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6 Class Counsel for the Willis Class

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

10 ANTELOPE VALLEY GROUNDWATER
11 CASES

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

15 *Plaintiffs,*

16 v.

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

24 *Defendants.*

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

Case No. BC 364553

SUMMARY OF PROCEEDINGS

Date: March 21, 2016

Time: 1:30 P.M.

Place: San Jose Superior Court
191 North First Street
San Jose, CA 95113

Judge: Hon. Jack Komar

25 The Willis Class respectfully submits the following summaries of the Law and Motions,
26 Objections, and Case Management Statements that it filed in this adjudication.

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1 **Law and Motion:**

2 The Willis Class researched, filed, and argued at least 14 motions in opposition to the SPPS
3 and in defense of the 2011 Willis Class judgment. A brief description of each motion is provided
4 below:

- 5 1. On October 10, 2014, Class Counsel filed the *Motion for Leave to Add or Substitute*
6 *Class Representative* (Docket #9393). Ms. Rebecca Willis sold her property in the
7 Antelope Valley and moved out of California. As a result, and in order to oppose the
8 SPPS, Class Counsel sought out other class members who may be interested in
9 representing the Class as named Class representatives. The effort was challenging. Mr.
10 Estrada and the Archdiocese offered to step in as Class representatives. Opposing
11 parties argued in a limited opposition against the Archdiocese. They argued that the
12 Archdiocese had not opted-in to the Willis Class and was therefore not eligible. On
13 October 28, 2014 the Willis Class filed its reply brief (Docket #9417). On November
14 4, 2015, the matter was argued and the Court granted the motion as to Mr. Estrada, but
15 denied without prejudice the motion as to the Archdiocese.
- 16 2. On November 25, 2014, Class Counsel filed the *Renewed Motion to Add Lead Plaintiff*
17 (Docket #9460). It was important for the Willis Class to have the Archdiocese because
18 as an entity it would remain in the Antelope Valley and would (because it is an
19 institution) long outlast the human parties to this litigation. Opposing parties argued
20 principally that the Archdiocese had a conflict of interest with the Willis Class. They
21 argued that Archdiocese is not a domestic water user and its interests would therefore
22 conflict. A reply brief was filed in response to the conflict issue and to comply with
23 the prior Court's orders. On January 22, 2015, the matter was heard, and the Court
24 again denied the motion without prejudice.
- 25 3. On March 4, 2015, the Willis Class filed a *Motion to Obtain Court Order Permitting*
26 *Willis to Class Counsel to Seek Additional Attorneys Fees* Docket #9626. The Willis
27 Class argued that one exception under the judgment is for the Willis Class to seek an
28 Order allowing them to seek fees in the future. The Public Water Suppliers argued in
29 opposition that the Willis Class motion was seeking an advisory opinion from the court.
30 On March 19, 2015, the Willis Class filed its reply brief Docket 9661. The matter was
31 heard on March 26, 2015, and the Court denied the motion.
- 32 4. On March 4, 2015, the Willis Class filed a *Motion for Court-Appointed Expert or, in*
33 *the alternative, Motion to Decertify the Willis Class* (Docket #9625). This motion and
34 its supporting documents argued that in order to effectively represent the Willis Class,
35 Class Counsel needed a court appointed expert or its own set of experts, because the
36 Wood Class had already moved for and secured a court-appointed expert, and the same
37 logic applies to the Willis Class. The Public Water Suppliers opposed. Opposing parties
38 responded and argued that the Willis Class' claims were all settled, and the Court
39 should not decertify the Willis Class, because that would also mean the loss of
40 jurisdiction over the United States and would undermine the previous rulings of the

1 Court. The Willis Class filed its reply brief on March 19, 2015 (Docket # 9660). The
2 motion was argued and by minute order dated March 26, 2015, the Court denied the
3 motion.

4 5. On March 4, 2015 the Willis Class filed a *Re-Notice of Motion to Add Archdiocese as*
5 *Lead Plaintiff* (Docket #9627). Opposing parties filed their opposition again re-
6 alleging the conflict of interest issue, the adequate representation by Mr. Estrada, and
7 the failure of the Willis Class to comply with the Court's orders. On March 19, 2015
8 (Docket #9662), the Willis Class responded that the Willis Class had satisfied all of the
9 Court's requirements, and that the Archdiocese would be able to represent the class for
10 decades to come. On March 26, after hearing, the Court denied the motion without
11 prejudice.

12 6. On April 7, 2015, the Willis Class filed a *Motion to Admit Alternative Proposed*
13 *Physical Solutions*, Docket #9715. The Willis Class argued that the SPPS extinguished
14 the rights of the Willis Class and the Court should consider alternative solutions. The
15 Motion was opposed. The Court did not rule on this Motion until trial. At trial the Court
16 sustained all objections to the introduction of any alternative proposed solutions.

17 7. On May 21, 2015, the Willis Class filed a *Motion to Enforce Settlement Agreement*,
18 Docket #9949. The Motion argued that several portions of the SPPS were inconsistent
19 with the 2011 Willis Class Settlement and Final Judgment and that the Public Water
20 Suppliers were responsible for that breach. The PWS opposed and argued that the SPPS
21 is consistent with the Willis Class Stipulation of Settlement and Judgment, because the
22 SPPS said it was. A reply brief was filed on June 8, 2015. The matter was argued on
23 June 15, 2016 and the Court denied the motion without prejudice.

24 8. On May 21, 2015, the Willis Class filed a *Motion to Enforce the Due Process Rights*
25 *of the Willis Class*, Docket #9950. The Willis Class argued that the SPPS, and the
26 judgment that would be entered to enforce the SPPS, would violate the due process
27 rights of the Willis Class. The Class was never sued, and a pleading naming the Willis
28 Class as a defendant was never issued. The Motion was opposed. The PWS argued
that any due process violations were premature, because the Court had not approved
the SPPS. The PWS further argued that the Willis Class agreed to be bound by any
physical solution, and that the terms of the SPPS are fair. A reply brief was filed on
June 8, 2015. The Motion was argued, and on June 15, 2015, the Court denied the
motion without prejudice.

9. On May 21, 2015, the Willis Class filed a *Motion for Court Order for Payment of*
Expert Witness Fees, Docket # 9951. The Class argued that it retained experts to help
them protect the interests of the Class, and the Court should permit Class counsel to
consider those costs as taxable costs. The PWS opposed. A reply brief was filed on
June 8, 2015. The Motion was argued on June 15, 2015 and the Court denied the motion
without prejudice.

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10. On July 10, 2015, The Willis Class filed *Motion to Withdraw Based on Conflict of Interest or, in the Alternative, Motion for Continuance of the Phase VI Physical Solution Trial*, Docket #10121. The Willis Class argued that an irreconcilable conflict of interest had arisen because of the SPPS. Namely, Wood Class counsel informed class members that they may be in both classes and the classes overlap. Class Counsel argued that previous court orders and statements made it clear that members of the Willis Class were distinct and separate from the Wood Class and that the two classes do not overlap. Opposing Counsel argued that this was a parcel-based class not a person-based class. A reply was filed on August 8, 2015, Docket #10323. The Court ruled that there was no conflict of interest and a person may be in both classes and denied the Motion in its entirety.
 11. On July 15, 2015, the Willis Class filed a *Second Motion to Enforce Settlement Agreement with Defendant Public Water Suppliers*, Docket #10172. The Willis Class reiterated its argument that the Public Water Suppliers breached their settlement with the Willis Class by entering into and agreeing to the SPPS. Class Counsel argued that several sections of the SPPS contradict the Willis Settlement and Final Judgment. The PWS opposed. The Willis Class filed its reply brief on July 29, 2015, Docket #10262, and argued that the SPPS prevents the Willis Class from pumping from the native safe yield; asserts prescriptive rights against the Willis Class; and unfairly burdens the Willis Class. The Court deferred ruling on the Motion.
 12. On July 31, 2015, the Willis Class filed “*Motion in Limine No 1. Re: Exclusion of Expert Report of Tim Thompson*” (Docket #10280), and “*Motion in Limine No 2. Re: Opinion Testimony on Reasonable and Beneficial Use of Groundwater by the Small Pumper Class*” (Docket #10282). With these motions, the Willis Class argued that the testimony and analyses of the court-appointed expert should be prevented from coming into the record. First, the attorney for the Wood Class flawed regarding the survey - Mr. Thompson was neither a survey expert nor a statistician, and the results suffered from several, common biases. In the second motion, Willis Class Counsel sought to preclude testimony regarding “reasonable and beneficial use.” The Court denied the first motion, but granted the second motion.
 13. On September 3, 2015, the Willis Class noticed its *Second Motion to Enforce Settlement Agreement with Public Water Suppliers; Motion to Enforce Due Process; and Motion for Court Order for Payment of Expert Witness Fees for the Willis Class for Physical Solution Proceedings*” (Docket #10390). Class Counsel reissued these motions, because they had been previously denied without prejudice.
 14. On November 3, 2015, the Willis Class filed *Willis Class’ First Amended Alternative Proposed Physical Solution*” and supporting documents, Docket #10926. The Willis Class argued that, under *City of Lodi*, the Court must consider alternative physical solution proposals. The Alternative Proposed Physical Solution was based on the SPPS agreed to by the stipulating parties, but in the opinion of Class Counsel maintained the correlative rights of the Class to the native safe yield. The Court denied the admission of any alternative proposed physical solutions.

1 **Oppositions**

2 In addition, the Willis Class researched, drafted and opposed several motions filed by Wood
3 Class and the Public Water Suppliers. A brief summary of each opposition is provided below:

- 4 1. On October 31, 2014 filed a response to the proposed Case Management Order filed
5 by the “Settling Parties”. The Willis Class had no objection to the schedule for the
6 settling parties regarding the Wood Class Settlement. However, the remainder of the
7 Proposed CMO appeared to impact the Willis Class “claims and rights to produce
8 groundwater from the Basin by Non-stipulating parties.” Class Counsel argued that all
9 of its claims were fully and finally settled with the Public Water Suppliers. Throughout
10 the entire scope of the case, no party had ever asserted a new claim against the Willis
11 Class. (Docket #9428).
- 12 2. On December 22, 2014, the Willis Class filed a request to be included in the settlement
13 discussions. The Willis Class sought negotiations in good faith with the settling parties
14 and a current copy of the proposed physical solution. (Docket #9520).
- 15 3. On January 20, 2015, Class Counsel filed objections to the CMO and an ex parte
16 application to modify the CMO. This list of objections included unrealistic obligations
17 on the Willis Class and others who would be opposing the SPPS. The proposed
18 schedule did not leave the Willis Class with enough time for discovery in order to
19 oppose the SPPS. (Docket #9600 and #9597).
- 20 4. On March 13, 2015, the Willis Class filed an opposition to the Wood Class’ Settlement
21 and the Proposed Physical Solution; a Schedule of Objections and Inconsistencies to
22 the SPPS; and four different Alternative Proposed Physical Solutions. The Willis Class
23 argued that the SPPS conflicts with the Willis Class’ Settlement; prejudices the Willis
24 Class, a non-stipulating party without its permission; denies due process rights to the
25 Willis Class; violates the California Constitution; is inconsistent with the Water Code;
26 contravenes common law; imposes an undue financial burden on the Willis Class; and
27 unjustly discriminates against the Willis Class. (Docket #9646, #9647, #9648).
- 28 5. On July 9, 2015, the Willis Class filed a response to two Case Management Statements
 filed by the Public Water Suppliers and Overlying landowners. The Willis Class
 pointed out that the phase VI trial would be an opportunity for a prove-up of the SPPS,
 as well as an opportunity for the Willis Class to offer alternative proposals. Further,
 the Willis Class pointed out that at least one provision of the SPPS had to be changed
 which would trigger a provision in the SPPS that if the document were to be modified
 it would become void *ab initio* (the “dynamite provision”). The Court must be able to
 modify or amend the SPPS – which according to the SPPS the Court could not do.
 Additionally, the Willis Class reiterated that the Public Water Suppliers could have no
 claims of prescription against the Willis Class, because of the Willis Class Settlement
 and Judgment. (Docket #10114).

- 1 6. On July 21, 2015, the Willis Class filed an opposition to the Wood Class Motion for
2 Final Approval of the Wood Class Settlement and Proposed Physical Solution. The
3 Wood Class Settlement and the SPPS were intertwined - approval of one meant the
4 approval of the other. The dynamite provision makes the SPPS illegal in that the Court
5 and even the Appellate Court is not allowed to modify or else the agreement is void *ab*
6 *initio*. Approval of the Settlement would mire Wood Class Counsel and Willis Class
7 Counsel in an unethical conflict of interest with dual-class members. Further, the PWS
8 were estopped from entering into this settlement with the Wood Class, because
9 positions in the Settlement violate the Settlement and Final Judgment that the PWS had
10 with the Willis Class. (Docket #10231).
- 11 7. On November 3, 2015, the Willis Class filed “*Willis Class Objections to Claims of*
12 *Prescription by the Public Water Suppliers in Phase VI Proceedings*” (Docket #10927).
13 The Willis Class argued that claims of prescription against the Willis Class violate the
14 Settlement Agreement and the Final Judgment – where all prescription claims were
15 forever released. Further, the Public Water Suppliers can never maintain an action for
16 prescription against dormant landowners as a matter of law. The water has not been
17 needed by the dormant landowner and a court cannot define or limit the prospective
18 rights. The Court did not address this objection.

12 **Status Conferences/Case Management Conferences**

13 Class Counsel also attended and participated in at least 17 Case Management Conferences over
14 the past four (4) years. Class Counsel monitored the filings of all the other parties to the coordinated
15 proceedings and frequently reviewed cases and other background materials that were cited in their
16 filings. Further, Class Counsel filed at least 17 Status Conference Statements and reviewed filings
17 made by other counsel. A summary of each of these CMC Statements is provided below:

- 18 1. On April 25, 2012 Class Counsel informed the Court that the Willis Class was not
19 participating in the then scheduled mediation between some of the parties. The Willis
20 Class had previously settled its claims with the Public Water Suppliers and after
21 discussion with the same public water suppliers – the Willis Class remained available,
22 but not participating in the mediation. (Docket #5081).
- 23 2. On June 13, 2012, a CMC statement was filed by the Willis Class to express concern
24 regarding the mediation process that had been ongoing without the Willis Class’
25 participation. Based on statements and comments of the negotiating parties, the Willis
26 Class wanted to express its concern that the proposed Physical Solution that might
27 come out of the negotiating process would exclude the Willis Class and prevent them
28 from exercising their correlative rights in the future. (Docket #5130).
3. On October 9, 2012, a CMC statement was filed to inform the Court that the Willis
Class was encouraged to hear that the landowner parties and the public water suppliers
were possibly close to ending their conflicts. However, the Willis Class also mentioned
that it would have to object to any deal that deprived it of its rights to the Basin’s
groundwater. (Docket #5256).

- 1 4. On May 19, 2014, a CMC statement was filed to re-establish the Willis Class' position
2 that it was not involved with the physical solution that was being proposed the various
3 boards and stakeholders. The Willis Class requested that it be allowed to have a copy
4 of the physical solution so that Class Counsel could review it. Class Counsel made
5 clear that if the terms of the physical solution in anyway bound the Willis Class – Class
6 Counsel would carefully scrutinize the terms to make sure they were consistent with
7 the Willis Class' Judgment. If the language deprived the Willis Class of its rights, then
8 Class Counsel would be forced to voice its objections. (Docket #8967).
- 9 5. On August 5, 2014, a CMC statement restated the Willis Class' willingness to come to
10 an agreement and a physical solution to resolve the issues with the groundwater in the
11 Basin. However, the Willis Class was unwilling to agree to anything that excluded it
12 from accessing the Basin's water. This Case Management Statement discusses the
13 interaction that Class Counsel had with the counsel for District 40 – namely that the
14 Willis Class was told to take it or leave it. Class Counsel was rebuffed when it offered
15 suggestions on improvements, changes, and concerns. After further discussion, District
16 40 said it may take some of the concerns into consideration. (Docket #9070).
- 17 6. On September 19, 2014, a CMC statement was written to say that, after several attempts
18 at negotiating, the Willis Class was finally able to participate in limited discussions
19 with the settling parties. However, some of the parties thought that the Willis Class
20 had no right to be at the negotiating table. Despite Class Counsel's efforts and though
21 it brought several alternatives to the table, the parties did not come to an agreement
22 about how to fairly include the Willis Class in the settlement and Physical Solution.
23 The Willis Class reiterated its position that it is willing to be a part of the negotiations
24 and a physical solution, but fully maintained its position that it would not do so by
25 limiting the rights of the Class. (Docket #9288).
- 26 7. On October 9, 2014, a CMC statement was filed to inform the Court that Willis Class
27 was effectively shut out of the negotiating room and was not included in the several
28 days of debate and drafting that led to the then draft of the Proposed Physical Solution
("PPS"). Class Counsel indicated that the other landowners and the Public Water
Suppliers seemed to have no interest in negotiating with the Willis Class. It seemed
clear that the other parties only sought to bind the Willis Class to a solution that
subordinated and/or completely extinguished its rights. (Docket #9387).
8. On January 5, 2015, a CMC statement was filed and explained that the Willis Class had
finally been given an updated draft of the SPPS after filing with the Court a demand to
be included in the negotiation process. Further, the Willis Class and absent class
members were never put on notice that their rights would be subordinated or
extinguished by the Physical Solution. And finally, the PWS's breach of the Willis
Class' Settlement and Final Judgment was causing this already lengthy and protracted
litigation to extend even further. (Docket #9549).
9. On January 15, 2015, the CMC statement outlined the Willis Class' concerns that the
timing of subsequent hearing dates was insufficient to provide the Court and the non-
stipulating parties' time to properly analyze the SPPS. According to a Statement filed
by the Wood Class, the SPPS was not ready for presentation to the Court. The Willis

1 Class was provided a draft copy, and the Willis Class informed the Court that unless
2 drastic changes were made to the language, the Willis Class would have to oppose the
3 SPPS as well as potentially requiring experts to fully address the issues. The Willis
4 Class requested that the Court require a date certain for the SPPS to be filed and then
allow for a meaningful review period for the Court and the non-stipulating parties.
(Docket #9572).

5 10. On March 19, 2015, the Willis Class asked the Court to reject the SPPS in the
6 preliminary approval stage. The Willis Class had already filed its formal objections to
7 the SPPS and the Motion for Preliminary Approval of the Settlement; however, Class
8 Counsel wanted to respond to the PWS comments that 140 parties had agreed to the
9 SPPS and that the Court should accept it as is. The Willis Class reiterated that it was
not one of these 140 parties, and has objected to the SPPS. The Wood Class and the
other stipulating parties were trying to acquire for themselves a permanent allocation
of groundwater – something that the Court had prevented them from doing in the past.
(Docket #9664).

10 11. On April 29, 2015, the Willis Class reiterated that the SPPS cannot legally bind the
11 Willis Class, whom were not parties to it. The Willis Class brought up the Waldo
12 Accord (rejected by District 40) as an example of a Physical Solution that could take
13 into consideration the Willis Class' rights and the rights of all other parties. If the court
14 were to use the SPPS as a foundation for the physical solution, then the Willis Class'
15 rights would have to be incorporated into it. The prove-up of the SPPS would put the
16 Willis Class in the untenable position of having to oppose 280 witnesses and more than
1200 exhibits – all without experts appointed by the Court to assist the Court and the
Class. There would be substantive and procedural due process issues for the Willis
Class if these issues were not addressed. (Docket #9870).

17 12. On May 13, 2015, the Willis Class filed a CMS and its addendum to discuss with the
18 Court the fact that there had been some discussion with the settling parties regarding
19 the SPPS, but that the settling parties refused to allow the Willis Class access to the
20 native safe yield in the future. The Willis Class noted that it will object to all of the
21 provisions of the SPPS that conflict with the Willis Class Settlement and Judgment.
22 The Willis Class then noted that the SPPS amounted to an illegal taking of private
property and that the Willis Class would be submitting its own versions of alternative
proposed physical solutions (APPS). In the addendum to this statement, the Willis
Class said that it would present evidence at the upcoming trial as well as reiterate that
an expert should have been appointed by the Court to assist the Court and the Willis
Class. (Docket #9916).

23 13. On June 10, 2015, the Willis Class outlined the breach of the Settlement by the Public
24 Water Suppliers, and indicated to the Court that the SPPS would be a financial burden
25 on all of the Willis Class whose property values would be reduced (by one estimate
26 over \$4 billion). Class Counsel asked the court to enjoin the Public Water Suppliers
27 from directing County officials to deny Willis Class well permits and to not approve
the SPPS for several different reasons. The Willis Class wanted to offer up alternative
proposals, and absent the ability to properly put on evidence, the Willis Class would

1 have to be decertified. Further, Class Counsel was in an impossible position of having
2 to mount an effective opposition against the 140 stipulating parties. (Docket #9979).

3 14. On July 7, 2015, the CMC statement outlined the Willis Class' objections with certain
4 provisions of the SPPS. The dynamite provision of the SPPS prevented the Court or
5 the Appellate Court from modifying the SPPS; any attempt to modify it by either court
6 would result in the SPPS being *void ab initio*. Further, the Willis Class reiterated its
7 objections to the allocation of the Unused Federal Reserve Right to the appropriators
8 and PWS. Finally, the statement reiterated the burden that would be placed on Class
9 Counsel having to oppose 140 parties and their agreement.

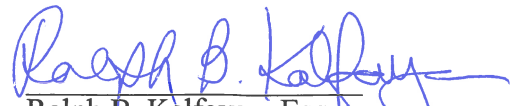
10 15. On September 2, 2015, the Willis Class reiterated its opposition to the SPPS and the
11 burden placed on Class Counsel to oppose 140 parties and their agreement. Class
12 Counsel noted that the Willis Class representative David Estrada would testify in the
13 upcoming trial. Further, Class Counsel said that it would probably be providing the
14 bulk of its evidence after the stipulating parties, and that, by agreement, would depose
15 Public Water Supplier's and AVEK's witnesses. Class Counsel also encouraged the
16 Court to adopt the alternative Proposed Order that the Willis Class' submitted. (Docket
17 #10383).

18 16. On September 18, 2015, and the Addendum Docket #10519, also filed September 18,
19 2015, were submitted to cover a variety of topics that directly related to the upcoming
20 Phase VI trial. The Willis Class discussed the breach by the Public Water Suppliers of
21 the Willis Class' Settlement, and how that led to the SPPS, which failed to properly
22 take into account the Willis Class' rights. The Willis Class discussed the proper
23 evidence sequence that the trial should follow. Some of the Stipulating Parties wanted
24 to simply admit the Phase IV evidence and deem it sufficient for Phase VI. The Willis
25 Class opposed this and said that the Phase IV evidence (to be consistent with the
26 Court's own orders) could be used for only limited purposes –2011 and 2012 pumping
27 amounts. (Docket #10518).

28 17. On October 6, 2015, the Willis Class reported to the Court that the Willis Class both
had a right to and planned to cross-examine several of the Stipulating Parties to the
SPPS during trial. The Willis Class further stated that it would call all four of its experts
and though had previously submitted the reports of three experts, was submitting the
report of the fourth expert – Mr. Roach. Finally, the Willis Class reserved the right to
call Mr. Wildermuth at trial regarding foundational facts of the Settlement between the
Willis Class and District 40. (Docket #10783).

Dated: January 22, 2016

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