

1 Ralph B. Kalfayan, SBN133464
David B. Zlotnick, SBN 195607
2 KRAUSE, KALFAYAN, BENINK
& SLAVENS LLP
3 625 Broadway, Suite 635
San Diego, CA 92101
4 Tel: (619) 232-0331
Fax: (619) 232-4019

5 Attorneys for Plaintiff and the Class
6
7
8

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

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

) RELATED CASE TO JUDICIAL
) COUNCIL COORDINATION
) PROCEEDING NO. 4408
)

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

)
) PLAINTIFF REBECCA WILLIS'
) STATUS CONFERENCE STATEMENT
)

15 Plaintiff,
16

17 vs.

) Date: May 22, 2008
) Time: 9:00 a.m.
) Dept: 17C
) Judge: Hon. Jack Komar
Coordination Trial Judge

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;

24 Defendants.
25

26 Pursuant to request of the Court at the May 5, 2008 status conference, the Willis Class
27 submits the following status conference statement outlining its position relative to joinder,
28 discovery, and bifurcation of trial.

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

I.

INTRODUCTION

A critical factor from the Class’ perspective is the speed and efficiency in which the case is ultimately tried before this Court. Injury to the Class increases each day the adjudication is delayed as the basin may potentially suffer from an overdraft and there may not be a legally effective way to enjoin the continued uncontrolled and unrestricted pumping by overlying landowners and purveyors alike. Second, the government entities have shown that they have the financial resources to prolong this litigation to the point where it may become economically unfeasible for any landowner to pursue the case to trial. Delay clearly works in favor of those who pump and it alone may create an ultimate victory for the defendants. The Court must move swiftly to protect the basin and to ensure that the dormant Class’ property interests are preserved for their future use and enjoyment.

To avoid delay, promote settlement, and afford a more logical presentation of the evidence the Willis Class recommends the following approach: (1) the court should proceed without the group of small pumpers unless a complaint is filed forthwith on behalf of that Class; (2) immediately lift the stay on all discovery; (3) ensure the pleadings are at issue as soon as reasonably possible; (4) set the cause for trial after a reasonable discovery period; and then (5) order separate trial of issues so that the presentation may be as follows: (i) characteristics and yield; (ii) pumping and overdraft; (iii) prescription and self help; and finally (iv) a physical solution that allocates water rights and determines damages.

II.

JOINDER OF PARTIES

The class of persons within the boundaries of the adjudication that are not part of this litigation is the group of “small pumpers.” Defendant LA County Water District estimates that this group has approximately 7,500 members. Should interested counsel, Mr. McLachlan, choose to represent this group on a classwide basis and file a complaint, then the matter is solved, and all parties will effectively be before the Court in one coordinated proceeding.

If not, the Willis class strongly urges the court to proceed without this group or

1 alternatively order the defendant purveyors to serve process on each individual member or move
2 to certify a defendant Class. There are several mitigating factors that warrant proceeding without
3 this group. First, parties with similar interests are already aggressively pursuing the litigation of
4 the case. The large pumpers are represented by counsel whose ultimate goals are closely aligned
5 with the group of small pumpers. The product of their effort will serve to benefit the absent
6 group. Second, as time is a critical factor, proceeding without them will help expedite the case
7 and foster a speedier resolution that will ultimately protect the basin.

8 III.

9 SCOPE AND TIMING OF DISCOVERY

10 Once the pleadings are framed, the court should then immediately lift the stay on
11 discovery and permit merits discovery to go forward by all parties on all issues. Although, for
12 trial purposes, the court may prefer to control the order of the evidence and the manner in which
13 it may determine the issues, parsing discovery in phases will **not** benefit any party and will delay
14 the adjudication. By bifurcating the case into a series of separate mini trials and in turn limiting
15 discovery, the Class will be forced to participate in every phase of the case before it is afforded
16 an opportunity to bring a summary judgment motion on notice issues relative to the purveyor's
17 claim of prescription. Furthermore, the delay will most likely be costly and wasteful for the
18 Class. There will be significant time delays and expenses incurred in repeating depositions and
19 other discovery as issues will change over every phase of the trial. This redundancy and delay
20 will cause numerous inefficiencies. Furthermore, the parties will find it impossible to arrive at a
21 negotiated settlement as they will not have the evidence they need to evaluate the strength and
22 weakness of each parties' claims and defenses. The Class needs discovery on yield, pumping,
23 and prescription in order to commence negotiation toward an ultimate resolution. Any stay or
24 limitation on discovery will only ensure a protracted and endless course of litigation that will
25 ultimately be harmful for all concerned.

26 IV.

27 SEPARATION OF ISSUES FOR TRIAL PURPOSES ONLY

28 **YIELD:** The Willis Class proposes that this Court first consider and determine the safe

1 yield and characteristics of the basin. Characteristics of the Basin should include matters such as
2 the existence of separate sub-basins versus management of different sub-areas. Other matters for
3 the court to consider may include the sources, amount, and nature of replenishment of water for
4 the basin. Economic and climate conditions may also impact the basin and should be
5 considered. Determination of safe yield, i.e. the amount of water which can safely be extracted
6 on an annual basis without causing an undesirable result to the basin, should be considered next.
7 It is anticipated that the period of coverage will span decades. Return flows from natural
8 recharge and recharge from foreign water would be included in this determination.

9
10 **PUMPING:** Once safe yield is determined the Court should consider and determine the
11 amount of pumping over the applicable period. The court should determine who pumped water,
12 how much water was pumped, the period of time it was pumped, and the use made of the water.
13 Each party's reasonable and beneficial use will be included in this determination. The amount of
14 an overdraft may then be arrived at once the pumping data is determined.

15
16 **PRESCRIPTION:** After overdraft, the court may then determine prescription and rights
17 to self help. Each element of taking should be determined including whether it was hostile,
18 adverse, actual, open, notorious, continuous and uninterrupted for a period of five years, and
19 under claim of right. Should the Court find prescription, then self help defense analysis should
20 follow.

21
22 **PHYSICAL SOLUTION:** Finally, the court will allocate water rights, protect the basin,
23 and award damages or injunctive remedies as appropriate in this final stage.

24 V.

25 **CONCLUSION**

26 Willis contends that prescription will be difficult if not impossible for the purveyors to
27 prove as against unexercised landowners. Separating this case in multiple phases for discovery
28 purposes will force the Class to incur time delay and unnecessary expenses before they reach the

1 point of bringing a dispositive summary judgment motion. Although bifurcating the issues for
2 trial purposes may make sense, discovery should be allowed on all issues, so as to avoid
3 unnecessary delay. Finally, the parties will find it more difficult to settle should the Court
4 bifurcate discovery as they will not have the benefit of all the evidence to properly evaluate their
5 respective claims and defenses.

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

Dated: May 20, 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
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

PROOF OF SERVICE

I, Ashley Polyascko, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 625 Broadway, Suite 635, San Diego, California, 92101. On **May 20, 2008**, I served the within document(s):

PLAINTIFF REBECCA WILLIS' STATUS CONFERENCE STATEMENT

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

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

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

Executed on May 20, 2008, at San Diego, California.


Ashley Polyascko