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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
16 v.

17 LOS ANGELES COUNTY
18 WATERWORKS DISTRICT NO. 40;
CITY OF LANCASTER; CITY OF
19 PALMDALE; PALMDALE WATER
DISTRICT; LITTLEROCK CREEK
20 IRRIGATION DISTRICT; PALM
RANCH IRRIGATION DISTRICT;
21 QUARTZ HILL WATER DISTRICT;
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' OBJECTIONS TO
PROPOSED AMENDED CASE
MANAGEMENT ORDER AND RELATED EX
PARTE APPLICATION**

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

1 The Willis class objects to the Proposed Amended Case Management Order filed *ex parte*
2 on January 15, 2015 by counsel for the Wood Class (hereinafter “Proposed Amended CMO”).

3 The Proposed Amended CMO imposes unrealistic obligations on Willis Class Counsel
4 and the CMO’s schedule is patently unfair to the Willis Class. The soon-to-be filed Stipulation
5 for Entry of Judgment and Proposed Physical Solution (the “SPPS”) seeks to unlawfully bind the
6 Willis Class to its terms, permanently allocates the Native Safe Yield to pumping landowners,
7 contradicts the Willis Class Stipulation of Settlement and Amended Final Judgment, and
8 extinguishes or diminishes the water rights of the Willis Class. Moreover, Class Counsel is
9 unable to effectively oppose the SPPS which specifically binds the Willis Class without (1)
10 experts; (2) a mechanism for payment of attorneys’ fees and costs; (3) a pleading against the
11 Class; and (4) notice to the Willis Class notifying them that the SPPS diminishes or eliminates the
12 Class’ water rights. Further, substantive and procedural due process will be denied the Willis
13 Class if the Court imposes the Proposed Amended CMO on the Willis Class. Below are
14 references to the Proposed Amended CMO and related objections.
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17 *Paragraph 1: The deadline for filing Stipulation(s) for Entry of Judgment by the*
18 *Stipulating Parties shall be February 26, 2015. Upon the filing of the Stipulations, the following*
19 *procedures are established for the approval of the Small Pumper Class Settlement and the*
20 *Proposed Judgment and Physical Solution.*

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22 **Objections:** It is not clear how many stipulations will be filed and by whom. It is also
23 not clear when and if the Wood Class will be filing a motion for preliminary approval of
24 settlement by February 26, 2015, the proposed date in the Proposed Amended CMO. More
25 importantly, the Wood Class settlement and the proposed physical solution are essentially the
26 same agreements. They are intertwined and joined in the same agreement. Thus, a motion to
27 approve the Wood Class settlement is effectively a motion for the preliminary approval of the
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1 proposed physical solution which prejudices the Willis Class. This single document called the
2 SPPS, and the potential for its approval, raises many substantive and procedural obstacles for the
3 Willis Class that are referenced in this filing (as well as the Willis Class' *Ex Parte* Application
4 filed concurrently herewith). Should the Court approve the Wood Class settlement, it will in
5 effect have preliminarily approved the proposed physical solution without the benefit of full
6 opposition from the Willis Class. This potential outcome is unfair and prejudicial to the Willis
7 Class. Opposition to the Wood Class settlement and the proposed physical solution on the merits
8 will require a significant record and will include many complex and as yet undefined issues.

10 The SPPS is *inconsistent* with the Willis Class Stipulation of Settlement and Amended
11 Final Judgment. Further, because the Proposed Amended CMO requires Willis Class Counsel to
12 oppose a (1) prove-up by the Stipulating Parties of their reasonable and beneficial uses, (2) a
13 prove-up of the physical solution, and (3) proof of Claim by the Willis Class to produce
14 groundwater, the Willis Class will likely require experts in the following categories before it can
15 effectively oppose the SPPS or a Wood Class Motion for Preliminary Approval: (1) an expert to
16 determine current and prospective reasonable and beneficial uses of all pumping landowners; (2)
17 an expert to oppose the Wood Class expert regarding the Wood Class' reasonable and beneficial
18 uses; (3) an expert to quantify the rights of the Willis Class for their future reasonable and
19 beneficial uses of the Basin's groundwater; (4) an expert who can opine on the diminution in
20 value of land owned by Willis Class Members given the terms outlined in the SPPS; and (5) any
21 other expert necessary to rebut expert testimony that may be offered by the stipulating parties.
22 Absent court appointment of these experts, the Willis Class is unable to effectively oppose the
23 SPPS.

26 Furthermore, because the SPPS is inconsistent with the Willis Class Stipulation of
27 Settlement and Amended Final Judgment and imposes obligations on Willis Class Counsel
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1 beyond mere enforcement of the Willis Stipulation of Settlement and Amended Final Judgment,
2 Class Counsel may have no mechanism to recover attorneys' fees from any of the overlying
3 landowners (see Order of Consolidation Order dated February 19, 2010), nor from any of the
4 Public Water Suppliers absent a written Court Order (See Willis Class Stipulation of Settlement
5 paragraph VIII. D. dated July 13, 2010). Class Counsel's inability to recover attorneys' fees and
6 costs jeopardizes Class Counsel's ability to represent the Willis Class in opposing the inconsistent
7 SPPS.
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9 In addition, several procedural issues impair Class Counsel's ability to oppose the SPPS.
10 Namely, no pumping landowner has sued the Willis Class and the Class Members have not
11 received notice that their rights will be diminished or eliminated if the SPPS is approved in its
12 present form. Class Counsel cannot be tasked with defending the interests of the Willis Class
13 against claims of other overlying landowners that have never been asserted in prior pleadings. To
14 do so is jurisdictionally improper. The Court also will recall that the Willis Class was told in the
15 notice of settlement that they have correlative rights to share in 85% of the Native Safe Yield. If
16 the SPPS contradicts those terms and/or terms in the Willis Class Stipulation of Settlement, then
17 the SPPS cannot be adopted without first incorporating the rights of the Willis Class.
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19 Moreover, in contravention of the law, the Proposed Amended CMO leaves no room for
20 the Court to determine its own physical solution that may be reasonable for all parties. Since the
21 adoption of the 1928 constitutional amendment, it is not only within the power, but it is also the
22 duty of the trial court to admit evidence relating to possible physical solutions, and if none is
23 satisfactory to it to suggest on its own motion such physical solution. *City of Lodi v East Bay*
24 *Municipal Utility District*, 7 Cal.2d 316, 341 (1936). Here, the parties present the SPPS which
25 binds Willis in a "take-it-or-leave-it" basis. This approach contravenes the law. The Willis Class
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1 will have no choice but to propose alternative consistent physical solutions that comply with the
2 law and equity. These consistent physical solutions may require expert opinions.

3 Given these objections, the Willis Class will file their own alternative proposed physical
4 solutions on February 26, 2015 that will incorporate all of the water rights of the stakeholders in
5 the Basin as required by California law.

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7 *Paragraph 2: The Small Pumper Class Motion for Preliminary Approval of the proposed*
8 *Small Pumper Class settlement shall be scheduled for hearing on March 19, 2015 at 9:00 a.m.*
9 *The hearing will do the following:*

- 10 a. *Preliminary presentation of Settlement, including Physical Solution, to the Court;*
- 11 b. *....with notice of same to be sent out in the Small Pumper Class notice of settlement;*
- 12 c. *No objections to the Stipulated Judgment and Physical Solution will be heard on*
13 *March 19, 2015, and instead will occur on August 3, 2015.*

14 **Objections:** The Proposed Amended CMO permits the stipulating parties to present the
15 SPPS, but precludes Class Counsel from addressing its terms. This provision is emblematic of the
16 unfairness of the entire Proposed Amended CMO and is completely unacceptable.

17 *Paragraph 3: Subject to the prior Orders of the Court, written statement of objections to*
18 *the proposed Stipulated Judgment and Physical Solution, and any assertion of claims or rights to*
19 *produce groundwater from the Basin by a Non-Stipulating party, shall be due no later than April*
20 *1, 2015.*

21 **Objections:** There are many issues that must be resolved before the Willis Class can
22 oppose the SPPS. Importantly, the Willis Class counsel will need experts and a written attorneys'
23 fee order before it can oppose the SPPS. The Willis Class does not assert any new claims with
24 respect to the right to produce groundwater, but simply insists on its rights under the Willis
25 Settlement and Judgment. All of the Willis Class claims have been resolved by that Final
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1 Judgment; however, the proposed SPPS diminishes or extinguishes the water rights of the Willis
2 Class.

3 *Paragraph 4: Disclosure of witnesses and exhibits regarding any objections to the*
4 *Proposed Stipulated Judgment and Physical Solution, assertion of claims or rights to produce*
5 *groundwater from the Basin by Non-Stipulating Parties, the Public Water Suppliers claim of*
6 *prescription, and the prove-up by Stipulating Parties for the Stipulated Judgment and Physical*
7 *Solution shall be due no later than April 27, 2015.*

9 **Objections:** The Willis Class has not been sued by and is not a party to any claims by the
10 pumping landowners. The Willis Class Counsel has not performed any discovery in connection
11 with any claims that may be presented by any pumping landowner or the Wood Class. The Willis
12 Class is not a defendant class and all Willis Class claims have been resolved via an Amended
13 Final Judgment. The proposed schedule provides insufficient time to the Willis Class to prepare
14 and submit its objections to the SPPS.

16 *Paragraph 5: Discovery regarding objections to the proposed Stipulated Judgment and*
17 *Physical Solution, claim of prescription, and any assertion of claims or rights of by Non-*
18 *Stipulating Parties shall be completed by July 17, 2015.*

19 **Objections:** The Willis Class is not a party to any claims by the pumping landowners.
20 The Court cannot expect Class Counsel to perform discovery against all pumping landowners
21 within 75 days and without experts, without the ability to recover attorneys' fees or expert costs
22 from the parties, and without due process.

24 *Paragraph 6: Trials or hearings on final approval of the Small Pumper Class Settlement*
25 *and on prove-up of the Stipulated Judgment and Physical Solution shall commence on August 3,*
26 *2015, and continuing through August 7, 2015, and if necessary, August 17 through August 21,*
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1 2015. Subject to further orders and scheduling of the Court, such trial or hearings shall include
2 the taking of evidence regarding the following subjects:

- 3 a. Prescription by the Public Water Suppliers;
4 b. Prove-up by Stipulating Parties;
5 c. Proof of Claim to produce groundwater by Non-Stipulating Parties;
6 d. Prove-up of defaults;
7 e. Prove-up of Physical Solution;
8 f. Fairness and final approval of the Small Pumper Class Settlement.

9 **Objections:** The Willis Class has settled its claims against the Public Water Suppliers.
10 There are no pending claims against the Willis Class. As to the prove-ups by the Stipulating
11 Parties, no landowner has filed a claim against the Willis Class and the Willis Class is not a party
12 to any claims by landowners. If the Stipulating Parties present evidence on reasonable and
13 beneficial uses, the Willis Class is unable to oppose this evidence without experts, fees, and due
14 process under this constrained time table. As to the Prove-up of a Physical Solution, if the
15 stipulating parties present expert evidence, the Willis Class is unable to oppose such testimony
16 without due process, experts, and ability to recover reasonable attorneys' fees and costs.

17 In brief, the Stipulating Parties are attempting to use the Proposed Amended CMO as an
18 "end run" to diminish or extinguish the water rights of the Willis Class. The Wood Class and
19 other parties cannot be allowed to circumvent fundamental principles of due process in this
20 fashion.

21 Dated: January 20, 2015

KRAUSE KALFAYAN BENINK & SLAVENS, LLP

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25 By: /s/ Ralph B. Kalfayan

26 _____
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28 Lynne M. Brennan, Esq.
Class Counsel for the Willis Class