'present and prospective' reasonable
10 beneficial use upon the land." *Id.* (quoting *Barstow*, 23 Cal. 4th at 1240) (emphasis added).
11 As with all water rights, "the court not only has the power but the duty to fashion a solution
12 to insure the reasonable and beneficial use of the state's water resources as required by
13 article X, section 2. *The only restriction is that, absent the party's consent, a physical
14 solution may not adversely affect that party's existing water rights.* *Id.* at 288 (emphasis
15 added).

16 As currently drafted, the proposed judgment and physical solution violates these governing
17 standards.

18 **The SPPS is Inconsistent with Water Code Sections 106 and 106.3**

19 Concerning the priority of domestic use, Section 106 of the Water Code declares:

20 *It is hereby declared to be the established policy of this State that the use of water
21 for domestic purposes is the highest use of water and that the next highest use is
22 for irrigation.*

23 With regard to the human use of water, Sections 106.3 (a) and (b) of the Water Code state:

24 (a) *It is hereby declared to be the established policy of the state that every human
25 being has the right to safe, clean, affordable, and accessible water adequate
26 for human consumption, cooking, and sanitary purposes.*

27 (b) *All relevant state agencies, including the department, the state board, and the
28 State Department of Public Health, shall consider this state policy when revising,
adopting, or establishing policies, regulations, and grant criteria when those
policies, regulations, and criteria are pertinent to the uses of water described in
this section.*

In recognition of the priorities of domestic use, the SPPS specifically recognizes the Small
Pumper Class' right to claim priority under Water Code section 106 (section 5.1 of the SPPS).
Indeed, section 3.5.2 of the SPPS expressly places the domestic and household use of the Small
Pumper Class as the first priority in the Basin.

1 In contrast to the Wood Class, and contrary to the dictates of the Water Code, the SPPS
2 subordinates the rights of the Willis Class to pump water for domestic and human uses to below
3 the allocated rights of all other users in the Basin. The treatment of Willis Class' prospective
4 domestic and human use as compared to the treatment of the Wood Class is unjust, prejudicial
5 and inequitable as well as a violation of the Water Code. The Public Water Suppliers are in
6 violation of the Willis Judgment by approving the Wood Class preference over the Willis Class.

7
8 **DEFENDANTS' BREACH IS NOT EXCUSED**

9 The fact that the Willis Class agreed to be bound by a later Physical Solution entered by the
10 Court in no way provides a legally cognizable excuse for the Public Water Suppliers' breach of the
11 Willis Settlement Agreement. Both the Consolidation Order and the Amended Final Judgment
12 entered by this Court mandate that the class action settlement agreements will be *merged* and
13 *incorporated* into any later Physical Solution:
14

15 "... the Court may enter a final judgment approving any settlements, including the *Willis*
16 and *Wood* class settlements, that finally determine all cognizable claims for relief among
17 the settling parties **for purposes of incorporating and merging the settlements into a**
comprehensive single judgment containing such a declaration of water rights and a
physical solution.

18 *Order Transferring and Consolidating Actions for All Purposes* dated February 19, 2010
19 at 4:25 to 5:1 (emphasis supplied) (Exh. D).

20 and

21 "In addition, **without effecting the finality of this Judgment, the Court retains**
22 **jurisdiction over the Parties for purposes of incorporating and merging this**
23 **Judgment into a physical solution** or other Judgment that may ultimately be entered in
24 the Consolidated Actions."

25 *Amended Final Judgment*, ¶ 20 (emphasis supplied).

26 Further, the Public Water Suppliers explicitly agreed to be part of a Physical Solution to the
27 extent it is *consistent* with the terms of the Willis Settlement Agreement:

28 The Stipulating Parties expect and intend that this Stipulation will become part of a
Physical Solution entered by the Court to manage the Basin and that the Court will retain
jurisdiction in the Coordinated Actions. **The Settling Parties agree to be part of a**

1 **Physical Solution to the extent it is consistent with the terms of this Stipulation** and to
2 be subject to Court-administered rules and regulations consistent with California and
3 Federal law and the terms of this Stipulation.

4 *Willis Settlement Agreement*, ¶ V.B. (emphasis supplied).

5 Thus, the Public Water Suppliers had absolutely no legal basis to ignore and then intentionally
6 breach the Willis Settlement Agreement by entering into the SPPS. The terms agreed upon by the
7 Public Water Suppliers, including the Willis Class' right to pump water from the Native Safe Yield,
8 were to be merged and incorporated into the Physical Solution. Instead, the Public Water Suppliers
9 knowingly and intentionally breached the terms of the Willis Settlement Agreement by entering
10 into the SPPS which strips away the rights of the Willis Class to pump groundwater from the Native
11 Safe Yield free of replacement assessment or otherwise.

12 Any argument from the Public Water Suppliers that the Willis Class Members' share of the
13 Native Safe Yield can be zero under the Willis Settlement Agreement is utterly without merit and,
14 indeed, sanctionable. In awarding attorneys' fees to Willis Class Counsel as the "prevailing party"
15 pursuant to C.C.P. Section 1021.5, this Court ruled correctly and obviously that the Willis
16 Settlement Agreement had conferred "substantial benefits" on the Willis Class:
17

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

23 *Order Awarding Attorneys' Fees* at 5:1-5 (Exh. E).

24 The Willis Settlement Agreement, the Willis Judgment, and the Court's Order Awarding Attorneys'
25 Fees would all be rendered absolutely meaningless if the Willis Class' "share" of the Native Safe
26 Yield could be zero under the Physical Solution adopted by the Court. Such an absurd interpretation
27 by the Public Water Suppliers of these legally-enforceable documents makes a mockery of the
28 judicial system and the Willis Class Members' substantive and procedural rights under the laws of
 California and the U.S. Constitution.

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CONCLUSION

The SPPS filed by the Stipulating Parties fails to incorporate the groundwater rights of the Willis Class, violates California and Federal law including the Willis Class' due process rights, and is not fair and equitable to the Willis Class. Therefore, the Willis Class will oppose the SPPS at trial. In addition, the Willis Class will introduce evidence at trial of a "modified" SPPS that utilizes the existing framework of the SPPS, but incorporates the groundwater rights of the Willis Class in a manner consistent with California law, the Willis Judgment, and principles of fairness and equity.

Dated: September 22, 2015

Respectfully submitted,

KRAUSE, KALFAYAN, BENINK &
SLAVENS, LLP



Ralph B. Kalfayan, Esq.
Lynne M. Brennan, Esq.
Class Counsel for the Willis Class

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA }
3 COUNTY OF SAN BERNARDINO }

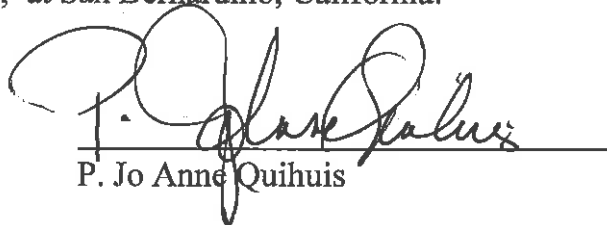
4 I am employed in the County of the San Bernardino, State of California. I am over
5 the age of 18 and not a party to the within action; my business address is 1839 Commercenter
West, San Bernardino, California 92408-3303.

6 On March 15, 2016, I served the foregoing document(s) described as:
7 **DECLARATION OF LELAND McELHANEY IN SUPPORT OF OVERLIERS'**
8 **OPPOSITION TO WILLIS CLASS MOTION FOR COSTS AND ATTORNEY FEES**
in the following manner:

9 ■ **BY ELECTRONIC SERVICE AS FOLLOWS** by posting the document(s)
10 listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater*
Litigation, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-
CV-049053.

11
12 X (STATE) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

13
14 Executed on March 15, 2016, at San Bernardino, California.

15
16 
17 P. Jo Anne Quihuis

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