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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**

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

16 Plaintiff,

17 vs.

18 LOS ANGELES COUNTY  
19 WATERWORKS DISTRICT NO. 40;  
20 CITY OF LANCASTER; CITY OF  
21 PALMDALE; PALMDALE WATER  
DISTRICT; LITTLEROCK CREEK  
22 IRRIGATION DISTRICT; PALM RANCH  
IRRIGATION DISTRICT; QUARTZ HILL  
23 WATER DISTRICT; ANTELOPE VALLEY  
WATER CO.; ROSAMOND  
24 COMMUNITY SERVICE DISTRICT;  
25 PHELAN PINON HILL COMMUNITY  
26 SERVICE DISTRICT; and DOES 1  
27 through 1,000;

28 Defendants.

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4408

CASE NO. BC 364553

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: February 24, 2010  
Time: 10:00 a.m.  
Dept: 1  
Judge: Hon. Jack Komar  
Coordination Trial Judge

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**I. INTRODUCTION**

Class Plaintiff Rebecca Lee Willis has entered into a Stipulation of Settlement (the "Stipulation") with Defendants 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, Rosamond Community Service District, Phelan Pinon Hills Community Services District, Desert Lake Community Services District, and North Edwards Water District (collectively, the "Settling Defendants"), subject to Court approval and other conditions set forth in the Stipulation (Kalfayan Decl, Exhibit A). The Settling Defendants have mailed the Court approved Notice to the over 65,000 class members and have published a summary notice in three local newspapers.

Plaintiff now requests that the Court approve the proposed settlement as fair and reasonable and enter the [Proposed] Final Judgment Approving Class Action Settlement negotiated by the parties and submitted herewith.

**II. THE LITIGATION AND PROPOSED SETTLEMENT**

**A. History of the Litigation**

The Court is intimately familiar with the history of this litigation. For present purposes, it is sufficient to observe that Plaintiff Willis filed this action in January 2007 to (1) protect her right and the rights of Class members to make reasonable and beneficial future use of the groundwater underlying their properties within the Antelope Valley Basin (the "Basin") and (2) contest claims of prescriptive rights that certain public water supplier parties had asserted in prior cases. By Order dated September 11, 2007 (as

1 amended by Orders dated May 22, 2008 and September 2, 2008), the Court certified  
2 this action to proceed as a class action on behalf of the following Class:

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,  
7 inheritance, or otherwise of such landowners.

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

18 Notice of the Pendency of this action was originally sent to the approximately  
19 65,000 members of the Willis Class in or about January 2009 and the opt-out period (as  
20 extended) expired on August 30, 2009. Certain persons who opted out were  
21 subsequently permitted to rejoin the Class. During that process, numerous Class  
22 members contacted counsel regarding the action, and we were able to gather valuable  
23 insights into the desires and priorities of those persons.

24 Over the last several years, Class counsel and the other parties have engaged in  
25 extensive discovery and law and motion proceedings with respect to many critical  
26 issues, including, but not limited to, (a) the Basin's yield; (b) the factual and legal bases  
27 for the Suppliers' claims to prescriptive rights; (c) the Class' right to an expert witness;  
28 and (d) the ability of anyone to obtain prescriptive rights against "dormant" landowners.  
Those proceedings and the relevant history of this complex matter are described at  
greater length in the accompanying Declaration of Ralph B. Kalfayan, Esquire (the  
"Kalfayan Declaration").

By Order dated October 28, 2009, the Court stated its intent to consolidate the

1 various Actions that were coordinated as part of JCCP No. 4008, including the Willis  
2 action. On February 19, 2010, the Court entered an Order Transferring and  
3 Consolidating [the Coordinated] Actions for All Purposes.

4 In January 2011, the Court commenced a third phase of trial, addressing the  
5 issues of the Basin's yield and whether it is in overdraft. Given the proposed  
6 settlement, Plaintiff Willis and Class Counsel have not participated in that phase of trial.  
7 As is discussed more fully below, both the Stipulation of Settlement and [Proposed]  
8 Final Judgment make clear that the Court retains jurisdiction over the Class for  
9 purposes of future proceedings, specifically including entry of a Physical Solution, if  
10 appropriate, governing the Class Members' rights to use the Basin's groundwater.

11  
12 **B. Background and Terms of the Proposed Settlement**

13 Counsel for the Willis Class engaged in settlement discussions with Defendants'  
14 counsel during mid 2009. On September 2, 2009, counsel participated in a mediation  
15 session before the Honorable Ronald Robie. That mediation resulted in an agreement  
16 in principle among counsel for the Settling Parties to settle the litigation between and  
17 among their respective clients, subject to appropriate approvals. After almost six  
18 months of difficult negotiations, the parties agreed upon the terms of a Stipulation of  
19 Settlement and ancillary documents. Due to the complicated nature of this multi-party  
20 case, it then took another six months to obtain the parties' formal agreements to the  
21 proposed settlement.  
22

23 Plaintiff and the Settling Defendants have arrived at a settlement agreement that  
24 is fair to all concerned – including the non-settling parties. With respect to the latter, the  
25 Stipulation expressly provides that it “shall not . . . be construed to prejudice the rights,  
26 claims, or defenses (whether asserted or potential) of any persons who are not Settling  
27

1 Parties . . . . .” (Kalfayan Decl, Exh. A at ¶¶ II. I.) Furthermore, the Agreement and  
2 Proposed Judgment expressly provide that the Court retains jurisdiction over the  
3 Settling Parties for further proceedings, including the entry of a Physical Solution if  
4 appropriate.

5           The essential terms of the settlement provide that (1) the Class will not contest  
6 the Settling Defendants’ assertions as to the Basin’s yield, and all parties will accept the  
7 Court’s determination in that regard; (2) the Settling Defendants agree not to seek  
8 prescriptive rights as to the Class; (3) the Settling Defendants agree to recognize the  
9 Class’ correlative rights to use the Basin’s groundwater; and (4) the Class agrees that  
10 Settling Defendants are entitled up to 15% of the Basin’s Native Yield as well as the  
11 return flows from water that they have previously imported. Id. at ¶¶ IV A-D. Further,  
12 the Settling Parties have further agreed that they will cooperate in the development and  
13 implementation of a Physical Solution for the Basin consistent with the terms of the  
14 Settlement.  
15

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17 **III. ARGUMENT**

18 **A. Procedure and Standard For Final Approval**

19 A settlement or compromise of a class action requires Court approval after  
20 notice to the class and a fairness hearing. Cal. Rules Ct., Rule 3.769. There is a three-  
21 step process for approval of class action settlements:

- 22 1. Preliminary approval of the proposed settlements and proposed  
23 notice to settlement class members;
- 24 2. Dissemination of the notice of the settlements to class members;
- 25 3. A final approval hearing, at which class members may be heard  
26 regarding the settlement, and at which evidence and argument concerning  
27 the fairness, adequacy and reasonableness of the settlements is  
28 presented.

1  
2 By Order dated November 18, 2010, this Court granted preliminary approval of  
3 the proposed settlement and the form of class notice. Waterworks District 40 thereafter  
4 mailed the Court-approved notice to the approximately 65,000 class members and  
5 published a summary notice in three local newspapers. Plaintiff now moves for final  
6 approval of the settlement. To date, no class members have filed objections to the  
7 settlement and only a handful have voiced any concerns to class counsel which have  
8 since been addressed to the satisfaction of the class members. Kalfayan Decl. at ¶ 4.

10 **B. The Proposed Settlement Is Well Within The Range Of Reasonableness and**  
11 **Merits Final Approval.**

12 There is an overriding public interest in settling and quieting litigation, especially  
13 in complex class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th  
14 Cir. 1992), *cert. denied*, 506 U.S. 953 (1992). Although Court oversight of class  
15 settlements is necessary and appropriate, the Court's role is limited to ensuring that  
16 proper procedures were followed (i.e., notice given in an appropriate manner) and that  
17 the agreement is fair and reasonable. As the Court of Appeal has stated:

18 Due regard should be given to what is otherwise a private consensual  
19 agreement between the parties. The inquiry must be limited to the extent  
20 necessary to reach reasoned judgment that the agreement is not the product  
21 of fraud or overreaching by, or collusion between, the negotiating parties, and  
22 that the settlement, taken as a whole, is fair, reasonable and adequate to all  
23 concerned.

24 *Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4<sup>th</sup> 1794, 1801.

25 In deciding whether to approve a class action settlement, the Court has wide-  
26 ranging discretion to determine whether the proposed settlement is fair under the  
27 circumstances of the case. *Mallick v. Superior Ct.*, 89 Cal. App. 3d 434, 438 (1979). A

1 class settlement is presumed fair where: "(1) the settlement is reached through arm's  
2 length bargaining; (2) investigation and discovery have been sufficient to allow counsel  
3 and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4)  
4 the percentage of objectors is small." *Wershba v. Apple Computer, Inc.*, 91 Cal. App.  
5 4<sup>th</sup> 224, 244-45 (2001). A review of these factors strongly favors preliminary approval of  
6 the proposed Settlement in this action.  
7

8 The settlement proposed here is well within the "range of reasonableness" such  
9 that it merits final approval. Although Plaintiff believes that her claims have merit, she  
10 recognizes, based on extensive discovery and research and the lack of clearly  
11 governing precedent, that there is considerable risk as to her claims. Therefore, it is in  
12 the best interests of Plaintiff and the Class, as well as the public at large, for Plaintiff to  
13 settle with Defendants and receive reasonable benefits rather than litigate over claims  
14 that would be difficult and time consuming to prove.  
15

16 The proposed settlement offers substantial benefits to the Class, including the  
17 dismissal and compromise of Defendants' prescription claims and Defendants'  
18 recognition of the Class members' correlative rights. Moreover, the Class will be  
19 entitled to the benefits of a higher yield number if the Court concludes that Defendants'  
20 estimates are too low. The parties labored hard, with Justice Robie's assistance, to craft  
21 settlement terms that resulted in a win-win for each side.  
22

23 It is elemental that a settlement is a compromise and inevitably will not provide  
24 100 percent of what a party sought. "In the context of a settlement agreement, the test  
25 is not the maximum amount plaintiffs might have obtained at trial on the complaint, but  
26 rather whether the settlement is reasonable under all of the circumstances." *Wershba*,

1 91 Cal.App.4<sup>th</sup> at 250 (citation omitted). Given the many risks that Plaintiff and the  
2 Class face, this settlement represents a reasonable resolution of a complex and  
3 contested case. It is well within the range of reasonableness under all of the relevant  
4 circumstances. Further, this litigation (if not settled) would be very protracted and  
5 expensive. The present settlement serves the public interest, as well as that of the  
6 Class, in reaching a resolution of the issues facing the Basin, so this vital resource can  
7 be appropriately protected. This is clearly a case in which “a bird in hand is worth two in  
8 the bush.”  
9

10 Notably, the pending Settlement did not involve any compromise as to the yield  
11 issues. Rather, all parties agreed to be bound by the Court’s determinations of the  
12 Basin’s yield at the Phase III trial. At its core, the Settlement reflects the Class’  
13 agreement that the Public Water Suppliers are entitled up to 15% of the Basin’s native  
14 yield (as well as return flows from water that they imported) in exchange for which the  
15 Suppliers have released their prescription claims against the Class and agreed to  
16 respect the Class correlative rights. Given the fact that the Suppliers prescription claims  
17 were for far more than 15% of the native yield, and the fact that their recognition of the  
18 Class’ correlative rights provides important protections for the Class, the present  
19 settlement is clearly fair and reasonable. As the Court is well aware, the water rights of  
20 “dormant” landowners were at risk from the public entities. This is a reasonable  
21 resolution of those difficult issues.  
22

23 **1. The Settlement Was the Product of Arms' Length Negotiations.**

24 The settlement before the Court was the product of arms’ length negotiations.  
25 Prior to reaching the present settlement, the parties engaged in extensive settlement  
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1 efforts overseen by an experienced water-law expert, Bill Dendy. They continued to talk  
2 thereafter, but were only able to reach an agreement in principle through the mediation  
3 efforts of the Honorable Ronald Robie in September 2009. Thereafter, the parties  
4 negotiated the language of the Stipulation of Settlement and accompanying documents  
5 over a period of some six months. It cannot be disputed that this agreement was the  
6 product of arms' length negotiations.  
7

## 8 **2. The Settlement Was Only Reached After Extensive Proceedings.**

9 This Settlement came to fruition only after years of discovery and highly  
10 contested law and motion proceedings, which educated both sides to the strengths and  
11 weaknesses of their claims. Plaintiff reviewed and analyzed many thousands of pages  
12 of documents produced by Defendants, and counsel engaged in extensive research and  
13 briefing of the factual and legal issues. Based on this extensive discovery and legal and  
14 factual analysis, Class counsel were well situated to assess the strengths and  
15 weaknesses of the claims and defenses and negotiate an appropriate settlement.  
16

## 17 **3. The Experience and Views of Counsel and the Mediator**

18 Counsel for plaintiffs are experienced in complex class action litigation and have  
19 regularly consulted with water rights experts, as needed. Greg James, Esquire, an  
20 experienced water rights attorney, has actively worked with us in negotiating and  
21 documenting the settlement. Further, the Settlement was recommended after lengthy  
22 mediation by Court of Appeal Justice Ronald Robie. During the mediation, counsel  
23 carefully reviewed and discussed with Justice Robie the strengths and weaknesses of  
24 their respective cases. Justice Robie has many years of experience in water law and  
25 complex cases such as this and recommended the settlement proposed herein. His  
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1 recommendation speaks loudly to the reasonableness of the proposed Settlement.<sup>1</sup>

2 **4. The Class Supports the Settlement.**

3 The objection deadline has not yet passed, so we cannot comment on the  
4 number of objectors at this time. Since the mailing of the notice, however, class  
5 counsel has had numerous phone calls and e-mail inquiries from Class members  
6 regarding the settlement and their response has been overwhelmingly positive.  
7 Kalfayan Decl. at ¶ 4. Accordingly, this factor also militates in favor of approval of the  
8 settlement.  
9

10 **IV. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully requests that the Court  
12 grant final approval to the proposed settlement and enter the proposed Final Judgment  
13 negotiated by the parties to effectuate the settlement.

14 Dated: January 21, 2011

KRAUSE KALFAYAN BENINK  
& SLAVENS LLP

17 */s/Ralph B. Kalfayan*

18 Ralph B. Kalfayan, Esq.  
19 David B. Zlotnick, Esq.  
20 Attorneys for Plaintiff and the Class

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24 <sup>1</sup> It is common in class settlements for the parties to negotiate counsel's fees. That  
25 did not occur here. Rather, the parties have agreed to leave counsel's fees entirely up  
26 to the Court's determination, further showing that the settlement was not in any way  
27 collusive and that counsel's recommendation of the settlement was not influenced by  
28 improper considerations.