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

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

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

18 *Plaintiffs,*

19 v.

20 LOS ANGELES COUNTY WATERWORKS
21 DISTRICT NO. 40; CITY OF LANCASTER;
22 CITY OF PALMDALE; PALMDALE
23 WATER DISTRICT; LITTLEROCK CREEK
24 IRRIGATION DISTRICT; PALM RANCH
25 IRRIGATION DISTRICT; QUARTZ HILL
26 WATER DISTRICT; ANTELOPE VALLEY
27 WATER CO.; ROSAMOND COMMUNITY
28 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' NOTICE AND MOTION
FOR COURT-APPOINTED EXPERT OR,
IN THE ALTERNATIVE, MOTION TO
DECERTIFY THE WILLIS CLASS**

Date: March 26, 2015

Time: 10:00 AM

Place: Superior Court of California,
County of Los Angeles,
111 North Hill Street, Room 222
Los Angeles, CA 90012

Judge: Hon. Judge Komar

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

2 **PLEASE TAKE NOTICE** that on March 26, 2015 at 10:00 am or as soon thereafter as the
3 matter may be heard, before the Honorable Judge Komar, Superior Court of California, County of
4 Los Angeles, 111 North Hill Street, Los Angeles, CA 90012, Room 222 on the 2nd Floor of the
5 Stanley Mosk Courthouse, the undersigned law firm, Class Counsel for the Willis Class, will and
6 hereby does move for an Order for Court-Appointed Expert. The Court appointed expert is needed
7 to determine the reasonable and beneficial uses of groundwater of each of the parties to the
8 adjudication, evaluate the future reasonable and beneficial uses of the Willis Class if the Court
9 approves a permanent allocation of the Native Safe Yield, and assist the parties in preparing a
10 physical solution consistent with the Willis Class Judgment. In the Alternative, the Court should
11 decertify the Willis Class.

12 This Motion is based on this Notice, the attached Memorandum of Points and Authorities
13 with exhibits, the Declaration of Ralph B. Kalfayan, and such other and further evidence as may be
14 presented at the hearing. More specifically, the Motion for a Court-Appointed Expert is based on
15 the Court's inherent authority to appoint experts at any time in any action pursuant to Evidence
16 Code Section 730. Alternatively, if an expert witness is not appointed, then the Willis Class'
17 Motion to Decertify must be granted as the rights of the Class will not be effectively represented.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **COURT-APPOINTED EXPERT FOR WILLIS CLASS FOR PHYSICAL SOLUTION**
3 **PROCEEDINGS**

4 **I. SUMMARY OF ARGUMENT**

5 A number of parties have entered into a Stipulated Proposed Physical Solution (the "SPPS")
6 for the Basin. This proposed physical solution severely limits (subordinates, modifies, or
7 extinguishes) the groundwater rights of the Willis Class in contravention of established California
8 law. Moreover, the SPPS guarantees a quantified permanent water right allocation to all the parties
9 except the Willis Class in contravention of the Willis Class Stipulation of Settlement and Final
10 Amended Judgment (the "SOS"). The SOS clearly provides that the Willis Class can be bound
11 only by a physical solution that is consistent with its terms. Because the SPPS is inconsistent with
12 the SOS and the Willis Class must oppose its approval by this Court, the Court must appoint an
13 expert to evaluate the reasonable and beneficial uses of the all the parties claiming water rights in
14 this adjudication.

15 In addition, on January 22, 2015, the Court set a trial/hearing date for a physical solution
16 proceeding ("CMO"). The hearing/trial is set for August 3, 2015. This phase includes the taking
17 of evidence regarding the following subjects:

- 18 b. Prove-up by Stipulating Parties;
- 19 c. Proof of Claim to produce groundwater by Non-Stipulating Parties;
- 20 e. Prove-up of Physical Solution, and
- 21 f. Fairness and final approval of the Small Pumper Class Settlement.

22 The Willis Class Counsel is not able to oppose the SPPS and present alternative proposed
23 physical solutions without the aid of an expert. Absent the Court's appointment of an expert for
24 this phase of the proceedings, Class Counsel will not be able to effectively represent the Willis
25 Class in the next phase of trial/hearing.

26 A Court-appointed expert is necessary to objectively (a) evaluate the reasonable and
27 beneficial uses of the Basin's groundwater by each of the Stipulating Parties, present and future;
28 (b) determine the extent of future unexercised water rights of the Willis Class on a permanent vested

1 basis should the Court preliminarily approve the Wood Class settlement and permanently allocate
2 the groundwater in the Basin; (c) evaluate the cost and reasonableness of requirements imposed by
3 the Public Water Suppliers in the SPPS for new pumping; (d) evaluate the availability of water
4 supplies from alternative sources other than the Native Safe Yield to accommodate new pumping
5 per the SPPS; (e) opine on the diminution of the value of real property owned by the Willis Class
6 if the Court preliminarily approves the Wood Class settlement; (f) opine on the reasonableness of
7 allocating the unused Federal government's water allocation to the Public Water Suppliers instead
8 of allocating the water rights to the overlying landowners; (g) consider the domestic use priority of
9 the parties under Water Code Section 106; (h) evaluate export and in lieu water rights of the parties
10 per the SPPS; (i) evaluate the metering and reporting requirements for all parties in the Basin; (j)
11 consider the reasonableness and impact of the drought provisions in the SPPS; (k) evaluate the
12 reasonableness in imposing a replacement water assessment on Willis Class members only; and (l)
13 evaluate the cost of the Physical Solution and fairly distribute its burden on all the parties.
14
15

16 Every significant party to this 16-year litigation has either retained experts or, in the case of
17 the Wood Class, had one appointed by the Court. The Willis Class stands alone, without an expert,
18 heading into the critically important, technology-intensive Physical Solution proceedings. A Court-
19 appointed expert must now be appointed. As this Court has acknowledged again and again, the
20 groundwater rights of the Willis Class must be protected in a Physical Solution. How that will be
21 accomplished has become more difficult by virtue of the SPPS and the Stipulating Parties. To be
22 blunt, the Stipulating Parties are asking the Court to extinguish the water rights of the Willis Class
23 without a pleading, without notice to the Class, without an obligation to pay Class Counsel's
24 attorneys' fees, and without an expert. If the Court preliminarily approves the Wood Class
25 settlement and permanently allocates groundwater rights in the Basin to the parties, then a Court-
26 appointed expert will be necessary for the purposes outlined in this brief. Class Counsel does not
27 have the technical expertise to advise the Court on these matters. If the Willis Class does not have
28

1 access to a Court-appointed expert to challenge the Stipulating Parties' agreed-upon permanent
2 allocation, then the Willis Class must be decertified.

3 4 II. ARGUMENT

5 **A. The Court Has Inherent Authority to Appoint an Expert for the Willis Class** 6 **Pursuant to Evidence Code Section 730**

7 Willis Class Counsel has handled this matter with the expectation of being compensated
8 under C.C.P. Section 1021.5. But as this Court is well aware, an award under Section 1021.5 cannot
9 include expert witness fees. In 2008, the California Supreme Court issued its opinion in *Olson v.*
10 *Automobile Club of Southern California*, holding that expert witness fees may not be awarded under
11 Section 1021.5, unless expressly ordered by the court. 42 Cal.4th 1142, 1150-51 (2008)(citing
12 C.C.P. § 1033.5(b)(1).) This opinion expressly overruled *Beasley v. Wells Fargo Bank*, 235
13 Cal.App.3d 1407 (1991), which had previously held that expert witness fees were recoverable under
14 Section 1021.5. (*Olson* at 1151.) The result of the *Olson* case is that, assuming Class Counsel were
15 willing and able to advance substantial funds to cover expert witness fees, they could not recover
16 those fees at the end of the case. After nine years and a huge investment of time and money
17 (including hundreds of thousands of dollars of Court-approved attorneys' fees never recovered from
18 a number of the PWS), Class Counsel simply cannot advance the substantial non-recoverable funds
19 required for an expert witness. Nor should they be forced to. As this Court recognized in
20 appointing an expert for the Wood Class, "I would not want to see [Wood Class Counsel] commit
21 malpractice by not being able to be adequately prepared to represent your clients' interest."
22 *Hearing Transcript* dated April 24, 2009 at 27:18-21, attached as Exhibit A. The Court's statement
23 applies with equal, if not greater force, to Willis Class Counsel.

24 As it did for the Wood Class, this Court has the inherent authority to appoint an expert
25 pursuant to Evidence Code Section 730 for the Willis Class. Evidence Code Section 730 provides
26 for the appointment of experts in any case and at any time and for any party to the action:

27 When it appears to the court, at any time before or during the trial of an
28 action, that expert evidence is or may be required by the court or by any

1 party to the action, the court on its own motion or on motion of any party
2 may appoint one or more experts to investigate, to render a report as may
3 be ordered by the court, and to testify as an expert at the trial of the action
4 relative to the fact or matter as to which the expert evidence is or may be
5 required. The court may fix the compensation for these services, if any,
6 rendered by any person appointed under this section, in addition to any
7 service as a witness, at the amount as seems reasonable to the court.

8 Cal. Evid. Code § 730 (emphasis supplied).

9 This statute confers inherent power on the trial judge to appoint experts in appropriate
10 circumstances. It has been applied in civil cases. *See, e.g. California v. Superior Court (Woolsey)*,
11 66 Cal.App.4th 421, 440 (1998) (in action for refund of excessive vehicle license fees, trial judge
12 properly sought expert advice on questions of class action management, including efficient means
13 of notifying class members). Of course, the Court already has exercised its inherent power under
14 Section 730 to appoint an expert for the Wood Class. Just like the Wood Class action, the Willis
15 Class action presents appropriate circumstances for the appointment of an expert. Namely, the
16 Class of 65,000 landowners will not have an expert it needs to effectively participate in the
17 critically-important Physical Solution proceedings unless the Court exercises its inherent power
18 pursuant to Evidence Code Section 730 to appoint an expert.

19 **B. A Court-Appointed Expert is Necessary to Analyze and Address Factual Issues**
20 **Unique to the Willis Class**

21 No expert witness has provided this Court with expert testimony relating to the necessary
22 allocation of water for the Willis Class, either on a permanent¹ or annual basis. Likewise, there is
23 no expert witness who will keep the Court fully apprised of opposing facts and information relating
24 to the “Prove Ups” of the Stipulating Parties’ alleged reasonable and beneficial uses for the
25 groundwater allocated to them on a permanent, guaranteed basis in the SPPS. This Court has
26 recognized the vital importance of expert evidence in reaching a comprehensive groundwater
27 adjudication for the Antelope Valley:

28 ¹ The Willis Class hereby incorporates all of their objections to a permanent allocation of groundwater rights in the Basin. However, to the extent the Court is inclined to adopt a Physical Solution with permanent allocations of groundwater rights, then expert testimony is absolutely required to determine a “set aside” allocation for the overlying groundwater rights of the Willis Class Members going forward.

1 I've indicated that I will want some testimony from an expert, a court expert,
2 if that's the only source that I have, at the time we're having **an evidentiary**
3 **hearing to determine the various allocable rights in the valley.**

4 *****

5 And I have every intention of insuring that the court is fully apprised so that
6 this is a **comprehensive adjudication dealing with everybody's interests**
7 **in it.**

8 *Hearing Transcript* dated April 17, 2012 at 14:7-11 and 13:25-28 (emphasis supplied), attached
9 hereto as Exhibit B.

10 These statements were made by the Court in the context of a motion by the 3800-Member
11 Wood Class for a Court-appointed expert.² However, these statements apply with equal, if not even
12 greater, force to the 65,000-Member Willis Class' request for a Court-appointed expert. The Willis
13 Class is heading into the Physical Solution proceedings with a veritable Army lined up against
14 them. The Stipulating Parties to the so-called "Global Settlement"³ include the Public Water
15 Suppliers⁴, the United States, the Wood Class, Bolthouse Farms, and other large overlying
16 landowners. Even though the Stipulating Parties have agreed amongst themselves to essentially
17 extinguish the overlying rights of the Willis Class in the SPPS, this Court has repeatedly ruled that
18 a settlement agreement can have "no bearing whatsoever" on nonsettling parties. Rather, the Court
19 will determine the rights of each party and how to incorporate all of those rights into a Physical
20 Solution. In so doing, however, the Court necessarily will have to determine the appropriate
21 allocation for each party based on evidence of reasonable and beneficial uses or contemplated uses
22 for groundwater:

23 ² Wood Class Counsel had successfully argued that "the Court has repeatedly made note that an evidentiary prove-up
24 hearing would be necessary. The testimony or report of the Court-appointed expert would be needed at such a
25 hearing." *Richard Wood's Notice of Motion and Motion for Order Authorizing Court-Appointed Expert Work* dated
26 July 12, 2011 at 6:5-7, attached as Exhibit C. The Court appointed Timothy Thompson as an expert to determine the
27 water usage of the Wood Class. Dr. Thompson and his firm have billed in excess of \$100,000, which has been paid
28 by the Public Water Suppliers.

³ The Willis Class truly appreciates that the Court has recognized in both a tentative ruling and at the January 22,
2015 hearing that the SPPS is **not** a "Global Settlement" (as the Stipulating Parties frequently -- and erroneously --
call it) because the SPPS cannot legally bind non-signatories. The 65,000-Member Willis Class (who own over 65%
of the land in the Basin) is not a signatory to the SPPS and neither are Phelan Pinon Hills and a few other parties.

⁴ By signing the SPPS, the PWS are in willful breach of the Willis Stipulation of Settlement and in violation of the
Judgment. The Willis Class has placed the PWS on notice that the Class will seek appropriate remedies for the PWS'
willful breach and violation, if necessary, to protect the substantive and due process rights of the Willis Class
Members.

1 You have to acknowledge the fact that as to other parties the Court has
2 to make findings based upon evidence. I can't do that based upon an
3 agreement of some of the parties, but not all of the parties.

4 *Hearing Transcript* dated June 16, 2011 at 3:8-11 (emphasis supplied), attached as Exhibit D.

5 Only a Court-appointed expert can fully apprise the Court regarding the amount of
6 groundwater that will need to be "set aside" for future use of Willis Class Members. Likewise,
7 only a Court-appointed expert can fully apprise the Court regarding the validity of the Stipulating
8 Parties' claims that their proposed permanent water allocations are justified as reasonable and
9 beneficial uses. Because the Stipulating Parties improperly (and illegally with respect to the PWS)
10 propose to permanently allocate all of the 82,300 NSY amongst themselves, the Court necessarily
11 will need to determine how much of the NSY will actually be allocated to Willis Class Members
12 (and any other Non-Stipulating Parties) and, accordingly, how much of a reduction in each of the
13 Stipulating Parties' proposed permanent allocation will be adopted by the Court. Only a neutral,
14 Court-appointed expert can accomplish these goals.

15
16 **C. The Willis Class Should Not Be Forced to Rely on the Stipulating Parties' Experts**
17 **During the Physical Solution Proceedings**

18 To the extent the Stipulating Parties argue that their experts can provide sufficient
19 information to the Court on these matters, the Court already rejected any such arguments in
20 appointing an expert for the Wood Class:

21 My concern about [not appointing an expert for the Wood Class] is that I
22 think counsel very often really does need assistance in representing its
23 client, his or her client, as the case may be, with regard to technical issues
24 and should not have to make an election as to which of the other parties'
25 experts they wish to agree or disagree with without having some
26 assistance themselves.

27 *Hearing Transcript* dated April 24, 2009 at 14:13-15:19 (emphasis supplied), attached as Exhibit
28 A.

 Even the United States has acknowledged that a Court-appointed expert is entirely
appropriate for determining reasonable allocation of water for class members:

1 **A Court-appointed expert may assist the Court in** examining the
2 reasonableness of the Class's claims to beneficial use, or even
3 **independently determining the amount of water that can reasonably be**
 allocated to the Class . . .

4 *Federal Defendants' Response to Richard Wood's Motion to Decertify Small Pumper Class at*
5 2:15-19 (emphasis supplied), attached as Exhibit E.

6 Indeed, prior to the aforementioned finding by the Court, Wood Class Counsel had bluntly
7 and accurately argued that partisan experts cannot adequately represent the interests of class
8 members:

9 While the underlying data in [groundwater adjudication] cases is generally
10 fixed, the actual expert analysis is generally subject to substantial subjective
11 components that can vary significantly based on assumptions. **It is no**
12 **secret that experts have, from time to time, been known to angle their**
13 **subjective decisions in a direction favoring the parties they represent.**
14 **The interests of the small pumpers would be best served with an**
 independent expert, and that the appearance of fairness in this
 adjudication would be enhanced through the appointment of such an
 expert under Evidence Code 730.

15 *Letter from Mr. McLachlan (Wood Class Counsel) to the Court dated May 14, 2008 at p.2*
16 (emphasis supplied), attached as Exhibit F.

17 A year later, Wood Class Counsel was even more strident in their assertions that the
18 Wood Class could not be required to rely on experts retained by other landowners:

19 Whatever that amount [of water pumped by Small Pumper Class Members]
20 might be, the **Small Pumper class clearly cannot rely on the experts**
 retained by other landowners. . . .

21 . . . **the agricultural pumpers will advocate that they have been pumping**
22 **a greater volume of water for reasonable and beneficial uses than other**
 overlying owners, and vice versa.

23 No landowner would seek to minimize their pumping volume in an
24 overdrawn basin because any physical solution will ultimately force users
 to scale down from some baseline pumping volume.

25 So without an expert in the Phase III trial, the **Small Pumper class will get**
26 **whipsawed by competing experts, all of whom will interpret whatever**
 data exists (sic) to minimize pumping by the small domestic pumpers.

27 *Richard Wood's Response to AGWA's Motion to Decertify Class dated May 1, 2009 at 3:4-18*
28 (emphasis supplied), attached as Exhibit G.

1 As with the Wood Class, the interests of the Willis Class “would best be served with an
2 independent expert, and the appearance of fairness in this adjudication would be enhanced through
3 the appointment of such an expert under Evidence Code 730.” The appearance of fairness in this
4 groundwater adjudication is even more critical now. It does not take a law degree to know that it
5 is outrageously unfair to have the United States, the State of California, the Public Water Suppliers,
6 the 3800-Member Wood Class, Bolthouse Farms, Diamond Farms and other large landowners all
7 getting together to divide up the 82,300 NSY amongst themselves to the exclusion of the Willis
8 Class. As overlying landowners, the Willis Class Members previously obtained significant rights
9 and benefits from the Stipulation of Settlement and Judgment that these Stipulating Parties are now
10 attempting to strip away. If successful, their actions would amount to an unprecedented and
11 massive taking of private property rights. Yet, all of these entities will have expert witnesses to
12 “back up” their proposed permanent allocations.⁵ Neither David Estrada nor the 64,999 absent
13 Willis Class Members will have an expert to protect their extremely valuable property interests
14 during the Physical Solution proceedings unless the Court appoints one.

17 Even more compelling, Willis Class Counsel will not be able to rely on the testimony of the
18 Stipulating Parties’ experts even if they wanted to do so. Those experts will not be tasked with
19 determining a fair allocation of water for Willis Class Members going forward. This determination
20 will involve complex statistical calculations relating to projected groundwater usage by the 65,000
21 Willis Class Members. *See generally, Letter re Proposed Scope of Work of Potential Expert*
22 *Witness David Sunding, Ph.D. and Dr. Sunding’s Curriculum Vitae*, attached as Exhibit I.
23 Moreover, the Stipulating Parties’ experts clearly will not oppose the findings of their fellow
24 experts or the interests of their clients. Therefore, Willis Class Counsel will not have any expert
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28 ⁵ In addition to an army of experts, the Stipulating Parties will have a “million dollar team of hired guns,” as Wood Class Counsel described the army of attorneys retained by the PWS. *Richard Wood’s Reply Brief in Support of Motion for Appointment of Expert* dated February 26, 2009, at 3:5-9, attached as Exhibit H.

1 testimony to rely upon in opposing the Prove Ups of the Stipulating Parties. Such a scenario is
2 clearly untenable. The unfairness of all classes of groundwater right holders except one – the
3 nonpumping overlying landowner class – having access to expert witnesses able to testify on the
4 critical water right use and valuation issues is manifestly apparent. If the Court does not appoint
5 an expert, that would be akin to arranging a court-sanctioned showdown at the OK Corral without
6 giving the Willis Class any ammunition. This simply cannot happen.
7

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9 **D. The Public Water Suppliers Should Pay for the Court-Appointed Expert for the
Willis Class**

10 The answer as to who should pay for the Willis Class Court-appointed expert is very
11 straightforward: the Public Water Suppliers. This Court ordered the Public Water Suppliers to pay
12 for the Wood Class expert because the PWS had initiated the lawsuit. The Court subsequently
13 ordered that the expert fees be allocated amongst the ten Public Water Suppliers who had brought
14 claims against the Wood Class. *Order After Case Management Conference on May 6, 2010* at
15 3:20-4:5, attached as Exhibit J. In a later motion, Wood Class Counsel reiterated this same point:
16

17 the Wood Class has only sued the water suppliers. These are the parties
18 who should pay these [expert] costs, consistent with the Court's prior orders
in this case, and the Willis case.

19 *Richard Wood's Reply in Support of Motion for Order Authorizing Court-Appointed Expert Work*
20 dated April 12, 2012 at 2:18-20, attached as Exhibit K.

21 The Public Water Suppliers were ordered by the Court pursuant to Evidence Code Section 731 to
22 pay the fees for the Court-Appointed expert for the Wood Class. Significantly, even after a number
23 of Public Water Suppliers settled with the Wood Class, this Court denied the Motion of Wood Class
24 Settling Defendants to be Relieved of All Court Orders for Payment of Court-Appointed Expert
25 Fees and Costs. *Order Denying Motion of Wood Class Settling Defendants* dated January 15, 2014,
26 attached as Exhibit L. Indeed, even after parties settle their claims against each other, expert
27 testimony is still required to determine the reasonableness of all groundwater uses in adjudicating
28

1 a physical solution for the Basin. Thus, even Public Water Suppliers who have settled their claims
2 should continue to share in the expert costs. District 40 persuasively argued this precise point to
3 this Court in opposing the Settling Defendants' Motion:
4

5 It is not possible to determine water rights for some pumpers and not
6 others because the reasonableness determination depends upon all other
7 parties' groundwater uses. **Stated simply, the Wood Class reasonable**
8 **and beneficial use of groundwater cannot be resolved without the Court**
9 **considering the reasonableness of all groundwater uses. Consequently,**
10 **the testimony or report of the court-appointed expert is required,**
11 **not just to establish the Wood Class's groundwater amounts and their**
12 **reasonable and beneficial use, but to determine the reasonableness of all**
13 **water uses, including those of the Settling Defendants.**

14 *****

15 Fairness requires that all parties who benefit from the expert's work
16 share a portion of his fees and costs. Unless the Wood Class abandons its
17 water claims, an evidentiary hearing on the Wood Class's groundwater
18 pumping and reasonable use of that water is required as to all parties. **As**
19 **water rights are correlative, the Court cannot adjudicate groundwater**
20 **rights of any of the water without determining the Wood Class water**
21 **rights as against all parties.** (*Orange County Water Dist. V. Colton* (1964)
22 226 Cal.App.2d 642, 647 ["Since, under the law, all overlying rights are
23 correlative, in order to make a complete determination every parcel from
24 which the right was purported to have been granted would have to be
25 analyzed to determine its beneficial requirement of water in comparison
26 with all other overlying parcels.']. **As the court-appointed expert's**
27 **testimony or report is necessary to determine the Settling Defendants'**
28 **water rights, fairness requires that they share a portion of the expert's**
fees and costs.

21 *Los Angeles County Waterworks District 40's Opposition to Motion of Wood Class Settling*
22 *Defendants to Be Relieved of All Court Orders for Payment of Court-Appointed Expert Fees and*
23 *Costs at 2:13-19 and 3:2-12 (emphasis supplied), attached as Exhibit M.*

24 Consistent with its prior Orders, the Court should exercise its power pursuant to Evidence
25 Code Section 731 to order the Public Water Suppliers to pay the fees of the Court-appointed expert
26 for the Willis Class as well. For all the reasons set forth previously, an expert must be appointed
27 to determine the future groundwater needs of the Willis Class and to oppose the Stipulating Parties'
28 evidence regarding reasonable and beneficial use, as necessary.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ALTERNATIVE**
2 **MOTION TO DECERTIFY THE WILLIS CLASS**

3 The Willis Class hereby incorporates the foregoing Memorandum of Points and Authorities
4 in Support of Motion for Court-Appointed Expert in its entirety. In the alternative, the Court should
5 decertify the Willis Class. Decertification may be ordered at any time, including post-judgment.
6 *Grogan-Beall v. Ferdinand Roten Galleries, Inc.*, 133 Cal.App.3d 969, 977 (1982). As argued at
7 length previously, if the Court does not appoint an expert for the Willis Class for the upcoming
8 Physical Solution proceedings, the groundwater rights of the Willis Class will essentially be
9 extinguished. The significant rights and benefits gained by the Willis Class in the Stipulation of
10 Settlement and Judgment will have been lost because the Willis Class would be unable to provide
11 the Court with the necessary expert testimony to quantify the requisite permanent allocation for
12 Willis Class Members, determine the reasonable and beneficial uses of each landowner party, and
13 to oppose the expert testimony proffered by the Stipulating Parties.

14 Without an expert, Class Counsel and Class Representative David Estrada cannot
15 adequately represent the interests of the 64,999 absent class members and, therefore, the Willis
16 Class must be decertified. *Key v. Gillette Co.*, 782 F.2d 5, 7 (1st Cir. 1986) (“One of the most
17 important of these [Rule 23(a)] requirements is that the representative party fairly and adequately
18 represent the interests of the class. FRCP Rule 23(a)(4)). This requirement is particularly important
19 because the due process rights of absentee class members may be implicated if they are bound by
20 a final judgment in a suit where they were inadequately represented by the named plaintiff.”
21 *Citations omitted*).

22 This Court’s decertification ruling would protect absentee Willis Class Members from the
23 adverse res judicata effects of the Physical Solution on their significant groundwater rights and
24 must be entered if the Court does not appoint an expert for the Willis Class for the upcoming
25 Physical Solution proceedings.

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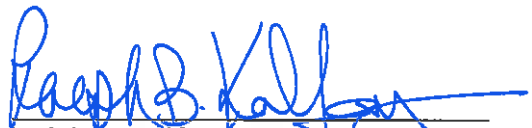
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CONCLUSION

The Court has inherent authority to appoint an expert for the Willis Class pursuant to Evidence Code Section 730. A Court-appointed expert is necessary to analyze and address factual issues unique to the Willis Class. The Willis Class should not be forced to rely on the Stipulating Parties' experts during the Physical Solution proceedings. Further, the Public Water Suppliers should pay for the Court-appointed expert for the Willis Class. Alternatively, if the Court does not appoint an expert for the Willis Class for the upcoming Physical Solution proceedings, then the Willis Class must be decertified.

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Respectfully submitted,



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