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

11 **ANTELOPE VALLEY GROUNDWATER
12 CASES**

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

17 *Plaintiffs,*

18 v.

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

Defendants.

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' OBJECTIONS TO
PROPOSED STATEMENT OF DECISION
AND PROPOSED JUDGMENT**

Date: December 23, 2015

Time: 10:00 am

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

Judge: Hon. Jack Komar

1 Pursuant to the procedures in California Rules of Court, Rule 3.1590(g), the Willis Class
2 respectfully objects to each of the provisions of the Proposed Statement of Decision (Proposed
3 Statement) identified below and submits, where appropriate, proposed substitute language for the
4 Court’s consideration. Proposed deletions are shown by strikeover and additions by underlying.

5
6 **OBJECTION 1.** The Proposed Statement states on page 1, lines 15-17: “*West Valley*
7 *County Water District and Boron Community Services District are also public water suppliers but*
8 *not-cross-complainants. They are included in “Public Water Suppliers” unless otherwise*
9 *indicated herein.*” West Valley County Water District and Boron Community Services District
10 were not parties to the Willis Class action complaint nor did they assert any claims against the
11 Class. As appropriators, their rights are subordinate to the overlying rights of the Willis Class. The
12 Proposed Physical Solution inappropriately allocates a portion of the Native Safe Yield free of
13 replacement assessment to these two entities in derogation of the rights of the Willis Class. West
14 Valley County Water District appeared in the action in August 25, 2014, long after the 2011 Willis
15 Class judgment and Boron failed to join the Willis Class stipulation of settlement and failed to
16 assert any prescriptive rights against the Willis Class. Any allocation of the Native Safe Yield to
17 these appropriators should be stricken or unenforced against the Willis Class.
18

19 **Substitute language:** the following language should be added: Any allocations of
20 groundwater to these entities are stricken from Exhibit 3.
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22 **OBJECTION 2.** The Proposed Statement states on page 1, lines 18-22: “*Cross-*
23 *defendants include the United States, numerous private landowners (collectively, “Landowner*
24 *Parties”), numerous public landowners (“Public Overliers”), Small Pumper Class, Willis Class,*
25 *other public water suppliers, and Phelan Pinon Hills Community Services District (“Phelan”).*
26 *Both classes filed action to adjudicate their respective groundwater rights. All actions were*
27 *coordinated and consolidated for all purposes.*” The Willis Class was never a cross-defendant in
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1 any pleading in this adjudication. The first sentence is factually incorrect. Furthermore, the Willis
2 Class did not seek to adjudicate any claims to groundwater vis-à-vis any other overlying landowner.
3 Its claims were aimed solely against the public water suppliers to defeat claims of prescription. The
4 Court resolved those claims by judgment. The consolidation order carved an exception for the
5 Willis Class and permitted the entry of a final judgment.
6

7 **Substitute Language:** To accurately list the Cross-defendant parties, page 1, lines 18-21
8 should read: “Cross-defendants include the United States, numerous private landowners
9 (collectively, “Landowner Parties”), numerous public landowners (“Public Overliers”), Small
10 Pumper Class, other public water suppliers, and Phelan Pinon Hills Community Services District
11 (“Phelan”).
12

13 **OBJECTION 3.** The Proposed Statement, on pages 1, lines 23 to 28, and page 2, lines
14 1 to 7 recites the Court’s findings in each of the six phases of trial, but the Proposed Statement does
15 not expressly state that the Court affirms its findings in each of the phases of the trial.

16 **OBJECTION 4.** The Proposed Statement states on page 2, lines 2-3: “*The fourth*
17 *phase of trial determined parties’ respective groundwater uses.*” This statement is factually
18 incorrect. The Fifth Amended Case Management Order dated May 20, 2013, states: “*The Court’s*
19 *current Case Management Order is hereby amended as follows: The Phase IV Trial is only for the*
20 *purpose of determining groundwater pumping during 2011 and 2012. The Phase IV Trial shall not*
21 *result in any determination of any water right, or the reasonableness of any party’s water use or*
22 *manner of applying water to the use. The Phase IV Trial will not preclude any party from*
23 *introducing in a later trial phase evidence to support its claimed water rights including, without*
24 *limitation, evidence of water use in years other than 2011 and 2012. All parties reserve their rights*
25 *to produce any evidence to support their claimed water rights and make any related legal*
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1 *arguments including, without limitation, arguments based on any applicable constitutional,*
2 *statutory, or decisional authority.”*

3 **Substituted Language:** To accurately reflect the purpose of the phase four trial, page 2,
4 lines 2-3 should read: “The fourth phase of trial determined the parties’ groundwater pumping for
5 calendar years 2011 and 2012 only.”

6 **OBJECTION 5.** The Proposed Statement states on Page 2, lines 11 to 15 that: “[A]fter
7 *consideration as to all parties’ respective groundwater rights and in recognition of those rights,*
8 *the Court approves the stipulation and physical solution presented as the [Proposed] Judgment*
9 *and Physical Solution (hereafter, "Judgment and Physical Solution" or "Physical Solution") in the*
10 *final phase of trial and adopts it as the Court's own physical solution.” To the extent the Court*
11 *purports to adopt the Stipulated Proposed Physical solution as its own physical solution, the*
12 *transformation in the nature of the proceeding significantly impairs the procedural and substantive*
13 *rights of the Willis Class. First, the Willis Class did not have notice that the court would convert*
14 *the proceeding from a prove-up to a full blown trial. The Second Amended Case Management*
15 *Order dated March 27, 2015, couched the proceedings in terms of a prove-up by Stipulating parties*
16 *not a full blown trial (See page 3, lines 14-24). The Court also confirmed the prove-up nature of*
17 *the proceeding by expressly indicating to counsel that this was a “thumbs up” or “thumbs down”*
18 *proceeding. Furthermore, the Court exempted the Willis Class from making a proof of claim to*
19 *produce groundwater under the Second Amended CMO dated March 27, 2015. The Court said: “I,*
20 *frankly, did not think that the Willis Class met that category of people. I never did. Correlative*
21 *share of a non-pumper is the correlative share of a non-pumper, and what that turns out to be when*
22 *he wishes to pump is determined at that time, not now. I cannot determine it in advance. My*
23 *concern was in particular in the C.M.O was the parties who had not signed who were, in fact,*
24 *pumping and wanted to establish their right to pump.” Reporter’s Transcript of Proceedings August*
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1 4, 2015, page 50, lines 5-14. This sudden change in the nature of the proceedings – contrary to the
2 court’s past statements and without advance notice to the Willis Class – violates the due process
3 rights of the Class.

4 Second, at the hearing, the Court precluded the Willis Class from introducing evidence
5 related to an alternative proposed physical solution, value of water rights, and the proposed physical
6 solution’s burdensome regulatory requirements for new pumping. The court also precluded the
7 Willis Class from cross-examining the Stipulating Parties who actively participated in the Phase IV
8 trial proceedings. And, the Court precluded any evidence regarding a party’s future use of
9 groundwater. As a result, there is insufficient evidence in the record for the court to adopt the
10 physical solution as its own physical solution.

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12 **Substitute Language.** Based upon the Court’s Tentative Ruling, and upon the language
13 quoted from page 20 of the Proposed Statement of Decision, the statement on page 2, line 13 of the
14 Proposed Statement should delete the following words: “*and adopts it as the Court’s own physical*
15 *solution.*”

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17 **OBJECTION 6.** The Proposed Statement states on page 3, lines 1 to 2, that: “[H]ere,
18 *all potential claimants to Basin Groundwater have been joined. They have been provided notice*
19 *and an opportunity to be heard regarding their respective claims.*” The Court’s Minute Orders
20 concerning Phase VI of the trial stated in pertinent part that Phase VI “[*Includes, but is not limited*
21 *to, the non-stipulating parties’ prove up; presentation of physical solutions and objections thereto;*
22 *and evidence in the default proceedings.*” The court stated on June 15, 2015 and again on
23 September 29, 2015 that the purpose of the Phase VI trial was to determine whether the Court
24 should adopt the Proposed Physical Solution and to not hear alternative physical solutions. As
25 stated on page 14, lines 3 to 4: “*Because the Willis Class objected to the Physical Solution, it is*
26 *entitled to have its rights tried as if there were no stipulated physical solution.*” Under such
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1 circumstances, the Statement of Decision should not state broadly that all parties, including the
2 Willis Class, have had notice and the opportunity to be heard regarding its claims. In fact, the
3 procedure adopted by the Court violated the due process rights of the Willis Class.

4 **Substitute Language.** To accurately reflect the stated purpose of the Phase 6 trial, the
5 sentence quoted from page 3, lines 1 to 2 should read: “[H]ere, all potential claimants, other than
6 the Willis Class, to Basin Groundwater have been joined. They have been provided notice and an
7 opportunity to be heard regarding their respective claims. The Willis Class has not been able to
8 adjudicate their water rights as if there were no physical solution.”

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10 **OBJECTION 7.** The Proposed Statement states on page 4, lines 8 to 11 that: “[T]he
11 *Public Water Suppliers sought an award of prescriptive rights against the Tapia parties, defaulted*
12 *parties, and parties who did not appear at trial. As explained below, the Court finds that the Public*
13 *Water Suppliers have established the requisite elements for their respective prescriptive rights*
14 *claims against these parties.”* In fact, the Public Water suppliers originally sought an award of
15 prescriptive rights against the members of the Willis Class, but pursuant to a settlement between
16 the Willis Class and the Public Water Suppliers and pursuant to a Judgment entered by the Court
17 approving the settlement the Public Water Suppliers released all claims of prescription against the
18 Willis Class.

19
20 **Substitute Language.** To accurately reflect the provisions of the Willis settlement and
21 judgment concerning prescription, the following sentence should be added after the quoted
22 language: “There are no claims of prescription against the Willis Class as all claims of prescription
23 have been released by the Public Water Suppliers.”

24
25 **OBJECTION 8.** The Proposed Statement states on page 8, lines 16-22 that: “*The*
26 *Court finds that West Valley County Water District produced 169 AFY for reasonable and*
27 *beneficial use over the continuous 5-year period of 2000-2004, sufficient to establish a prescriptive*
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1 *right. The Court finds that Boron Community Services District produce 318 AFY for reasonable*
2 *and beneficial use over the continuous 5-year period of 2000-2004, sufficient to establish a*
3 *prescriptive right. The allocation to these parties is fair and reasonable in light of their historical*
4 *and existing reasonable and beneficial uses, and the significant and material reduction thereto*
5 *required by the Physical Solution.” See Objection number 1.*

6
7 **Substitute language:** the following language should be added: Any allocations of
8 groundwater to these entities are stricken from Exhibit 3.

9 **OBJECTION 9.** The Proposed Statement states on page 11, lines 1-7 that: “*Here, the*
10 *Court heard evidence from four water engineers in the sixth phase of trial regarding the stipulating*
11 *Landowner Parties and Public Overliers’ reasonable and beneficial uses of water. Based on their*
12 *credible and undisputed expert testimony, and substantial evidence in the fourth and sixth phases*
13 *of trial, the Court finds that each stipulating Landowner Party and each Public Overlier has*
14 *reasonably and beneficially used amounts of water which collectively exceeded the total native safe*
15 *yield; and the amounts allocated to each of these parties under the Judgment and Physical Solution*
16 *are reasonable and do not exceed the native safe yield.” The use of the phrase “undisputed expert*
17 *testimony” is inappropriate; the Willis Class was not afforded an opportunity to retain their own*
18 *experts in these proceedings. Further, counsel for the Willis Class challenged the opinions of the*
19 *experts proffered at the hearing for lack of proper foundation and their failure to properly address*
20 *the appropriate standard under Article X Section 2 of the Constitution.*

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23 **OBJECTION 10.** The Proposed Statement states on page 11, lines 7-10 that: “*The*
24 *Court finds that the Landowner Parties and the Public Overliers will be required to make severe*
25 *reductions in their current and historical reasonable and beneficial water use under the physical*
26 *solution.” Not all of the Landowner Parties and the Public Overliers made “severe” reductions in*
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1 their pumping. In fact, several pumpers saw no reductions. Some overlying landowners were
2 allocated water without any prior groundwater pumping, e.g. Copa de Oro.

3 **Substitute Language:** The word “severe” should be struck in the sentence above and
4 should be struck from all sentences in the Statement were it modifies reductions in pumping.
5 Further, the words “many of” should be inserted between “that” and “the Landowner Parties” in
6 the sentence (i.e., “*The Court finds that **many of** the Landowner Parties*”).
7

8 **OBJECTION 11.** The Proposed Statement states on page 11, lines 10 to 17 that: “[T]he
9 *evidence further shows that the Basin's native safe yield alone is insufficient to meet the reasonable*
10 *and beneficial uses of all users, so the Court must allocate quantities for each party's present use.*
11 *The Court therefore finds that there is substantial evidence that all allocations of groundwater in*
12 *the Physical Solution herein and as stipulated by the parties will effectively protect the Basin for*
13 *existing and future users.*

14
15 *The Court further finds that the native safe yield allocations amongst the parties in the*
16 *Physical Solution make maximum reasonable and beneficial uses of the native safe yield under the*
17 *unique facts of this Basin, as required by the California Constitution, Article X, section 2.”*

18 Paragraph 5.1 of the Judgment and Physical Solution allocates Production Rights to the
19 entire Native Safe Yield to specific parties including those listed on Exhibits 3 and 4. Paragraph
20 18.5.10 of the Judgment and Physical Solution provides that if the Native Safe Yield is adjusted
21 upward or downward in the future, the allocated Production Rights will be adjusted upward or
22 downward on a pro-rata basis. Finally, Paragraph 9.3.4 of the Judgment and Physical Solution
23 provides that if it is determined that the exercise of a party’s Production Right is causing Material
24 Injury, the Production Right may be curtailed, but only if the Watermaster provides a substitute
25 water supply. Under these provisions of the Judgment and Physical Solution, the percentage of the
26 allocated Production Rights will never change. Further, the Judgment and Physical Solution
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1 contains no provisions that would allow the Watermaster Engineer, the Watermaster or the Court
2 to determine whether a future exercise of a permanently allocated Production Right remains a
3 reasonable and beneficial use under the then existing conditions.

4 The Court has, in effect, made its Physical Solution *permanent* by allocating water rights
5 on a pro-rata basis without providing a mechanism for dealing with future changes.

6
7 **Substitute Language.** In view of the foregoing referenced provisions of the Judgment and
8 Physical Solution, to accurately reflect the Court’s ruling, the sentences quoted from page 4, lines
9 8 to 11 should read: “[T]he evidence further shows that the Basin's native safe yield alone is
10 insufficient to meet the reasonable and beneficial uses of all users, so the Court must permanently
11 allocate to specified parties a pro-rata Production Right to the Native Safe Yield quantities for that
12 each party's present and future use. The Court therefore finds that there is substantial evidence that
13 all allocations of groundwater in the Physical Solution herein and as stipulated by the parties will
14 effectively protect the Basin for existing and future users.

15
16 The Court further finds that, although there are no provisions in the Judgment and Physical
17 Solution that would allow the Watermaster Engineer, the Watermaster or the Court to determine
18 whether the future exercise of a party’s permanently allocated Production Right remains a
19 reasonable and beneficial use under then existing conditions, the native safe yield allocations
20 amongst the parties in the Physical Solution make maximum reasonable and beneficial uses of the
21 native safe yield under the unique facts of this Basin, as required by the California Constitution,
22 Article X, section 2.”

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24 **OBJECTION 12.** The Proposed Statement states on page 11, lines 18-20 that: “*The*
25 *Court finds credible the testimony by water engineers Robert Beebe and Robert Wagner that the*
26 *Landowner Parties’ and Public Overliers’ allocated amounts are reasonable and beneficial uses*
27 *of water....*” The cited experts did not perform any reasonable and beneficial use tests, neither at
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1 a macro nor a micro level. They merely said that any use that was already existing was reasonable
2 and beneficial. Furthermore, reasonable and beneficial use is a legal conclusion that the Court must
3 make after balancing several factors – including uses of all other users in the area of adjudication.

4 **OBJECTION 13.** The Proposed Statement states on page 13, lines 9-13 that: “*The*
5 *Court finds the testimony by Mr. Thompson, the Court-appointed expert, to be credible and*
6 *undisputed regarding Small Pumper Class water use. The Court finds that the average use of 1.2*
7 *AFY per parcel or household is reasonable, and is supported by Mr. Thompson’s report and*
8 *testimony. Given the variation in Class Member water use for reasonable and beneficial purposes,*
9 *the same is true of individual Class Member use of up to 3 AFY.” The analysis of expert Tim*
10 *Thompson concluded that 1.2 AFY was the median, not the average, use of the Small Pumper Class*
11 *member; therefore, the class should be limited to 1.2 AFY per parcel or household. Under the*
12 *Judgment and Physical Solution, a Wood Class member is permitted to pump up to 3 AFY without*
13 *the payment of a replacement assessment. This should not be the case. Furthermore, the survey*
14 *and the analysis were flawed from beginning to end. There was impermissible attorney interaction*
15 *with the survey participants and data gathering. Mr. Thompson is neither a survey expert nor a*
16 *statistician. The survey data suffered from several types of selection bias. Likewise, the statistical*
17 *analysis on this data performed by Mr. Thompson was improperly done.*

18 **OBJECTION 14.** The Proposed Statement states on page 14, lines 2-4 that: “*The Willis*
19 *Class members are property owners in the Basin who have never exercised their overlying rights.*
20 *Because the Willis Class objected to the Physical Solution, it is entitled to have its rights tried as if*
21 *there were no stipulated physical solution.” While the Willis Class is entitled to this hearing, such*
22 *hearing factually never happened. The Willis Class’ rights were never tried “as if there were no*
23 *stipulated physical solution.” Furthermore, the Court struck its requirement to have the Willis*
24 *Class make a proof of claim to produce groundwater in the future.*

1 **Substitute Language:** The above quoted sentences should read: “The Willis Class
2 members are property owners in the Basin who have never exercised their overlying rights.
3 Because the Willis Class objected to the Physical Solution, the purpose of the proceeding was to
4 consider those objections.”

5 **OBJECTION 15.** The Proposed Statement states on page 14, lines 9 to 15 that: “[I]n
6 *certain situations, as the Willis Class argues, unexercised overlying rights can be exercised at any*
7 *time, regardless of whether there has been any previous use. According to the Willis Class, that*
8 *means that the unexercised overlying owners should be able to begin pumping at any time without*
9 *any reasonable limitation of any kind. Here, that is not factually or legally true and cannot be the*
10 *case because of the unique conditions in this Basin and because undisputed and substantial*
11 *evidence establishes that the stipulating Landowner Parties, Public Overliers and Small Pumper*
12 *Class pumping alone exceed the Basin's safe yield.” The Proposed Statement mischaracterizes the*
13 *position of the Willis Class. The Class does not assert “the unexercised overlying owners should*
14 *be able to begin pumping at any time without any reasonable limitation of any kind.” The*
15 *settlement between the Class and defendants, in fact, recognizes their rights may be reasonably*
16 *limited in a manner correlative to other landowners. The Physical Solution approved by the Court*
17 *does not recognize the Willis Class’ correlative rights; it effectively eliminates the Class’ right to*
18 *pump in the future while leaving the pumping rights of pumping landowners and the Public*
19 *Overliers (whose rights are inferior to those of the Willis Class) intact. Further, the Willis Class*
20 *contends that the meaningful limitation for groundwater pumping is the native safe yield. Any*
21 *pumping in excess of the native safe yield carries the burden of a replacement water assessment.*
22 *The Willis Class has proposed several alternative physical solutions which implement this*
23 *limitation. Finally, the California Constitution places reasonable and beneficial use limitations on*
24 *all water users.*

1 **Substitute Language.** To accurately reflect the position of the Willis Class, the sentences
2 quoted from page 14, lines 9 to 15 should read: “[I]n certain situations, as the Willis Class argues,
3 unexercised overlying rights can be exercised at any time, regardless of whether there has been any
4 previous use. According to the Willis Class, that means that the unexercised overlying owners
5 should be able to begin pumping at any time without any subject to the native safe yield, in a manner
6 consistent with the Willis Class Judgment and the California Constitution. ~~of any kind. Here, that~~
7 ~~is not factually or legally true and cannot be the case because of the unique conditions in this Basin~~
8 ~~and because undisputed and substantial evidence establishes that the stipulating Landowner Parties,~~
9 ~~Public Overliers and Small Pumper Class pumping alone exceed the Basin's safe yield.”~~

11 **OBJECTION 16.** The Proposed Statement states on page 14, lines 16 to 18 that:
12 *“[H]ere, despite the Willis Class' settlement with the Public Water Suppliers limiting the impact of*
13 *the prescriptive right, the Court finds multiple grounds to condition the unexercised overlying*
14 *rights of the Willis Class.”* This statement is incorrect. The Willis Class settlement did not “limit”
15 the impact of the prescriptive right, it *extinguished* prescription by release and judgment. As a
16 result, the Court has no authority to “find multiple grounds to condition the ... overlying rights of
17 the Willis Class.”

19 **Substituted Language.** To be consistent with the Willis settlement and judgment, the
20 sentence quoted from page 14, lines 16 to 18 should be deleted.

22 **OBJECTION 17.** The Proposed Statement states on page 14, lines 18 to 24 that:
23 *“[B]ecause the landowners' reasonable and beneficial use pumping alone exceeded the native safe*
24 *yield while public water supplier pumping was taking place, the unexercised overlying rights of the*
25 *Willis Class are not entitled to an allocation in the Physical Solution. If that were not required*
26 *under these circumstances in this Basin, the Court finds that the pumping here by Landowner*
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1 *Parties, Public Overliers and the Small Pumper Class would become legally meaningless because*
2 *all unexercised overlying rights could eliminate long-established overlying production.”*

3 The Judgment and Physical Solution permanently allocates the entire Native Safe Yield to
4 parties other than the Willis Class. Further, under the Judgment and Physical Solution, a Willis
5 Class member has no right to pump any portion of the Native Safe Yield, and only may pump
6 groundwater from the Basin if (1) he or she meets onerous and expensive regulatory requirements;
7 (2) applies to a biased Watermaster board; (3) the Watermaster Engineer and Watermaster, in its
8 discretion, determines that the Willis Class member may pump groundwater; and (4) with the
9 possible exception of domestic use, pays a replacement assessment. This Solution is inconsistent
10 with and repugnant to the correlative water rights of the Willis Class as recognized and preserved
11 by the final Willis Class Judgment previously approved and entered by this Court in 2011.

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14 **Substitute Language.** To accurately reflect the provisions of the Judgment and Physical
15 Solution, the sentences on page 14, lines 18 to 24 should read: “[B]ecause the landowners’
16 reasonable and beneficial use pumping alone exceeded the native safe yield while public water
17 supplier pumping was taking place, the unexercised overlying rights of the Willis Class are not
18 entitled to an allocation in the Physical Solution of any portion of the Native Safe Yield. ~~If that~~
19 ~~were not required under these circumstances in this Basin,~~ The Court finds that because a Willis
20 Class member has no right to pump any portion of the Native Safe Yield, and only may pump
21 groundwater from the Basin if, after application to the Watermaster Engineer, the Watermaster, in
22 its discretion, determines that the Willis Class member may pump groundwater and, with the
23 possible exception of domestic use, subject to a replacement assessment, the rights granted
24 pumping here by to the Landowner Parties, Public Overliers and the Small Pumper Class are
25 protected under the provisions of the Physical Solution. ~~would become legally meaningless because~~
26 ~~all unexercised overlying rights could eliminate long-established overlying production.”~~

1 **OBJECTION 18.** The Proposed Statement states on page 14, lines 25-27 and page 15,
2 lines 1-5 that: “*Furthermore, the Willis Class settlement and Notice of Proposed Willis Class Action*
3 *Settlement and Settlement Hearing specifically state that the Court will make a determination of*
4 *rights in the physical solution that will bind the Willis Class as part of the physical solution. (Notice*
5 *of Proposed Settlement at §9 [‘The Court is required to independently determine the Basin’s safe*
6 *yield and other pertinent aspects of the Basin after hearing the relevant evidence, and the Settling*
7 *Parties will be bound by the Court’s findings in that regard. In addition, the Parties will be*
8 *required to comply with the terms of any Physical Solution that may be imposed by the Court to*
9 *protect the Basin, and the Court will not be bound by the Settling Parties’ agreements in that*
10 *regard.’].)” This statement is factually incorrect. Neither the settlement nor the notice refer to a
11 “determination of rights in the physical solution.” The groundwater rights of the Willis Class,
12 referred to in the 2011 Willis Class judgment and notice, is a correlative share in 85% of the native
13 safe yield free of replacement assessment. The Court’s reliance on the language of the Notice
14 summarizing the settlement in layman’s terms for the Class members is misplaced; the language of
15 the settlement itself is determinative. The settlement limits the Court’s authority to adopt a Physical
16 Solution and provides as follows: “The Settling Parties agree to be part of such a Physical Solution
17 to the extent it is consistent with the terms of this Stipulation and to be subject to Court-administered
18 rules and regulations consistent with California and Federal law and the terms of this Stipulation.”
19 See ¶V.B of Willis Class Stipulation of Settlement.
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22*

23 **Substitute Language:** The above quoted language should be deleted.

24 **OBJECTION 19.** The Proposed Statement states on page 15, lines 15 to 19 that: “[T]he
25 *Court has heard evidence on all parties’ water rights. The Court has considered these water rights*
26 *in relation to the reasonable use doctrine in Article X, section 2 of the California Constitution. The*
27 *Court finds that the unique aspects of this Basin explained below and its chronic overdraft*
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1 *conditions prevent the Willis Class from having unrestricted overlying rights to pump Basin*
2 *groundwater.”*

3 As noted above, under the Judgment and Physical Solution, a Willis Class member has no
4 right to pump any portion of the Native Safe Yield, and only may pump groundwater from the
5 Basin if, after application to the Watermaster Engineer, the Watermaster, in its discretion,
6 determines that the Willis Class member may pump groundwater and, with the possible exception
7 of domestic use, subject to a replacement assessment. Furthermore, the Court did not give the Willis
8 Class an opportunity to present a proof claim to pump groundwater in the future.

9
10 **Substitute Language.** To be consistent with the provisions of the Judgment and Physical
11 Solution, the language on page 15, lines 15 to 19 should read: “[T]he Court has heard evidence on
12 all stipulating parties' water rights. The Court has considered these water rights in relation to a
13 modified reasonable use doctrine in Article X, section 2 of the California Constitution. The Court
14 finds that the unique aspects of this Basin explained below and its chronic overdraft conditions
15 prevent the Willis Class from having ~~unrestricted~~ overlying rights to pump Basin groundwater
16 unless such rights are restricted so that a Willis Class member has no right to pump any portion of
17 the native safe yield, complies with the regulatory requirements imposed by the stipulating parties
18 in their Physical Solution, and only may pump groundwater from the Basin if, after application to
19 the Watermaster Engineer, the Watermaster, in its discretion, determines that the Willis Class
20 member may pump groundwater and, with the possible exception of domestic use, subject to a
21 replacement assessment.”

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24 **OBJECTION 20.** The Proposed Statement states on page 15, lines 20 to 27 that: “[T]he
25 *Court also finds an alternative basis for conditioning the Willis Class unexercised overlying rights*
26 *in Article X, section 2 of the California Constitution. The Court finds that because of the*
27 *circumstances existing in the Basin it would be unreasonable under the Constitution to allow*
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1 *unexercised overlying rights holders to pump without the conditions imposed by the Physical*
2 *Solution. The Legislature has now recognized that unexercised overlying rights holders may have*
3 *conditions imposed upon them by a physical solution. (Assemb. Bill 1390, 2014-2015 Reg. Sess.,*
4 *ch.672, Code of Civil Procedure section 830, subdivision (b)(7),*
5 *http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-*
6 *”*

7 Assembly Bill 1390 was enacted during the 2014-2015 legislative session. The bill is not
8 an urgency measure and does not become effective until January 1, 2016. Section 830(b) provides
9 that the legislation will be applied and interpreted consistent with “[P]roviding notice and due
10 process sufficient to enable a court in a comprehensive adjudication conducted pursuant to this
11 chapter to determine and establish the priority for unexercised water rights. The court may consider
12 applying the principles established in *In re Waters of Long Valley Creek Stream System* (1979) 25
13 Cal.3d 339. Except as provided in this paragraph, this chapter shall not alter groundwater rights or
14 the law concerning groundwater rights. The decision in *In re Waters of Long Valley Creek Stream*
15 *System* (1979) 25 Cal.3d 339 provides that an unused riparian water right may be subordinated in
16 an adjudication to an exercised right to appropriate surface water. The case does not hold that an
17 unexercised overlying groundwater right may be modified so that there is no further right to pump
18 from the native safe yield of the groundwater basin. Further, the Willis Class’ unexercised
19 overlying correlative rights to pump from the Basin’s Native Safe Yield are protected by Article X,
20 section 2 of the California Constitution, and cannot be unreasonably permanently restricted to the
21 point of elimination simply because the circumstances currently existing in the Basin require the
22 imposition of temporary austerity measures on water usage.
23
24

25 **Substitute Language.** Since AB 1390 is not now effective, and since AB 1390 does not
26 expressly or impliedly provide authority in an adjudication to modify an unexercised overlying
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28

1 right so that there is no further right to pump from the native safe yield, the language on page 15,
2 lines 20 to 27 should not be included in the Statement of Decision.

3 **OBJECTION 21.** The Proposed Statement states on page 16, lines 5-8 that: “[The
4 Court’s Physical Solution] *severely reduces groundwater pumping, provides management structure*
5 *that will protect the Basin, balances long-term groundwater supply and demand, and limited future*
6 *pumping by management rules that are fair, equitable, necessary and equally applied to all*
7 *overlying landowners.”* The Willis Class, as overlying landowners, have a constitutional right to
8 the native safe yield. That right is protected not only by law, but also by the 2011 Willis Class
9 Judgment – stipulated to and approved/adopted by a Judgment of the Court. Nevertheless, under
10 the Court’s decision, the Willis Class’ right to pump from the native safe yield has been
11 permanently eliminated – while the correlative rights of the pumping landowners have been
12 disproportionately maintained (albeit, reduced). The Court’s Physical Solution does not “limit future
13 pumping by management rules that are fair, equitable, necessary and equally applied to all
14 overlying landowners.” To the contrary, as opined by the Willis Class real estate expert, Mr.
15 Stephen Roach:
16
17

18 By excluding the subject ownership class from any inherent water rights, the
19 proposed Judgement and Physical Solution for the Antelope Valley Groundwater
20 Cases would greatly diminish the potential economic uses and therefore materially
21 impact the values of the properties. Additionally, the process available to the subject
22 ownerships to achieve water rights is extremely rigorous, the cost of which could
23 more than offset the value gain the properties would achieve with water. This
24 process is also not a guaranteed path towards obtaining water, which could be denied
25 for any number of reasons.

26 If the proposed Judgement and Physical Solution for the Antelope Valley
27 Groundwater Cases is finalized, existing users will not have the burden of a water
28 replacement fee, which is a material economic burden that would be imposed on the
subject ownership class. The magnitude of the water replacement fee is unknown,
and cannot be determined based on information in the proposed Judgement. This
risk and uncertainty adversely impacts value.

 Particularly for lower-value properties, the process set forth in the proposed
Judgement to obtain permission to drill a well may be too demanding and expensive,

1 and could remove any economic possibility of utilizing the property. Even ignoring
2 the cost issues, approval of a well on the properties is not certain under the procedure
3 set forth. There is also a potentially insurmountable dilemma for the Willis Class
4 ownership: part of this proposed approval process requires the user to obtain a well
5 permit from the county, yet the county will reportedly not issue a well permit
6 without approval under this plan. The proposed physical solution does not address
7 this potential issue.

8 Based on my analysis of the proposed Judgement and Physical Solution for the
9 Antelope Valley Groundwater Cases and my experience as an appraiser, I have
10 concluded the proposed judgement would have a material negative impact on the
11 value of the subject properties.

12 **Substitute Language:** The above quoted sentence should read: “[The Court’s Physical
13 Solution] severely reduces groundwater pumping, provides management structure that will protect
14 the Basin, balances long-term groundwater supply and demand, and limited future pumping by
15 management rules that are fair, equitable, and necessary and equally applied to all overlying
16 landowners — except as to the Willis Class. ALTERNATIVE: “[The Court’s Physical Solution]
17 protects the Basin, and balances long-term groundwater supply and demand primarily by reducing
18 groundwater pumping through a management structure that severely limits, discourages and/or
19 eliminates future pumping by the Willis Class.”

20 **OBJECTION 22.** The Proposed Statement states on page 16, lines 10-12 that: “*The*
21 *Court finds it would be unreasonable to require present users to further reduce their already*
22 *severely reduced water use to reserve a supply of water for non-users’ speculative future use.*”
23 This fundamentally misstates the position of the Willis Class. In several different alternative
24 proposals offered by the Willis Class, the Willis Class has argued that water unused by the Willis
25 Class could be used by other pumpers. However, under the Willis Class’ proposals, when a Willis
26 Class member comes online (i.e., begins pumping) then that Willis Class member would be able to
27 pump its correlative share of the Native Safe Yield free of replacement assessment. The Willis
28 Class is not asking that the current pumpers reduce their water use unless and until a Willis Class
member comes on line.

1 **OBJECTION 23.** The Proposed Statement states on page 16, lines 13 to 16 that:
2 “[A]ccordingly, the Landowner Parties, Public Overliers and Small Pumper Class are entitled to
3 continue their significantly reduced production of the native or natural safe yield as set forth in the
4 Physical Solution.” This statement is inaccurate. First, not all parties on exhibits 3 and 4
5 “significantly reduced production.” Second, the Judgment and Physical Solution is inequitable in
6 that they permanently allocate the Native Safe Yield to overlying all landowners – except the Willis
7 Class.
8

9 **Substitute Language.** To accurately reflect the provisions of the Judgment and Physical
10 Solution concerning the allocation of Production Rights to the named parties, the sentence on page
11 16, lines 13 to 16 should read: “[A]ccordingly, the Landowner Parties and Public Overliers and
12 ~~Small Pumper Class~~ who have had their production significantly reduced are entitled to
13 permanently continue their significantly reduced production of the native or natural safe yield as
14 set forth in the Physical Solution. The Willis Class, which consists of present non-pumpers, will
15 permanently be foreclosed from future production, absent compliance with the twelve regulatory
16 requirements imposed by the stipulating parties in their Physical Solution.”
17

18 **OBJECTION 24.** The Proposed Statement states on page 16, lines 17-22 that: “*The*
19 *Court finds that without reasonable conditions upon the exercise of an overlying right in the*
20 *overdrafted Basin, the Willis Class members’ unrestricted right to exercise of the overlying right*
21 *during shortage conditions would make it impossible to manage and resolve the overdraft*
22 *conditions under the unique facts of this Basin and ‘[t]he law never requires impossibilities.’ (Civ.*
23 *Code, §3531.) The Court therefore finds that the Willis Class members have an overlying right*
24 *that is to be exercised in accordance with the Physical Solution herein.*” The Willis Class members
25 have never requested an “unrestricted right” to exercise of the overlying pumping rights during
26 shortage conditions. They have only objected to the permanent reduction/elimination of their future
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28

1 pumping rights based on the current shortage conditions. The Willis Class has proposed several
2 alternative physical solutions that would result in the same or in some instances better protection
3 of the Basin and its groundwater resources – while preserving their future rights, subject to the
4 imposition of reasonable conditions and continuing oversight by the Court.

5
6 **OBJECTION 25.** The Proposed Statement states on page 20, lines 16 to 21 that: “[T]he
7 Court finds that it is fair, reasonable and beneficial for the Willis Class members to pay for the cost
8 of replacement water from AVEK if a Class member should decide to exercise its overlying right
9 by installing a groundwater well and using its water for reasonable and beneficial uses. The Court
10 further finds that the Physical Solution provides that the Water Master has discretion to allow a
11 Willis Class member to pump groundwater without having to pay any replacement assessment in
12 certain circumstances.” As noted above, under the Judgment and Physical Solution, a Willis Class
13 member only may pump groundwater from the Basin if, after application to the Watermaster
14 Engineer, the Watermaster, in its discretion, determines that the Willis Class member may pump
15 groundwater and, with the possible exception of *de minimis* domestic use, subject to a replacement
16 assessment. This Solution amounts to a permanent elimination of the Class’ correlative water rights
17 protected by Article X Section 2 of the California Constitution. The wholesale elimination of the
18 Class’ constitutionally-protected water rights without due process is not “fair, reasonable and
19 beneficial for the Willis Class members.” With or without notice and a fair opportunity to be heard,
20 the elimination of the Class’ vested water rights is beyond of the Court’s authority to approve and
21 implement.
22

23
24 **Substitute Language.** In order to accurately reflect the provisions of the Judgment and
25 Physical Solution, the sentences on page 20, lines 16 to 21 should read: “[T]he Court finds that it
26 is fair, reasonable and beneficial for the Willis Class members to pay for the cost of replacement
27 water from AVEK if, the Watermaster in its discretion, should grant a Class member permission
28

1 ~~the right should decide to exercise its overlying right by installing~~ to install a groundwater well and
2 to pump groundwater from the well for ~~using its water~~ for reasonable and beneficial uses. The Court
3 further finds that the Physical Solution provides that the Water Master has discretion to allow a
4 Willis Class member to pump groundwater for de minimis domestic use without having to pay any
5 replacement assessment in certain circumstances but only after they meet regulatory requirements
6 imposed by the stipulating parties in this Physical solution.”

8 **OBJECTION 26.** The Proposed Statement states on page 20, lines 23-27 that: “*A large*
9 *number of parties representing a majority of the total groundwater production in the Basin*
10 *(“Stipulating Parties”) have stipulated to the Physical Solution. The Court, however, uses its own*
11 *independent judgment and discretion to approve the Physical Solution here; the Court adopts the*
12 *Physical Solution as its own physical solution for the Basin after it determined and considered the*
13 *parties’ respective groundwater rights.*” See objection number 5.

15 **OBJECTION 27.** The Proposed Statement states on page 21, lines 1 to 2 that: “[T]he
16 Willis Class challenges the Physical Solution’s allocation of native safe yield to those who exercise
17 and have exercised their overlying rights.” As noted above, the Judgment and Physical Solution
18 permanently allocates the entire Native Safe Yield to parties other than the Willis Class. The Willis
19 Class challenges the legality, fairness, and consistency of such a permanent allocation. The
20 provisions of the Judgment and Physical Solution which, in effect, permanently the Willis Class
21 from any allocation of the Native Safe Yield, is inconsistent with and violates the final Willis Class
22 Judgment previously approved and entered by this Court in 2011.

24 **Substitute Language.** To accurately reflect the position of the Willis Class, the sentence
25 on page 21, lines 1 to 2 should read: “[T]he Willis Class challenges the Physical Solution’s
26 permanent allocation of native safe yield to those who exercise and have exercised their overlying
27 rights.”

1 **OBJECTION 28.** The Proposed Statement states on page 21, lines 7-10 that: “*The*
2 *Willis Class interest in the long term health of the Basin is the same as every other overlying use*
3 *of groundwater; there is no conflict between the Willis Class and the other parties in the Physical*
4 *Solution. And the Court’s continuing jurisdiction protects the Willis Class from the possibility that*
5 *a future exercise of overlying right by any party could adversely affect them.*” The Willis Class
6 does have an interest in protecting the Basin and has put forth proposals that would alleviate the
7 strain on the Basin by the overdraft which was caused by the current pumpers. As to there being
8 no conflict between the Willis Class and the other parties – that is simply just not true. The
9 stipulating parties excluded the Willis Class from the native safe yield. Furthermore, the court’s
10 continuing jurisdiction is limited in scope, the Court is not able to modify the judgment. These
11 provisions of the Proposed Solution violate equitable and legal principles. There is no need “to
12 protect the Willis Class from the possibility that a future exercise of overlying right by any party
13 could adversely affect them” because the Physical Solution and Judgment permanently eliminates
14 their future rights. There is nothing left to “protect.”

17 **OBJECTION 29.** The Proposed Statement states on page 21, lines 11 to 12 that: “*The*
18 *Willis Class argues that they cannot be bound by provisions they did not agree to, but the Court*
19 *finds otherwise.*” This statement is directly contrary to the Court’s statement on page 17, lines 26
20 to 28 and page 18, line 1 of Proposed Statement, “[*T*]he only restriction is that, absent the party’s
21 consent, a physical solution may not adversely affect that party’s existing water rights. (Cf. *Mojave,*
22 *supra, 23 Cal.4th at pp. 1243-1244, 1250-1251.*) (*Santa Maria, supra, 211 Cal.App.4th at p. 288.*)
23 Pursuant to this duty a trial court is obliged to consider a physical solution “when it can be done
24 without substantial damage to the existing rights of others.” 3 (*Peabody, supra, 2 Cal.2d at p.*
25 *373.*)” The Willis Class submits the record is clear: (1) they have not consented to the proposed
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27
28

1 physical solution, and (2) the proposed physical solution adversely affect the Willis Class' existing
2 water rights. If the Court believes otherwise, it should make specific findings to the contrary.

3 **Substitute Language.** To accurately reflect the holdings of the Mojave court and the Santa
4 Maria court and the Court's tentative decision, the sentence on page 21, lines 11 to 12 should read:
5 "The Willis Class argues that they cannot be bound by provisions they did not agree to, but the
6 Court finds the Willis Class has consented to the proposed physical solution." Or, alternatively:
7 "The Willis Class argues they cannot be bound by provisions they did not agree to, but the Court
8 finds the proposed physical solution does not adversely affect the Willis Class' existing water
9 rights."
10

11 **OBJECTION 30.** The Proposed Statement states on page 21, lines 11-17 that: "*The*
12 *Willis Class argues that they cannot be bound by provisions they did not agree to, but the Court*
13 *finds otherwise. '[I]t should be kept in mind that the equity court is not bound or limited by the*
14 *suggestions or offers made by the parties to this, or any similar, action.' The court 'undoubtedly*
15 *has the power regardless of whether the parties have suggested the particular physical solution or*
16 *not, to make its injunctive order subject to conditions which it may suggest...*" The Court's
17 statement contains faulty reasoning and distorts the law. First, the whole purpose of the trial was
18 for the Court to "vote up or down" on "the suggestions or offers made by the [stipulating] parties"
19 in their proposed settlement and Physical Solution. In fact, since the proceedings were for the
20 limited purpose of "voting up or down" on the stipulating parties' proposed Physical Solution, the
21 Court excluded the Willis Class' offers and suggestions of alternative physical solutions. In its
22 tentative decision, however, the Court, for the first time, suggested that it had adopted the
23 stipulating parties' Physical Solution as its own independent solution. This outcome is unfair and
24 prejudicial to the Willis Class. Second, an equity court may have the power to disregard the
25 suggestions of the stipulating parties and make its injunctive order, but it does not have the power
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27
28

1 to disregard its own previous final judgment. The proposed statement of decision makes no
2 reference to the 2011 Willis Class Judgment and/or the breach of settlement agreement underlying
3 that Judgment by the ten Public Water suppliers. The Willis Class requests findings made in
4 connection with the inconsistencies between the Court’s proposed Judgment/Physical Solution
5 which is the subject of the current proceedings and the Willis Class’ 2011 Final Judgment based on
6 the Public Water Suppliers’ stipulation of settlement. The Willis Class also requests findings made
7 in connection with the Public Water Suppliers’ breach of that judgment and stipulation of
8 settlement.
9

10 **Substitute Language:** The above quoted lines should be deleted from the Proposed
11 Statement.

12 **OBJECTION 31.** The Proposed Statement states on page 22, lines 22 to 24 that: “*The*
13 *Court finds that each party is treated reasonably by the Physical Solution; the priority of rights in*
14 *the Basin is preserved; no vested rights are eliminated; and allocations are reasonably tied to*
15 *reasonable and beneficial use and the health of the Basin.*” As noted above, a Willis Class
16 member has no right to pump any portion of the Native Safe Yield, and only may pump
17 groundwater from the Basin if, after application to the Watermaster Engineer, the Watermaster, in
18 its discretion, determines that the Willis Class member may pump groundwater and, with the
19 possible exception of domestic use, subject to a replacement assessment. The constitutional and
20 previously recognized water rights of the Willis Class have been subordinated, if not extinguished
21 (they have no part of the native safe yield), by the Court’s proposed statement of decision.
22

23 **Substitute Language.** To accurately reflect the provisions of the Judgment and Physical
24 Solution, the sentence on page 22, lines 22 to 24 should read: “The Court finds that (1) each party
25 – including the Willis Class which now has no right to pump any portion of the Native Safe Yield,
26 and only may pump groundwater from the Basin if, after application to the Watermaster Engineer,
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1 the Watermaster, in its discretion, determines that the Willis Class member may pump groundwater
2 and, with the possible exception of domestic use, subject to a replacement assessment – has been
3 treated reasonably by the Physical Solution, and meets several regulations, (2) except for the rights
4 of the Willis Class, the priority of rights in the Basin are preserved; (3) the Stipulating parties vested
5 rights are not eliminated; and (4) all allocations are reasonably tied to reasonable and beneficial use
6 and the health of the Basin.”

7
8 **OBJECTION 32.** The Proposed Statement states on page 24, lines 8-10 that: “*The*
9 *Court finds that the right to return flows from imported State Water Project water is properly*
10 *allocated as set forth in paragraph 5.2 and Exhibit 8 of the Judgment and Physical Solution.*” This
11 statement is factually incorrect. The Willis Class members have no rights to return flows, even
12 though their future pumping is all from imported water. The Court indicated, in a prior ruling, that
13 return flows belong to the party who use the imported water. In an order after Motion by AVEK
14 for summary judgment, the Court determined that “water users who have imported the water into
15 the basin and who have augmented the water in the aquifer through use are entitled rights to the
16 amount of water augmenting the aquifer.” (Order After Hearing on January 27, 2014: Motion by
17 Cross-Complainant A VEK for Summary Judgment/Summary Adjudication, p. 4: 13-16 (“Order re
18 AVEK’s MSA”).) The Court specified that “[t]he return flow [right] results from *use* of imported
19 water, not just importation.” (*Id.*, at 4:8 [emphasis added].) For this reason, the Court ruled that, as
20 a matter of law, “AVEK has failed to establish that, as a [SWP] contractor with a contractual entitled
21 to receive and deliver SWP water to public water suppliers and private property owners,” it is
22 entitled to recapture return flows “delivered to and *used by others.*” (*Id.*, at 4: 9-14 [emphasis
23 added].)

24
25
26 **OBJECTION 33.** The Proposed Statement states on page 25, lines 3-5 that: “*The Public*
27 *Water Suppliers entered into a Stipulation of Settlement with the Willis Class* (“*Willis Class*
28

1 *Stipulation” or “Stipulation”)* which was approved by the Court on September 22, 2011.” This
2 sentence does not fully reflect the Court’s role in the Willis Class Stipulation of Settlement. The
3 Court approved the Stipulation and, thereafter, entered a binding final judgment based on the
4 Stipulation.

5
6 **Substitute Language:** To accurately reflect the facts of the Stipulation and Judgment, the
7 sentence quoted on page 25, lines 3-5 should read: “The Public Water Suppliers entered into a
8 Stipulation of Settlement with the Willis Class (“Willis Class Stipulation” or “Stipulation”) which
9 was approved by the Court, and Judgment was entered on September 22, 2011.”

10 **OBJECTION 34.** The Proposed Statement states on page 25, lines 11-16 that: “*Indeed,*
11 *the Willis Class acknowledged in the Stipulation that the ultimate determination of its reasonable*
12 *correlative right would depend upon the existing and historical pumping of all other overlying*
13 *landowners in the Basin. (Stipulation, ¶IV.D.3.) While the Stipulation recognized that the Willis*
14 *Class members may receive whatever is later to be determined by the Court as their reasonable*
15 *correlative right to the Basin’s native safe yield for actual reasonable and beneficial uses, it could*
16 *do nothing more.” See Objection 18. The Willis Class Stipulation says at ¶IV.D.3 “The Willis*
17 *Class members recognize that other overlying owners may have the right to pump correlatively*
18 *with them 85% of the Federally Adjusted Native Safe Yield...” The right is not dependent upon*
19 *historical pumping; rather, pumpers share the groundwater with new overlying users. The Court in*
20 *its Judgment found that the Willis Class has a correlative share of 85% of the Native Safe Yield.*
21 *A correlative share allows a user to pump water for his/her/its needs. If there are insufficient water*
22 *resources then each is “entitled to a fair and just proportion of the water available to overlying*
23 *owners.” See ¶III.D of Stipulation of Settlement.*

24
25
26 **Substitute Language.** The above quoted sentences should be deleted.
27
28

1 **OBJECTION 35.** The Proposed Statement states on page 25, lines 17 to 18 that: “*The*
2 *Court finds that the Physical Solution is consistent with the Willis Class Stipulation for at least the*
3 *following reasons:*” As noted above, the Willis Class and the Public Water Suppliers entered into
4 a settlement which was approved by a Judgment entered by the Court. On page 10 of the settlement
5 agreement, lines 11 to 16, provide: “The Settling Parties agree that the Willis Class Members have
6 an Overlying Right to a correlative share of 85% of the Federally Adjusted Native Safe Yield for
7 reasonable and beneficial uses on their overlying land free of any Replacement Assessment. The
8 Settling Defendants will not take any positions or enter into any agreements that are inconsistent
9 with the exercise of the Willis Class Members' Overlying Right to produce and use their correlative
10 share of 85% of the Basin's Federally Adjusted Native Safe Yield.” In contrast, as noted above, the
11 Judgment and Physical Solution provide that a Willis Class member has no right to pump any
12 portion of the Native Safe Yield, and only may pump groundwater from the Basin if, after
13 application to the Watermaster Engineer, the Watermaster, in its discretion, determines that the
14 Willis Class member may pump groundwater and, with the possible exception of domestic use,
15 subject to a replacement assessment. Despite the covenant in the settlement agreement to “not take
16 any positions or enter into any agreements that are inconsistent with the exercise of the Willis Class
17 Members' Overlying Right to produce and use their correlative share of 85% of the Basin's
18 Federally Adjusted Native Safe Yield,” the Public Water Suppliers stipulated to the Proposed
19 Judgment and Physical Solution. The Physical Solution is **not** consistent with the Willis Class
20 Stipulation.
21
22
23

24 **Substitute Language.** To accurately reflect the provision of the Willis Class settlement and
25 judgment given the Court’s tentative, the clause on page 25, lines 17 to 18 should read: “The Court
26 finds that the Public Water Suppliers in the Willis Settlement and Judgment have not taken any
27 positions or entered into any agreements that are inconsistent with the exercise of the Willis Class
28

1 Members' Overlying Right to produce and use their correlative share of 85% of the Basin's
2 Federally Adjusted Native Safe Yield, by stipulating to the Judgment and Physical Solution which
3 provides that a Willis Class member has no right to pump any portion of the Native Safe Yield, and
4 only may pump groundwater from the Basin if, after application to the Watermaster Engineer, the
5 Watermaster, in its discretion, determines that the Willis Class member may pump groundwater
6 and, with the possible exception of domestic use, subject to a replacement assessment, and meets
7 all of the regulatory new pumping application procedures. Therefore, the Physical Solution is
8 consistent with the Willis Class Stipulation for at least the following reasons:"

9
10 **OBJECTION 36.** The Proposed Statement states on page 26, lines 7 to 12 that: *“The*
11 *Physical Solution recognizes the Willis Class' share of correlative overlying rights and does not*
12 *unreasonably burden its members' rights given the significant reductions in groundwater pumping*
13 *and increased expense incurred by the Stipulating Parties in the Physical Solution. At this time,*
14 *more than the entire native safe yield is being applied to reasonable and beneficial uses.”* As noted
15 above, the Judgment and Physical Solution provide that a Willis Class member has no right to pump
16 any portion of the Native Safe Yield, and only may pump groundwater from the Basin if, after
17 application to the Watermaster Engineer, the Watermaster, in its discretion, determines that the
18 Willis Class member may pump groundwater and, with the possible exception of domestic use,
19 subject to a replacement assessment. The Willis Class has no correlative right to the native safe
20 yield in this physical solution; the total elimination of the Class’ correlative right is an unreasonable
21 burden; and, the regulatory new pumping application procedures are costly and burdensome.

22
23
24 **Substitute Language.** In order to accurately state the provisions of the Judgment and
25 Physical Solution, the sentences on page 26, lines 7 to 12 should read: “The Physical Solution
26 provides that a Willis Class member has no right to pump any portion of the Native Safe Yield, and
27 only may pump groundwater from the Basin if, after application to the Watermaster Engineer, the
28

1 Watermaster, in its discretion, determines that the Willis Class member may pump groundwater
2 and, with the possible exception of domestic use, subject to a replacement assessment, meets the
3 new pumping application regulatory procedures; this restriction recognizes the Willis Class' share
4 of correlative overlying rights and does not unreasonably burden its members' rights given the
5 significant reductions in groundwater pumping and increased expense incurred by the Stipulating
6 Parties in the Physical Solution. At this time, more than the entire native safe yield is being applied
7 to reasonable and beneficial uses.”

9 **Objection 37.** The Proposed Statement states on page 26, lines 24 to 27 that: “*The*
10 *Willis Class members, however, have never exercised their rights to produce groundwater from the*
11 *Basin. Recognizing this fact, the Physical Solution does not provide for an allocation to the Willis*
12 *Class, but preserves their ability to pump groundwater in the future.*” As noted above, the
13 Judgment and Physical Solution provide that a Willis Class member has no right to pump any
14 portion of the Native Safe Yield, and only may pump groundwater from the Basin if, after
15 application to the Watermaster Engineer, the Watermaster, in its discretion, determines that the
16 Willis Class member may pump groundwater and, with the possible exception of domestic use,
17 subject to a replacement assessment.

19 **Substitute Language.** In order to accurately state the provisions of the Judgment and
20 Physical Solution, the sentences on page 26, lines 24 to 27 should read: “[T]he Willis Class
21 members, however, have never exercised their rights to produce groundwater from the Basin.
22 Recognizing this fact, the Physical Solution does not provide for an allocation to the Willis Class,
23 but conditionally preserves their ability to pump groundwater in the future subject to the discretion
24 of the Watermaster and other regulatory requirements.”

26 **OBJECTION 38.** The Proposed Statement states on page 26, lines 24 to 27 that:
27 “[W]illis Class members will have the opportunity to prove a claim of right to the Court (Physical
28

1 Solution, (paragraph 5.1.10) or, like all other pumpers in the Basin, apply to the Water Master for
2 new groundwater production. (paragraph 18.5.13). Thus, the Willis Class' correlative rights are
3 more than fairly protected by the Physical Solution.” As noted above, the Judgment and Physical
4 Solution provide that a Willis Class member has no right to pump any portion of the Native Safe
5 Yield, and only may pump groundwater from the Basin if, after application to the Watermaster
6 Engineer, the Watermaster, in its discretion, determines that the Willis Class member may pump
7 groundwater and, with the possible exception of domestic use, subject to a replacement assessment.
8 Thus, the Willis Class’ correlative rights have not been fairly protected by the Physical Solution.
9

10 **Substitute Language.** In order to accurately state the provisions of the Judgment and
11 Physical Solution, the sentences on page 27, lines 4 to 8 should read: “[W]illis Class members will
12 have the opportunity to prove a claim of right to the Court (Physical Solution, (paragraph 5.1.10)
13 or, like all other pumpers in the Basin, apply to the Water Master for new groundwater production
14 and that production is subject to the discretion of the Watermaster and regulatory requirements.
15 (Paragraph 18.5.13).”
16

17 **OBJECTION 39.** The Proposed Statement states on page 27, lines 4-8 that: “Willis
18 Class members will have the opportunity to prove a claim of right to the Court (Physical Solution,
19 ¶5.1.10) or, like all other pumpers in the Basin, apply to the Water Master for new groundwater
20 production. (¶18.5.13).” The application procedures outlined in the New Groundwater Production
21 section of the Physical Solution (¶¶18.5.13, et seq.) are burdensome, unnecessary, and expensive.
22 Further, despite the application, the Watermaster still has the discretion to prevent the Willis Class
23 member from being able to pump groundwater.
24

25 **OBJECTION 40.** The Proposed Statement states on page 27, lines 13-15 that: “In
26 addition, the replacement assessment is imposed uniformly on all existing producers in the Basin
27 that produce more than their available allocation in any given year. (Physical Solution, ¶9.2.)”
28

1 This statement fundamentally misrepresents the proposed Physical Solution and imposition of a
2 replacement assessment. The stipulating parties on exhibits 3 and 4 have a free, transferrable, and
3 moveable production right. The Willis Class does not. There is no uniformity.

4 **OBJECTION 41.** The Proposed Statement states on page 27, lines 17-28 that:
5
6 *“Assuming an acre foot of water is sufficient for domestic use in the Antelope Valley as testified by*
7 *the court-appointed expert, Tim Thompson, the average monthly cost for a Willis Class member*
8 *would be a mere \$26 – a monthly amount less than what most Californians are likely paying for*
9 *that amount of water. The Court finds that the replacement assessment is not an unreasonable*
10 *burden upon any Willis Class member who may someday install a well for domestic use.*

11 *But even the small amount of replacement assessment cost can be avoided under the*
12 *Physical Solution if the Water master [sic] determines that the particular Willis Class member’s*
13 *domestic use will not harm the Basin or other groundwater uses. There is no reasonable basis for*
14 *any argument that a replacement assessment somehow unreasonably burdens or significantly*
15 *harms a Willis Class member who might have to pay a relatively small amount for a relatively large*
16 *amount of water.”* These sentences fundamentally misrepresent the makeup of the Willis Class,
17 the burdens placed for any new production, and the potential nature of the future use. Mr. Estrada,
18 the class representative for the Willis Class, is more than a domestic user; as such, he is entitled to
19 a correlative share of the native safe yield free of replacement assessment, and he need only meet
20 county permit requirements, rather than the arbitrary, expensive and burdensome new pumping
21 application procedures. Mr. Estrada has testified at trial regarding his proposed future use, the time
22 period wherein he plans to exercise those rights, and the burdensome nature of the new pumping
23 application procedures. The Willis Class Judgment provides that he (and the Class) may pump
24 groundwater in the future without a replacement water assessment, up to 85% of the native safe
25 yield.
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1 **OBJECTION 42.** The Proposed Statement states on page 28, lines 2 to 7 that: “*The*
2 *Court finds that the Physical Solution does not "extinguish" the water rights of the Willis Class, as*
3 *the Willis Class claims. Rather, the Physical Solution allows Willis Class members-who have never*
4 *put their overlying rights to reasonable and beneficial use - to prove their entitlement to a fair*
5 *share of the native safe yield to the Court or apply as a new pumper to the Water master. (Physical*
6 *Solution, paragraphs 5.1.10 & 18.5.13.) The Willis Class had notice and an opportunity to present*
7 *evidence on this and all other issues determined by the Court.*”

9 As noted above, the Judgment and Physical Solution provide that a Willis Class member
10 has no right to pump any portion of the Native Safe Yield, and only may pump groundwater from
11 the Basin if, after application to the Watermaster Engineer, the Watermaster, in its discretion,
12 determines that the Willis Class member may pump groundwater and, with the possible exception
13 of domestic use, subject to a replacement assessment. Further, as noted above, the Court’s Minute
14 Orders concerning Phase 6 of the trial stated in pertinent part that Phase 6 “[i]ncludes, but is not
15 limited to, the non-stipulating parties’ prove up; presentation of physical solutions and objections
16 thereto; and evidence in the default proceedings.” The Court stated on June 15, 2015 and again on
17 September 29, 2015 that the purpose of the Phase 6 trial was to determine whether the Court should
18 adopt the Proposed Physical Solution, not to hear alternative physical solutions. As stated on page
19 14, lines 3 to 4: “[*Because the Willis Class objected to the Physical Solution, it is entitled to have*
20 *its rights tried as if there were no stipulated physical solution.*” Under such circumstances, the
21 Statement of Decision should not state broadly that all parties, including the Willis Class, have had
22 the opportunity to present evidence on all issues determined by the Court. Finally, the Willis Class
23 rights have, indeed, been extinguished from the Native Safe Yield.

26 **Substitute Language.** In order to accurately state the provisions of the Judgment and
27 Physical Solution and that stated purpose of the Phase 6 trial, the sentences on page 28, lines 2 to
28

1 7 should read: “The Court finds that the Physical Solution does ~~not~~ "extinguish" the water rights of
2 the Willis Class in the native safe yield, ~~as the Willis Class claims. Rather,~~ However, the Physical
3 Solution allows Willis Class members - who have never put their overlying rights to reasonable
4 and beneficial use - to prove their entitlement to a fair share of ~~the native safe yield~~ imported water
5 to the Court, or apply as a new pumper to the Water master for new groundwater production, and
6 that production is subject to the discretion of the Water Master. (Physical Solution, paragraphs
7 5.1.10 & 18.5.13.) The Willis Class has had neither notice nor an opportunity to present evidence
8 on this and all ~~other on other~~ issues determined by the Court concerning the Judgment and Physical
9 Solution; furthermore, the Willis Class has not been able to adjudicate these water rights as if there
10 were no physical solution.”

11
12 **OBJECTION 43.** The Proposed Statement states on page 28, lines 8 to 17 that: “*The*
13 *Court finds that the Willis Class received adequate notice that the Court would adopt a physical*
14 *solution that could restrict or place conditions on the Willis Class members' ability to pump*
15 *groundwater. Due process protects parties from "arbitrary adjudicative procedures." (Ryan 11 v.*
16 *California Interscholastic Federation-San Diego Section (2001) 94 Cal.App.4th 1048, 1070.) No*
17 *such risk exists here because the Court-approved notice to the Willis Class, put them on notice that*
18 *they would be subject to a physical solution yet to be approved by the Court. The notice stated that*
19 *the Willis Class members "will be bound by the terms of any later findings made by the Court and*
20 *any Physical Solution imposed by the Court" and "it is likely that there will be limits imposed on*
21 *the amount of pumping in the near future." (Notice of Proposed Settlement at 17 §§9&17.)”*

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23
24 As noted above, the Judgment and Physical Solution provide that a Willis Class member
25 has no right to pump any portion of the Native Safe Yield, and only may pump groundwater from
26 the Basin if, after application to the Watermaster Engineer, the Watermaster, in its discretion,
27 determines that the Willis Class member may pump groundwater and, with the possible exception
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1 of domestic use, subject to a replacement assessment. See Objection 8, above. In addition, the Class
2 incorporates by reference its Motion to Enforce Due Process filed on May 21, 2015, docket #9950
3 and Reply filed on June 8, 2015, docket #9976, wherein the Class sets forth its points and authorities
4 regarding the failure of due process.

5
6 **Substitute Language.** In order to accurately state the provisions of the Judgment and
7 Physical Solution, the sentences on page 28, lines 8 to 17 should read: “[A]lthough the Judgment
8 and Physical Solution provides that a Willis Class member has no right to pump any portion of the
9 Native Safe Yield, and only may pump groundwater from the Basin if, after application to the
10 Watermaster Engineer, the Watermaster, in its discretion, determines that the Willis Class member
11 may pump groundwater and, with the possible exception of domestic use, subject to a replacement
12 assessment, ¶the Court finds that the Willis Class needs no further notice received adequate notice
13 that the Court would adopt a physical solution that could restrict or place conditions on the Willis
14 Class members' ability to pump groundwater. Due process protects parties from "arbitrary
15 adjudicative procedures." (Ryan 11 v. California Interscholastic Federation-San Diego Section
16 (2001) 94 Cal.App.4th 1048, 1070.) The Court finds that it has the ability to limit, subordinate,
17 and impair the water rights of the Willis Class without further notice to class members. No such
18 risk exists here because the Court approved notice to the Willis Class, put them on notice that they
19 would be subject to a physical solution yet to be approved by the Court. The notice stated that the
20 Willis Class members "will be bound by the terms of any later findings made by the Court and any
21 Physical Solution imposed by the Court" and "it is likely that there will be limits imposed on the
22 amount of pumping in the near future." (Notice of Proposed Settlement at 17 §§ 9 & 17.)”

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24
25 **OBJECTION 44.** The Proposed Statement states on page 28, lines 18-21 that: *“The*
26 *Willis Class has actively participated in these proceedings since January 11, 2007, knows that the*
27 *other Landowner Parties and Public Overliers claim a correlative share of the Basin’s native safe*
28

1 yield, and agreed in the Willis Class Stipulation that they would be subject to the Court's future
2 jurisdiction and judgment and be bound by a physical solution." The record does not support this
3 statement. The Court entered a final judgment in 2011 as to all the claims asserted by the Willis
4 Class. The Willis Class did not pump groundwater and had little or no interest in participating in
5 the Phase IV trial, which determined 2011 and 2012 pumping only. After the Willis Class stopped
6 participating in these proceedings, the defendants took the opportunity (without notice to the Willis
7 Class) to undo their agreement with the Class. To the extent the Willis Class has participated in
8 any proceedings after 2011, it was only because the Court was unwilling or unable to enforce the
9 2011 Willis Judgment and the protections afforded to the Class therein. The burden was on the
10 Public Water Suppliers to submit a legal, fair, and consistent physical solution. They did not. The
11 Court then entered a CMO which obligated the Willis Class to either accept or oppose the stipulated
12 proposed physical solution. The Willis Class was forced to oppose a one-sided physical solution
13 which extinguished its rights to the native safe yield.

14
15
16 **Substitute Language:** To accurately reflect the Willis Class' participation in this case from
17 January 11, 2007 to today the quoted language from page 28, lines 18-21 should be modified as
18 follows: "The Willis Class was obligated to accept or oppose the stipulated proposed physical
19 solution. actively participated in these proceedings since January 11, 2007 knows that the
20 other Landowner Parties and Public Overliers claim a correlative share of the Basin's native
21 safe yield, and agreed in the Willis Class stipulation that they would be subject to the Court's
22 future jurisdiction and judgment and be bound by a physical solution.

23
24 **OBJECTION 45.** The Statement of Decision fails to address many of the issues that
25 the Willis Class identified in its Request for Statement of Decision dated 11/13/2015 Docket
26 #10969. The Willis Class requests findings on those issues in the Statement of Decision.
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28

1 In further opposition to the Proposed Statement of Decision and Proposed Judgment, The
2 Willis Class incorporates by reference in this opposition, as though fully set forth, the following
3 briefs:

4 Willis Class' Opposition to Motion For Preliminary Approval of Wood Class Settlement;
5 Author: Kalfayan, Ralph; Filing date: 03/13/15. Docket #9646.

6 Separate Statement of Objections; Author: Kalfayan, Ralph; Filing date: 03/13/15. Docket
7 #9647.

8 APPS; Author: Kalfayan, Ralph; Filing date: 03/13/15. Docket #9648.

9 Declaration of RBK; Author: Kalfayan, Ralph; Filing date: 03/13/15. Docket #9649.

10 Willis Class' Motion to Enforce Settlement Agreement with Defendant Public Water
11 Suppliers; filed on 05/21/2015. Docket #9949

12 Willis Class' Motion to Enforce Due Process Rights of the Willis Class; filed on
13 05/21/2015. Docket #9950

14 Willis Class' Notice and Motion for Court Order for Payment of Expert Witness Fees for
15 the Willis Class for Physical Solution Proceedings; filed on 05/21/2015. Docket #9951

16 Reply Brief: Willis Class' Reply in Support of Motion to Enforce Settlement Agreement
17 with Defendant Public Water Suppliers; filed on 6/8/2015. Docket #9973

18 Reply Brief: Willis Class' Reply Motion for Court Order for Payment of Expert Witness
19 Fees for the Willis Class for Physical Solution Proceedings; filed on 6/8/2015. Docket #9975

20 Reply Brief: Reply Brief in Support of Motion to Enforce Due Process Rights of the Willis
21 Class.; filed on 6/8/2015. Docket #9976

22 Motion for Order: Willis Class' Second Motion to Enforce Settlement Agreement with
23 Defendant Public Water Suppliers.; filed on 7/15/2015. Docket #10172

1 Willis Class' Opposition to Wood Class' Motion for Final Approval of Class Settlement;
2 filed on 07/21/15. Docket #10231

3 Willis Class' Reply Brief Re Second Motion To Enforce Settlement Agreement With
4 Defendant Public Water Suppliers; Proof Of Service; filed on 07/29/15. Docket #10262

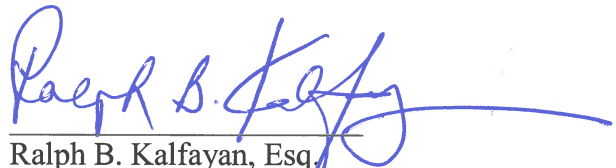
5 Willis Class' First Amended Alternative Proposed Physical Solution: [Proposed] Judgment
6 and Physical Solution Modified to Incorporate Willis Class Pumping; Author: Brennan, Lynne M.;
7 Filing date: 11/03/15 Docket #10926

8
9 Respectfully submitted,

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12 Dated: December 14, 2015

KRAUSE KALFAYAN BENINK & SLAVENS, LLP

13
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15 By:


16 Ralph B. Kalfayan, Esq.
17 Class Counsel for the Willis Class
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