

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

11 ANTELOPE VALLEY) RELATED CASE TO JUDICIAL
12 GROUNDWATER CASES) COUNCIL COORDINATION
13) PROCEEDING NO. 4408
14 This Pleading Relates to Included Action:) The Honorable Jack Komar
REBECCA LEE WILLIS, on behalf of herself) Coordination Trial Judge
and all others similarly situated,)
15) REBECCA WILLIS' AND THE
16 Plaintiff,) CLASS'REPLY MEMORANDUM OF
17 vs.) POINTS AND AUTHORITIES IN
18) SUPPORT OF MOTION FOR
LOS ANGELES COUNTY WATERWORKS) APPOINTMENT OF EXPERT WITNESS
19 DISTRICT NO. 40; CITY OF LANCASTER;)
CITY OF LOS ANGELES; CITY OF)
20 PALMDALE; PALMDALE WATER)
DISTRICT; LITTLEROCK CREEK) DATE: August 17, 2009
IRRIGATION DISTRICT; PALM RANCH) TIME: 9:00 a.m.
21 IRRIGATION DISTRICT; QUARTZ HILL) PLACE: Dept. 1
WATER DISTRICT; ANTELOPE VALLEY)
22 WATER CO.; ROSAMOND COMMUNITY) JUDGE: Hon. Jack Komar
SERVICE DISTRICT; MOJAVE PUBLIC)
23 UTILITY DISTRICT; and DOES 1 through)
1,000;)
24 Defendants.)

25
26 **INTRODUCTION**

27 The Willis Class respectfully submits this Reply Memorandum of Points and Authorities
28 in support of its Motion requesting that the Court appoint its own expert witness as to the issues

1 of safe yield that will be addressed at the next phase of trial. Contrary to the implications made
2 by the Public Water Suppliers in opposing Willis' Motion, Willis does not seek the appointment
3 of an expert for the Willis Class or a technical advisor. Rather, Willis asks that the Court
4 recognize the importance of the yield issue to all parties, including the two Classes, and the
5 reality that the government entities have been able to and have in fact spent far more on expert
6 witnesses than the other parties are able to spend. Accordingly, Willis urges that the Court
7 appoint its own expert to assist it in accurately determining the Basin's yield, the cost of which
8 should be borne by the Public Water Suppliers.

9 ARGUMENT

10 The Suppliers' arguments against the Court's appointment of a neutral expert are without
11 merit. First, although Bolthouse has retained an expert to testify at the yield trial, the landowners
12 simply cannot compete with the team of experts retained by the Suppliers. Contrary to the
13 Suppliers' statement that "[t]he Willis Class and other private landowners have already retained
14 expert witnesses," the fact is that the Willis Class has not and cannot retain an expert for the
15 yield trial. Nor can many of the other private landowners. Thus, the critical issue of the Basin's
16 yield will likely be determined by the testimony of experts retained by the Suppliers.
17

18 The Suppliers' argument that the Court will be well-equipped to make findings on safe
19 yield after hearing the expert testimony is equally without basis. The reality is that there are
20 substantial judgmental elements in the various experts' estimations of the Basin's yield; and
21 those judgments are inevitably shaded by the interests of the parties who retained the expert.
22 Moreover, the Court understandably places considerable credence in the Suppliers' expert, Mr.
23 Scalmanini, who has previously appeared before the Court in this and other matters. The Court
24 and the many parties who cannot afford to retain an expert should have the benefit of a qualified
25 expert's assessment of the biases and assumptions that underlie Mr. Scalmanini's findings, as
26 well as the competing reports of the other experts. That can only facilitate the Court reaching the
27 most accurate and appropriate determination of this critical issue.
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1 This critical issue should not be decided solely based on expert testimony propounded by
2 the Public Water Suppliers and large agricultural interests. Rather, the Court should appoint its
3 own expert to review and, if appropriate, testify with respect to the findings and opinions of the
4 parties' experts. Of course, the Court must ultimately decide this highly technical issue based on
5 the evidence presented to it. But given the critical nature of this issue and the complexity and
6 voluminous nature of the evidence, the Court should have the guidance of a truly independent
7 expert's analysis and testimony.

8 Third, the Suppliers' argument that "[t]here is no authority that requires a civil litigant to
9 pay the adverse party's expert witness fees" is simply a red herring. We do not suggest that the
10 Suppliers pay for an expert for the Willis Class or any adverse party, but simply pay for a neutral
11 Court-appointed expert who is not beholden to any particular party and will be available on equal
12 terms to all. That is fully consistent with Evidence Code section 730 which authorizes the Court
13 to appoint an expert "when the court sees the need for an assessment by a disinterested and
14 impartial expert who is not advocating on behalf of a party to the action."

15 The appointment of such an expert will help ensure that the litigation results in an
16 outcome that is fair and reasonable to the two Classes, even though the expert will not be
17 testifying on behalf of either Class. As noted in our opening papers, the Willis Class has no
18 interest in maximizing or minimizing the Basin's yield, but rather is only interested in the Court
19 reaching as accurate and fair a determination as is feasible. An independent expert helps ensure
20 such a result.

21 The Public Water Suppliers' argument that there are already sufficient experts in this case
22 misses the mark. The Suppliers are large governmental entities who have hired many experts to
23 assist in presenting their case. Given the vital interests at stake and the greatly disparate expert
24 opinions, the parties and the Court need the services of a truly impartial expert to ensure that
25 justice is done.

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CONCLUSION

For the reasons stated above, the Court should exercise its authority under Section 730 of the Evidence Code and appoint an independent expert to analyze the other experts' reports and testify with respect to the Basin's yield.

Dated: August 10, 2009

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/ Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class