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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

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

14 *Plaintiffs,*

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

25 *Defendants.*
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RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' NOTICE AND *EX PARTE*
APPLICATION FOR ORDER MODIFYING
CASE MANAGEMENT ORDER**

Date: January 22, 2015

Time: 11:00 AM

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

Judge: Hon. Judge Komar

28 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

1 **PLEASE TAKE NOTICE** that on January 22, 2015 at 11:00 a.m. or as soon thereafter as
2 the matter may be heard, before the Honorable Judge Komar, Santa Clara County Superior Court,
3 191 N. 1st St., San Jose, CA 95113, Department 1, the undersigned law firm, Class Counsel for
4 the Willis Class, will and hereby does move for an Order Modifying the Case Management Order.

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6 This *Ex Parte* Application is based on this Application including the attached Exhibits, the
7 Declaration of Lynne M. Brennan in Support of the *Ex Parte* Application, and all related
8 pleadings on file with this Court.

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *EX PARTE***
10 **APPLICATION**

11 The Proposed Amended CMO filed by the stipulating parties impermissibly links the
12 approval of the Wood Class Settlement with the Court's approval of the stipulated proposed
13 physical solution ("SPPS"), thereby violating the procedural and substantive rights of the Willis
14 Class. Accordingly, the Willis Class hereby moves *ex parte* for entry of an alternative Modified
15 CMO that allows the Willis Class, a non-signatory to the SPPS, to present proposed physical
16 solutions that would create a truly Global Resolution¹ to the Antelope Valley Groundwater
17 Adjudication. Moreover, the alternative Modified CMO provides the Court ample time to fairly
18 and thoroughly assess the alternative proposed physical solutions submitted by the parties for the
19 Court's review.

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21 The Willis Class need only repeat the valid objections to the prior Wood Settlement
22 lodged by other parties to this long-running adjudication to explain to the Court why the Proposed
23 Amended CMO and the yet-to-be-filed SPPS (which includes a fully intertwined Wood
24 Settlement) cannot be adopted by the Court. As Bolthouse Farms argued in May 23, 2011:

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26 . . . the overlying right is correlative and shared by all Overlying
27 Landowners. It is clear that the Wood Class only includes a portion of

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¹ As stated previously, the not-yet-filed SPPS cannot be considered by the Court or the parties as a "Global Settlement" when 60% of the land (owned by the Willis Class) is not subject to the agreement.

1 Landowners. **It would be improper to approve a Class Settlement which**
2 **settles a correlative right which the parties have no legal right to divide up**
3 **and settle separately.**² Further, failure to include rights of . . . parties . . .
4 creates an indispensable party infirmity in addressing and/or adjudicating
5 overlying rights and prevents complete adjudication for McCarran Act
6 jurisdiction.

7 Bolthouse Farms' Addendum to Objection to Motion for Preliminary Approval of Class
8 Settlement Filed by Richard Wood and District 40 at 2:10-17, attached hereto as Exhibit A
9 (emphasis supplied).

10 Without disclosing the specific terms of the SPPS, the Willis Class must inform the Court that the
11 SPPS and Wood Class Settlement illegally purports to settle the correlative rights of the Willis
12 Class by essentially extinguishing them. This Court correctly reminded all parties at the outset of
13 the January 7, 2015, telephonic hearing that non-stipulating parties cannot be bound by the
14 agreement of settling parties. *See also*, Order Transferring and Consolidating Actions for All
15 Purposes, filed Feb. 24, 2010 at 5:1-3, attached as Exhibit C ("Any . . . settlement can only affect
16 the parties to the settlement and cannot have any affect on the rights and duties of any party who
17 is not a party to any such settlement.").

18 However, because the Proposed Amended CMO filed by the stipulating parties places a
19 "gag order" on the Willis Class (and other non-stipulating parties) by not allowing any objections
20 to the SPPS to be heard until August 3, 2015, the Willis Class would be impermissibly prevented
21 from protecting their correlative rights that are illegally extinguished in the earlier-decided Wood
22 Class Settlement because it is inextricably intertwined with the SPPS. A preliminary approval
23 and resulting Notice of Settlement of the Wood class action simply cannot be decided without
24 also allowing objections to the SPPS from the Willis Class. Otherwise, the Wood Class would be
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27 ² AGWA similarly argued that the "**Court cannot approve an allocation of a specific acre-foot amount to the**
28 **Wood Class without reducing the amount of water available for allocation to other landowners.** Thus, approval
of the [Wood] Agreement harms the rights of the other landowners in the consolidated action." AGWA Objection
and Joinder in Objections to Preliminary Approval of Class Settlement Filed by Richard Wood and District 40 dated
May 11, 2011 at 2:7-10, attached as Exhibit B (emphasis supplied).

1 deciding the correlative rights of a non-party (i.e., the Willis Class) which this Court (as well as
2 Bolthouse Farms and AGWA) has admonished the parties cannot occur in this physical solution
3 proceeding.

4 Unlike the SPPS that will be submitted by the stipulating parties on February 26, 2015,
5 the Willis Class will submit alternative physical solutions (also on February 26) for a truly Global
6 Resolution that incorporates the Willis Stipulation of Settlement and Amended Judgment, as well
7 as the water rights of the stipulating parties. Thus, unlike the SPPS, the Global Resolution takes
8 into account the correlative rights of the 65,000-Member Willis Class as any physical solution
9 properly adopted by this Court must do. As Willis Class Members come "online" and start
10 pumping groundwater, they will access either the permanent allocation set aside for Willis Class
11 Members or will be allotted groundwater by a Watermaster for their reasonable and beneficial use
12 free of any replacement assessment.

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15 The SPPS and intertwined Wood Class Settlement cannot extinguish the Willis Class'
16 correlative rights simply because it is in their signatory clients' interest to do so. Although one
17 can obviously infer the reasons behind the Willis Class' exclusion from the negotiations that led
18 up to the SPPS, counsel for the Antelope Valley Groundwater Agreement Association ("AGWA")
19 bluntly stated his clients' goal of "protecting" themselves from the nonpumpers in the settlement
20 context at a hearing back on August 20, 2007:

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22 I represent pumpers. Our biggest concern is not the water purveyors
23 [PWS], it's the nonpumpers. . . . **our principal concern is to get a settlement
that protects us from the nonpumpers.**

24 *Hearing Transcript* dated 8/20/07 at 30:8-13, attached as Exhibit D (emphasis supplied).

25 When the Court finally has the opportunity to review the SPPS on February 26, 2015, this Court
26 will see how astonishingly successful AGWA and every other signatory party was (including the
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1 Wood Class, the PWS³, and the United States) in "protecting" themselves from the nonpumpers,
2 i.e. the 65,000-Member Willis Class. The Court also will understand how it would have been
3 entirely unreasonable for Class Counsel to become a signatory to the SPPS on behalf of the Willis
4 Class, despite the signatories' repeated (and absurd) assertions that the SPPS is fully "consistent"
5 with the Willis Stipulation of Settlement and Amended Judgment. Nothing could be further from
6 the truth.
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8 It is important for Willis Class Counsel to reiterate to the Court that they tried repeatedly
9 to be part of the settlement negotiations, particularly in 2014 as substantive progress on a
10 settlement agreement accelerated. Class Counsel will not recount the details of their attempts to
11 be included in settlement negotiations and how they were rejected at every turn, as those details
12 are already in the Court's record. However, Willis Class Counsel believes it is important to
13 remind the Court that, prior to the SPPS, Wood Class Counsel experienced the same rejection and
14 bad faith refusal to negotiate by the PWS in the context of settlement negotiations:
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16 **The public water suppliers refuse to negotiate in good faith, or even**
17 **respond to settlement communications and requests for information.** They
18 have had many months to resolve these issues and have chosen not to do
19 so. They have initiated this basin-wide adjudication, and have doggedly
20 pursued prescriptive rights claims against the Class despite this Court's
21 numerous inquiries of the utility of such claims.

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25 Small Pumper Class' Case Management Conference Statement dated November 10, 2011 at 4:1-5,
26 attached at Exhibit F (emphasis supplied).

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28 ³ If the SPPS is not revised prior to filing, then the Willis Class Counsel will take all necessary steps to enforce the terms of the Willis Stipulation of Settlement against the Public Water Suppliers in addition to pursuing all available judicial remedies for their breach of the Willis Stipulation of Settlement. Willis Class Counsel already placed the PWS on notice that they would be in breach if they filed the SPPS as is. That Notice informed counsel for the PWS that they were duty-bound to disclose to their respective Boards of Directors that the Willis Class considered the SPPS to be a material breach of the PWS' obligations under the Willis Stipulation of Settlement and that the Willis Class would pursue all available judicial remedies for that breach. See (redacted) Letter from Ralph B. Kalfayan to Counsel for PWS dated December 3, 2014, attached as Exhibit E. Willis Class Counsel does not know whether the PWS ever informed their respective Boards of Directors as required by law.

1 Ironically, the signatories to the SPPS' current attempt to determine the rights of the Willis Class
2 in their absence is precisely what Wood Class Counsel complained the PWS and large
3 landowners were attempting to do to them back in 2011:

4 The public water suppliers and certain of the larger landowners have given
5 the Court rather favorable impressions of the prospects for a global
6 resolution *vis a vis* the ongoing settlement talks. Plaintiff Richard Wood
7 and his counsel do not agree with this assessment.

8 **The public water suppliers and the "big five" landowners have agreed
amongst themselves to allocate to the other all of the water they want,
leaving very little of the safe yield for the smaller parties.**

9 Small Pumper Class' Case Management Conference Statement dated October 5, 2011 at 2:1-7,
10 attached as Exhibit G (emphasis supplied).

11 The only difference now is that the Wood Class has joined forces with the PWS and the large
12 landowners and "agreed amongst themselves to allocate to the other all of the water they want,"
13 leaving nothing of the safe yield for the Willis Class. Fortunately for the Willis Class, the Court
14 owes a fiduciary duty to the absent class members to ensure that their "significant benefits"
15 gained in the Willis Stipulation of Settlement are not extinguished by a settlement agreement and
16 proposed physical solution to which they are not a signatory.

17 Indeed, the Public Water Suppliers reminded this Court in 2011 of its directive to adopt a
18 physical solution that incorporates the priority rights of all stakeholders in the Basin:

19 Thus, although it is clear that a trial court may impose a physical
20 solution to achieve a practical allocation of water to competing interests,
21 **the solution's general purpose cannot simply ignore the priority rights of**
22 **the parties asserting them** [citation omitted]. In ordering a physical
23 solution, therefore, a court may neither change priorities among the water
24 rights holders nor eliminate vested rights in applying the solution without
25 first considering them in relation to the reasonable use doctrine. [citations
26 omitted]. *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224,
1250 (2000).

27 Public Water Suppliers' Case Management Statement dated October 11, 2011 at 1:16-22, attached
28 as Exhibit H (emphasis supplied).

1 The PWS went on to correctly inform this Court that "it is critical to comply with the holding in
2 *Mojave* and determine the water rights and consider them in implementing a physical solution."
3 *Id.* at 2:6-8.

4 As this Court and the PWS are well aware, the water rights of the Willis Class have been
5 determined in the Willis Stipulation of Settlement and Amended Judgment. The only remaining
6 task is to incorporate those rights and the rights of other stakeholders into a Physical Solution.
7 The alternative proposed Physical Solutions to be submitted by the Willis Class on February 26,
8 2015, will be the only proposed physical solutions that incorporate the rights of all of the
9 stakeholders in the Basin and can be considered a Global Resolution by the Court. Of course, the
10 Court has the duty to implement a physical solution that incorporates the water rights of the
11 Willis Class as well as the other stakeholders in the Basin. In so doing, the Willis Class agrees
12 with the United States that the scope and complexity of water rights claims are unparalleled in our
13 judicial system (citing *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District*,
14 26 Cal.3d 183, 194 (1980): "The scope and technical complexity of issues concerning water
15 resource management are unequalled by virtually any other type of activity presented to the
16 courts."). The scope and complexity of this adjudication is exactly why the Willis Class now
17 moves this Court to adopt their Modified CMO rather than the Proposed Amended CMO
18 presented by the stipulating parties.

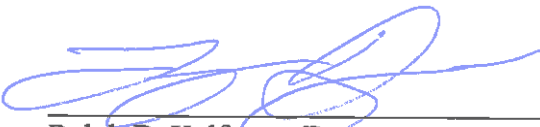
19 To reach a true Global Resolution in the form of a Physical Solution that incorporates all
20 of the stakeholders' rights, the Court, the Willis Class, and the other parties will need additional
21 time. It is just that simple. Otherwise, the due process and substantive rights of the Willis Class
22 will have been trampled upon and the stipulating parties will have succeeded in "protecting
23 themselves from the nonpumpers" in a most unseemly, Machiavellian way. Willis Class Counsel
24 and this Court cannot allow this to happen. The Modified CMO submitted by the Willis Class
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will enable all stakeholders to have their day in Court and, therefore, Willis Class Counsel respectfully urges the Court to adopt that Modified CMO.

Dated: January 20, 2015

Respectfully submitted,



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KRAUSE, KALFAYAN, BENINK &
SLAVENS, LLP