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

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

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

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

)
)
) PLAINTIFF REBECCA WILLIS'
) RESPONSE TO EX PARTE
) APPLICATION FOR ORDER
) CONTINUING TRIAL DATE AND TO
) AGWA'S REQUEST FOR ORDER
) PROTECTING PHASE 2 FINDINGS
)

14 Plaintiff,

15 vs.

16
17 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; CITY OF LANCASTER;
CITY OF LOS ANGELES; CITY OF
18 PALMDALE; PALMDALE WATER
DISTRICT; LITTLEROCK CREEK
19 IRRIGATION DISTRICT; PALM RANCH
IRRIGATION DISTRICT; QUARTZ HILL
20 WATER DISTRICT; ANTELOPE VALLEY
WATER CO.; ROSAMOND COMMUNITY
21 SERVICE DISTRICT; MOJAVE PUBLIC
UTILITY DISTRICT; and DOES 1 through
22 1,000;

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)
)
) Date: October 6, 2008
) Time: 9:00 a.m.
) Dep't: 1
) Judge: Hon. Jack Komar
)

23 Defendants.
24

25 Plaintiff Rebecca Willis responds to Fred Kia's Ex Parte Application for an Order
26 Continuing the Trial Date and to AGWA's Request for an Order Protecting Phase 2 Findings.
27 For the reasons stated below, the Willis Class has not sought and does not seek to postpone the
28 Phase 2 trial. But no Order can or should be entered "protecting" the Court's findings from later

1 challenge by parties who were not timely made parties to this proceeding. In particular, as a
2 matter of due process, the Willis Class members cannot be bound by the Phase II findings since
3 they have not yet had notice of these proceedings.

4 RELEVANT PROCEDURAL BACKGROUND

5 For approximately two years, this Court and parties have worked to make this proceeding
6 comprehensive and binding to the extent possible upon all parties in interest. We will not
7 recount the entire lengthy history. For present purposes, the critical facts are that the Court's
8 Amended Order of June 3, 2008 approved the form of Notice to be sent to the Willis Class and
9 required L.A. County Waterworks District No. 40 to "compile a list of Class members and
10 propose a means for disseminating the Class Notice to such persons, which it shall post on the
11 case website." L.A. County District No. 40 has not yet done so, apparently because it is trying
12 to work with counsel for the small pumpers Class to craft a Notice to that Class. The Willis
13 Class notice was finalized by counsel and approved by the court but was delayed by the Public
14 Water Suppliers in order to achieve one mass mailing. In any event, there is no way that the
15 members of the Willis Class will get Notice prior to the currently schedule Phase 2 trial.
16

17 ARGUMENT

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19 **1. As a Matter of Due Process, Mr. Kia and Others Similarly Situated Should Not
20 Be Bound By the Findings Reached at the Phase 2 Trial.**

21 Mr. Kia, as well as other persons who were not timely served by the purveyors and have
22 not had adequate notice of the proposed Phase 2 trial, should not be forced to participate in that
23 trial and, as a matter of due process, cannot be legally bound by the Court's findings. Any other
24 ruling would be unfair and would not hold up on appeal.

25 **2. The Members of the Willis Class Should Not Be Bound by the Findings at the
26 Phase 2 Trial.**

27 Due to the Purveyors' delays in sending Notice, the members of the Willis Class have
28 also not had Notice of this action or the opportunity to opt out. Under these circumstances, the

1 Class Members cannot be properly bound by the trial findings. The law is clear that prior to class
2 notice, class members cannot be bound by a determination on the merits; the defendants only
3 gain the res judicata benefits of class certification after notice has been disseminated. *Civil*
4 *Service Employees Ins. Co. v. Superior Court* (1978) 22 Cal. 3d 362, 372-74.

5 Given the Purveyor's delays in effecting service and Class notice, they must bear the
6 risks of "One Way Estoppel."

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8 **3. At a Minimum, the Collateral Estoppel Consequences of Any Findings Reached**
9 **at the Phase 2 Trial Should Be Decided Based on a Noticed Motion.**

10 This Court should reject AGWA's invitation to order "on the Court's own Motion" that
11 the Phase 2 Trial findings may **not** be challenged "by parties who have not yet appeared." That
12 is simply an invitation to reversal and will not serve to protect those findings. At a bare
13 minimum, the complicated issue of the collateral estoppel consequences of any Phase 2 findings
14 should be decided based on a noticed motion, not on an "off the cuff" basis.

15 **4. As a Practical Matter, There Is No Need to Delay The Next Phase of Trial.**

16 Notwithstanding the above, the Willis Class does not seek to continue the trial date. The
17 simple fact is that the Class members, almost by definition, may not have adequate economic
18 interests in the pending issues to spend the many thousands of dollars that would be required to
19 take a position regarding the next phase of the trial. We understand that virtually everyone who
20 does have such a significant interest has been served and has been given the opportunity to
21 participate. Thus, there is little risk of any meaningful challenge to the Court's findings being
22 asserted at a later date. In that regard, we note that the boundaries of the adjudication area were
23 determined prior to certification of the Class, and, to our knowledge, no one has challenged those
24 findings. Hopefully, preceding through the next phase of trial will advance a final resolution.

25
26 **5. Class Notice Should Be Served Promptly After This Phase of Trial.**

27 From the Class' perspective, much more significant issues will be raised at the
28

1 subsequent phases of trial; and it is imperative that Notice be sent to the Class and that Class
2 Members be given an opportunity to exclude themselves well before any further phases. We
3 trust that the purveyors will work with us to make sure that happens.

4 **CONCLUSION**

5 For the reasons stated above, the Willis Class does not object to the Phase 2 trial going
6 forward, but maintains that any findings rendered should not be binding on the Class Members.
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9 Dated: October 1, 2008

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& SLAVENS LLP

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14 David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class

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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 **October 1, 2008**, I served the within document(s):

PLAINTIFF REBECCA WILLIS' RESPONSE TO EX PARTE APPLICATION FOR ORDER CONTINUING TRIAL DATE AND TO AGWA'S REQUEST FOR ORDER PROTECTING PHASE 2 FINDINGS.

- 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 **October 1, 2008**, at San Diego, California.


Ashley Polyascko