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

12 ANTELOPE VALLEY  
13 GROUNDWATER CASES

14 This Pleading Relates to Included Action:  
15 REBECCA LEE WILLIS and DAVID  
16 ESTRADA, on behalf of themselves and  
17 all others similarly situated,

18 *Plaintiffs,*

19 v.

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

*Defendants.*

RELATED CASE TO JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' FURTHER REPLY BRIEF IN  
SUPPORT OF RENEWED MOTION TO ADD  
ARCHDIOCESE AS LEAD PLAINTIFF**

Date: January 22, 2015

Time: 10:00 AM

Place: Santa Clara County Superior Court,  
191 N. 1<sup>st</sup> St., San Jose, CA 95113, Dept. 1

Judge: Hon. Judge Komar

1           On January 8, 2015, the Wood Class filed an Opposition to the Willis Class' Renewed  
2 Motion to Add the Archdiocese of Los Angeles ("Archdiocese") as an additional class  
3 representative for its 65,000 Class Members (the "Opposition"). This Opposition is meritless as  
4 well as procedurally improper. The Opposition is untimely, the Wood Class lacks standing to assert  
5 it, includes improper speculation as to the future use of groundwater by the Willis Class,  
6 misrepresents the composition of the Willis Class, and unduly burdens the workload of the Willis  
7 Class Counsel.  
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9           *First*, the Opposition brief is untimely. The Renewed Motion was fully briefed back on  
10 December 15, 2014, and the matter was set for hearing on December 23, 2014. The Court on its  
11 own motion pushed back the hearing date to January 22, 2015. The new hearing date does not  
12 justify another round of briefing. *Second*, the Wood Class is not an adverse party to the Willis  
13 Class Action lawsuit. There is no pleading by the Wood Class against the Willis Class. Without a  
14 pleading, the Wood Class has no standing to oppose a motion by the Willis Class. *Third*, the Wood  
15 Class erroneously represents the composition of the Willis Class. The Willis Class includes over  
16 18,000 parcels that are over 5 acres and more than 4,000 parcels that are over 20 acres. Those  
17 parcels may or may not have domestic use. Their use is uncertain. *Fourth*, the Wood Class  
18 presumes that the Archdiocese has no interest in domestic use because they own large acreage.  
19 This presumption has no foundation. *Fifth*, there is no mechanism for the Willis Class Counsel to  
20 recover attorneys' fees from any other pumping landowners, including the Wood Class. The  
21 Court's Consolidation Order made clear that no fees may be assessed between parties that are not  
22 involved in the same suit. Thus, Willis Class Counsel's efforts in replying to this Opposition will  
23 not be compensated by the Court from the pumping landowners.  
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26           Substantively, the Opposition has no merit. *First*, as set forth at length in the Moving and  
27 initial Reply papers, leave to add a class representative is liberally granted by California courts and  
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1 the Archdiocese is more than adequate and qualified to serve as a class representative for the Willis  
2 Class. *Second*, there is no conflict between the Archdiocese and other Willis Class Members  
3 because the Class was defined to include all overlying landowners who have never pumped.  
4 Purpose and use of the groundwater was never a discriminating factor for eligibility in the Willis  
5 Class. *Third*, the claims of the class representative need not be identical to the claims of every class  
6 member. The test is whether the claims of the class representative arise from an event or practice  
7 or course of conduct that gave rise to the claims of other class members and whether it is based on  
8 the same legal theory as the other class members. Here, the Archdiocese, Mr. Estrada, and all  
9 Willis Class Members have one goal in common: to enforce the Willis Class Stipulation of  
10 Settlement and resulting Final Amended Judgment against the Public Water Suppliers and to ensure  
11 that the significant benefits gained therein are incorporated into the Physical Solution. If the soon-  
12 to-be-filed Stipulated Proposed Physical Solution (“SPPS”) purports to abrogate the rights of the  
13 Willis Class to the Native Safe Yield free of replacement assessment, then the Archdiocese is best  
14 suited to champion the interest of the entire Willis Class in ensuring that the Court does not approve  
15 the SPPS as submitted to the Court.

18 *Fourth*, the purported domestic use “conflict” example raised by the Wood Class in its  
19 Opposition is frivolous. The Legislature promulgated Water Code section 106 and the parties are  
20 bound by its terms. All parties, including the Archdiocese and each and every Willis Class Member,  
21 are obligated to follow the rule of law and comply with the priority order of beneficial uses. There  
22 is no conflict in complying with the law. *Lastly*, it is in the best interest of the Willis Class to have  
23 the Archdiocese as one of the lead plaintiffs. The Archdiocese is an institutional representative that  
24 likely will outlive any single individual class representative. It will assume the substantial burdens  
25 and responsibilities that most absent class members are not willing to undertake, and it has in-house  
26 legal resources to assist Class Counsel in its endeavor to protect the Class’ right to pump from the  
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1 Native Safe Yield. All Class Members thus benefit from the addition of the Archdiocese as an  
2 additional class representative.

3 Class Counsel and the Court owe a fiduciary duty to the absent class members to ensure  
4 that the substantial benefits gained by the Willis Class in the Stipulation of Settlement and  
5 Judgment are incorporated into the Physical Solution. The Archdiocese is committed to assisting  
6 Class Counsel in ensuring that those benefits are incorporated into the Physical Solution. There is  
7 simply no viable legal basis to deny adding the Archdiocese as a class representative and to do so  
8 would constitute a grave injustice to the Class.  
9

10 In short, the purpose for which a landowner would pump groundwater in the future has  
11 never been part of the class definition for the Willis Class. Landowners within the area of  
12 adjudication were sent notices with a response form that qualified their membership based solely  
13 on whether they pumped in the past or never pumped.<sup>1</sup> The landowners were never told that they  
14 would be excluded from the class if they intended to pump groundwater in the future for  
15 nonresidential purposes. As a result, there are thousands of landowners in the Willis Class who  
16 may in the future pump groundwater for nonresidential purposes. Even further, there are over  
17 18,000 Willis Class Members with parcel sizes of over 5 acres. Those parcels would likely have  
18 mixed uses, residential and nonresidential.  
19

20 Far from being “in conflict” with the absent members of the Willis Class, the Archdiocese  
21 is in fact an essential addition as a class representative to ensure that the thousands of absent class  
22 members who own nonresidential-size parcels and who intend to pump groundwater in the future  
23 for nonresidential purposes are adequately represented in the upcoming physical solution  
24 proceedings and beyond. Moreover, one or more of the eleven parcels owned by the Archdiocese  
25 may pump groundwater in the future for domestic (or residential) uses as well.  
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<sup>1</sup> The class definition also excluded parcels that in fact were receiving water from the Public Water Suppliers.

1           **1. There is No Conflict of Interest Between the Archdiocese and the Absent Class**  
2           **Members to Prevent this Court from Adding the Archdiocese as a Class**  
3           **Representative**

4           Like District 40's Opposition, the Wood Class' Opposition attempts to conjure up conflicts  
5 of interest between the Archdiocese and absent class members where none exist. Those attempts  
6 fail, both legally and factually. The Willis Class has over 65,000 members. Not surprisingly, the  
7 significantly larger number of Willis Class Members also means that the Willis Class is much more  
8 diverse than the Wood Class with respect to both parcel size and intended use for groundwater.  
9 The Willis Class Members' use of groundwater has not yet been determined and likely will include  
10 domestic and non-domestic uses.

11           The parcel size breakdown for Willis Class Members is as follows: under 5 acres, 49,070;  
12 between 5 and 20 acres, 14,157; between 20 and 100 acres, 3,683; and over 100 acres, 638 Class  
13 Members. Like both David Estrada and the Archdiocese, many members of the Willis Class own  
14 more than one parcel of land. Also, the response form to the Willis Class notice did not require  
15 class members to state their intended future use for groundwater. Thus, there is no way to  
16 definitively determine the intended uses for groundwater by Willis Class Members at this point in  
17 time. Significantly, the Court recognized back in 2007, and it is still true today, that the  
18 landowner's future intended use or purpose for the groundwater was not part of the class  
19 definition for the Willis Class. Nonetheless, the Court can reasonably infer that any parcel of  
20 land over 5 acres (and even parcels with fewer than 5 acres, but more than 3 acres perhaps) could  
21 possibly be used by the landowner for nondomestic or nonresidential purposes. At a minimum,  
22 then, more than 18,000 parcels of land owned by Willis Class Members could be used in the  
23 future for nonresidential purposes. Of course, depending upon the zoning regulations in the  
24 particular area of the Antelope Valley, certain parcels of land owned by Willis Class Members  
25 could be used for both residential and nonresidential purposes.  
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1 Like the over 18,000 Willis Class Members who own parcels of land consisting of more  
2 than five acres, the Archdiocese owns various parcels of land consisting of more than five acres  
3 as well. Specifically, the Archdiocese owns eleven pieces of property in the Antelope Valley  
4 Basin that total approximately 250 acres, with seven of those parcels having between 5 and 20  
5 acres. As stated in the Archdiocese' Declaration, "[i]t is the plan of the Archdiocese to develop  
6 those properties within the next two years for various needs of the church including a cemetery."

7  
8 The Wood Class ignores all of these facts and erroneously asserts that the Archdiocese is  
9 somehow "in conflict" with absent class members because it plans to build a cemetery. This  
10 assertion is patently false. The class definition for the Willis Class never made a distinction  
11 between Class Members who intend to pump groundwater in the future for domestic purposes  
12 versus nondomestic purposes. The Wood Class' attempt to create "dissentation" within the Willis  
13 Class based on a distinction that is not a part of the class definition must be rejected by this Court.  
14 *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 474 (1981).  
15

16 The Willis Class has amply demonstrated that no conflict of interest exists and the Wood  
17 Class has shown "no present and substantial conflict between the interests of the absent class  
18 members and the [proposed] named plaintiffs." *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462,  
19 479 (1981) (emphasis supplied). Even if this Court somehow were to recognize some level of  
20 "conflict" between absent class members and the Archdiocese based on the Wood Class'  
21 unsupported allegations, the alleged "conflict" certainly does not support a finding of a  
22 "substantial" conflict as required by the California Supreme Court to reject a proposed class  
23 representative. Therefore, this Court should grant the Willis Class' request to add the  
24 Archdiocese as a class representative.  
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1                   **2. The Wood Class Hypothetical is Irrelevant**

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3                   The Wood Class poses a hypothetical relating to a “Global Settlement”<sup>2</sup> that has no legal  
4 or logical relevance in the case. As established previously, the issue in this adjudication is not the  
5 type of use by Willis Class Members, but the enforcement of the Willis Class Final Amended  
6 Judgment which conveys an overlying right to pump groundwater in the future free of any  
7 replacement assessment to the Willis Class. The Wood Class hypothetical focuses on Water  
8 Code Section 106 and the possibility that the Willis Class may be given a right that they do not  
9 otherwise have or deserve. The Water Code, however, is the law in California and there is no  
10 conflict among the Willis Class Members with respect to the enforcement of its provisions. It is  
11 not a right that the Wood Class can give or take away from the Willis Class. The better  
12 hypothetical is as follows: If hypothetically, the SPPS was to allocate the entire Native Safe  
13 Yield on a permanent basis to all overlying pumping landowners free of any replacement  
14 assessment, to the exclusion of the Willis Class Members, then the SPPS would directly  
15 contravene the Willis Class Stipulation of Settlement and Amended Final Judgment and would  
16 contravene the California Constitution and common law. If this hypothetical proves true, then the  
17 Archdiocese would be in the best position to challenge the agreement, as the rights of all Willis  
18 Class Members would have been extinguished.  
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22                   In addition, the class representative or representatives should have enough at stake to  
23 ensure vigorous prosecution or defense of the action. *See, Stewart v. Winter*, 669 F.2d 328, 334-  
24 335 (5th Cir. 1982); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012).

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28 <sup>2</sup> The SPPS cannot possibly be considered by this Court or the parties as a “Global Settlement” when the 65,000-  
Member Willis Class which owns 60% of the land in the Antelope Valley is not a signatory.

1 The Archdiocese has a sizeable interest in this adjudication to ensure that it will vigorously  
2 prosecute this action on behalf of all the Willis Class Members.

3  
4 Finally, if and when the Court is able to review a truly Global Settlement that incorporates  
5 the rights of the Willis Class Members, the Court has an independent duty to ensure that the class  
6 representatives adequately protected the absent class members' rights in the proposed settlement.  
7 *See, In re Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1121 (2009), *citing Mark v.*  
8 *Spencer*, 166 Cal.App.4th 219, 227 (2008) (the court's responsibility to scrutinize the fairness of  
9 settlements rests, in part, on the fact that absent class members are not direct participants in  
10 settlement negotiations). Therefore, the Court has the ultimate authority to ensure that Class  
11 Counsel and the Class Representatives adequately protected the rights of the absent Willis Class  
12 Members. The Wood Class' scenario of the Archdiocese somehow preventing a fair settlement in  
13 this case has no factual or legal basis and must be rejected by this Court.  
14

### 15 16 **3. The Archdiocese' Claim is Typical of Other Willis Class Members**

17 This Court also must reject the Wood Class' argument that the Archdiocese' claim against  
18 the Public Water Suppliers (now settled) is not "typical" of the Willis Class. In general, the  
19 claims of the purported class representative need not be identical to the claims of other class  
20 members, but the class representative "must be part of the class and possess the same interest and  
21 suffer the same injury as the class members." *General Tel. Co. of Southwest v. Falcon*, 457 U.S.  
22 147, 156 (1982). The test is if the class representative's claim arises from the same event or  
23 practice or course of conduct that gives rise to the claims of other class members and is based on  
24 the same legal theory as their claims. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).  
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1 Furthermore, it is not necessary that all class members suffer the same injury as the class  
2 representatives. *Rosario* at 1018. The same or identical injury is not required. Here, the  
3 Archdiocese indeed has the same or identical injury as all other Class Members. To the extent the  
4 PWS reneges on its contractual obligations and attempts to abrogate the Willis Class Stipulation  
5 of Settlement and related Amended Final Judgment, then all Willis Class Members will be injured  
6 in the same way.  
7

8 The *Johnson* Court provides a very useful summary of California law pertaining to  
9 typicality:

10 Similarly, the purpose of the typicality requirement “ ‘is to assure that the interest of the  
11 named representative aligns with the interests of the class. [Citation.] “ **Typicality refers**  
12 **to the nature of the claim or defense of the class representative, and not to the**  
13 **specific facts from which it arose or the relief sought.’ ” [Citations.] The test of**  
14 **typicality “is whether other members have the same or similar injury, whether the**  
**action is based on conduct which is not unique to the named plaintiffs, and whether**  
**other class members have been injured by the same course of conduct.” ’ ” (*Seastrom***  
***v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502).**

15 *Johnson v. GlaxoSmithKline, Inc.*, 166 Cal. App. 4th 1497, 1508-09 (2008), *as modified on denial*  
16 *of reh'g* (Oct. 14, 2008) (emphasis supplied).

17 This Court established the Willis Class as an ascertainable class with a well-defined  
18 community of interest among class members, i.e. nonpumpers of groundwater in the Antelope  
19 Valley. Typicality refers in this case to the nature of the claim of the Archdiocese, and not to the  
20 specific facts from which the claim arose or the relief sought by the Archdiocese. Under  
21 California law, the Archdiocese passes the test of typicality in this case because “other members  
22 [of the Willis Class] have the same or similar injury,” “the action is based on conduct not unique  
23 to [the Archdiocese],” and “other members [of the Willis Class] have been injured by the same  
24 course of conduct.” *See Johnson* at 1508-09.  
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26 All of the cases cited by the Wood Class regarding typicality are factually distinguishable  
27 because the named plaintiffs in those cases had claims that were not typical of the other class  
28

1 members. That is simply not the case here. The Archdiocese' claim (now settled) against the  
2 Public Water Suppliers is typical of the other Willis Class Members.

3 **4. The Wood Class' Assertions are Baseless**

4 The Wood Class also claims that the Willis Class is seeking to add the Archdiocese for  
5 "reasons unknown." Wood Opp. Brief at 1:7-8. In its original reply, the Willis Class has already  
6 thoroughly articulated the reasons for the appointment of the Archdiocese.  
7

8 The Wood Class' later assertion that the Archdiocese may be attempting to "hijack the  
9 Willis Class" is equally unfounded. Wood Opp. at 4:19-20. Wood Class Counsel has absolutely  
10 no basis to make such a scurrilous accusation. The Archdiocese has submitted sworn testimony  
11 that it "understands the requirements of serving as a class representative and voluntarily  
12 undertake[s] the burdens associated with the role of class representative." *See*, Declaration of the  
13 Archdiocese of Los Angeles in Support of Motion to Substitute Lead Plaintiff dated October 2,  
14 2014, ¶ 3. Wood Class Counsel has no facts to contravene the Archdiocese' sworn testimony or  
15 to support its inflammatory accusation that the Archdiocese may attempt to "hijack the Willis  
16 Class." The requirements of a class representative include adequately representing the absent  
17 class members' rights. That is precisely what the Archdiocese has sworn it will do and, frankly,  
18 what the Wood Class fears it will do.  
19

20 Dated: January 15, 2015

21 Respectfully submitted,

22  
23 

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