

1 Class Plaintiff Rebecca Willis respectfully submits this Case Management
2 Statement in connection with the Court's Case Management Conference scheduled for
3 May 5, 2008. Willis addresses below two pivotal present issues with respect to how the
4 Court should proceed: (A) Proposed Trial Phasing and Discovery; and (B) Class
5 Certification and Notice Issues.

6 A. PROPOSED TRIAL PHASING AND DISCOVERY

7 Willis *strongly* endorses the suggestion of Bolthouse Farms, Inc. that the initial
8 phase of the trial determine the Municipal Suppliers' prescription claims, which will
9 necessarily include determining the Basin's yield and other physical characteristics. Willis
10 believes that, while there are some disagreements regarding the Basin's yield and physical
11 characteristics, the disputes in that regard are a matter of relatively modest scope and can
12 and should be decided in the context of determining the Suppliers' prescription claims.
13 Those prescription claims are one of the core issues in this proceeding, and deciding those
14 claims will substantially advance the parties' ability to settle this matter. By contrast,
15 merely addressing the Basin's characteristics is not likely to facilitate a resolution of this
16 matter. Moreover, as Bolthouse points out, the prescription claims are a cognizable legal
17 claim, with established standards, unlike the issues of the Basin's yield and characteristics.

18 Second, whether or not the Court adjudicates the Suppliers' prescription claims
19 within the next phase of trial, the Court should lift the present stay of discovery, at least as
20 to the issues of the Basin's yield and characteristics, and matters relevant to the
21 prescription claims, including issues of self-help. The stay is inhibiting the parties' ability
22 to arrive at a physical solution which by necessity requires information critical to
23 prescription such as production volume and notice evidence. In addition, continued
24 uncontrolled pumping by all parties is having an injurious effect on the Basin. These two
25 factors can be alleviated if the parties can immediately start merit discovery.

26 B. CLASS CERTIFICATION AND RELATED ISSUES

27 Willis shares the Court's desire for a comprehensive adjudication and believes that
28 there are several viable options to achieve that goal. There are three issues in that regard,

1 each of which Willis addresses below.

2 First, the Court has previously ordered the Suppliers to serve all persons who own
3 properties of more than 100 acres (of whom there are approximately 650). The Suppliers
4 have already served most of those persons. The Suppliers should be required to promptly
5 serve the balance of those persons.

6 Second, the Court has previously certified a class of dormant landowners. The
7 present class definition should be slightly revised based on information that the parties
8 have learned following the entry of that Order some eight months ago. Namely, the Class
9 should exclude all persons who own more than 100 acres. This change was reflected in
10 the Second Amended Complaint.

11 That leaves the “small pumpers,” of whom there are approximately 3,000 - 4,000.
12 There are at least three options in that regard. First, the Court could certify a defendant
13 class. In that regard, Willis understands that a small pumper has offered to act as class
14 representative for that group. The Court could appoint one or more of the existing pumper
15 counsel to act as counsel for that class, contingent on the Suppliers paying any
16 incremental costs (such as Notice) and the recognition that issues of self-help will
17 necessarily require some individualized fact-finding. Second, the Suppliers could
18 individually serve those persons. Third, given the fact that a number of pumpers are
19 already vigorously litigating their rights, the Court could proceed without the small pumper
20 group, with a reasonable degree of certainty that their interests will effectively be decided
21 by the resolution of the claims asserted by other pumpers. The practical reality is that the
22 small pumper group can be brought into the litigation at a later stage and their exclusion
23 at this time should not preclude the adjudication from moving forward. In all likelihood,
24 once the Court decides the fundamental legal and factual issues before it, such as
25 prescription, in the context of the existing parties and claims, it is very likely that the
26 remaining claims of the small pumpers can be readily resolved.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

In conclusion, the Willis Class requests that the court lift the stay on merit discovery, include both yield and prescription determinations in the first phase of the trial, and cause the Municipal Suppliers to serve process on the remaining group of small pumpers or certify a defendant Class for the group.

Dated: April 29, 2008

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/ Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.

Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

2 I, Ashley Polyascko, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,
California, 92101. On **April 29, 2008**, I served the within document(s):

5 **PLAINTIFF REBECCA WILLIS' CASE MANAGEMENT STATEMENT**

- 6 by posting the document(s) listed above to the Santa Clara County Superior Court
7 website in regard to the Antelope Valley Groundwater matter.
- 8 by placing the document(s) listed above in a sealed envelope with postage thereon
9 fully prepaid, in the United States mail at San Diego, California addressed as set
10 forth below:
- 11 by causing personal delivery by Cal Express of the document(s) listed above to the
12 person(s) at the address(es) set forth below.
- 13 by personally delivering the document(s) listed above to the person(s) at the
14 address(es) set forth below.
- 15 I caused such envelope to be delivered via overnight delivery addressed as
16 indicated on the attached service list. Such envelope was deposited for delivery
17 by UPS following the firm's ordinary business practices.

18 I am readily familiar with the firm's practice of collection and processing correspondence
19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
20 day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on
21 motion of the party served, service is presumed invalid if postal cancellation date or postage
22 meter date is more than one day after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct.

25 Executed on April 29, 2008, at San Diego, California.

26
27
28

Ashley Polyascko