

EXHIBIT 16

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

11 ANTELOPE VALLEY
12 GROUNDWATER CASES

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

16 *Plaintiff,*

17 v.

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

Defendants.

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' PARTIAL OPPOSITION TO
PROPOSED CASE MANAGEMENT ORDER**

Date: November 4, 2014
Time: 10:00 AM
Place: Department 3 Room 224
Judge: Hon. Judge Komar

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I. INTRODUCTION

The Willis Class respectfully submits the following statement in response to the Proposed Case Management Order (“Proposed CMO”) submitted by the United States, District 40, Bolthouse Farms, Van Dam entities, and the Wood class (“Settling Parties”).

By minute order dated October 10, 2014, the Court requested scheduling proposals and counter proposals from the parties for the submission of a stipulated proposed physical solution. On October 20, 2014, the Settling Parties submitted a Proposed CMO in response to the Court’s minute order. The Proposed CMO set forth a briefing schedule for approval of a settlement among certain Settling Parties and the Wood Class settlement. The Willis class has no objection to this portion of the Proposed CMO, although we reserve our right to object to the Proposed Settlement to the extent it impinges on the Class’ rights.

However, the Proposed Order also set forth a briefing schedule for *exchange of witnesses and exhibits, discovery, and trial* in connection with “claims or rights to produce groundwater from the Basin by Non-stipulating Parties.” It is unclear whether this provision purports to govern the Willis Class. To the extent the Proposed Order seeks to impose an exchange, discovery, and trial schedule on the Willis class to determine its claims to groundwater then the Willis Class respectfully objects.

Before discussing the Class’ objections, it is important to bear in mind the nature and size of the Willis Class and the value of the groundwater rights that are in dispute in this litigation. The Antelope Valley Area of Adjudication (“AVAA”) spans approximately 890,137 acres¹. Roughly 60% of the AVAA, or 631,904 acres, is owned by the Willis Class. The Willis Class owns twice the size of the area owned by the United States, which owns 265,986 acres.

¹ Best Best & Krieger (“BBK”) administered the Willis Class notice program and provided Class Counsel with the detail in support of the composition of the Class. See Declaration of Ralph B. Kalfayan in support of this partial opposition to the Case Management Order.

1 The Willis Class consists of over 65,000 different landowners, who received notice of this
2 class action at the time the Willis Class was certified. The response rate to the settlement notice
3 was overwhelmingly favorable. Class members continue to call the office of Class Counsel for
4 information regarding their water rights. Most parcels are far removed from any facilities that can
5 provide them with water to service their property. Their only source of water is from the ground
6 beneath their property. The breakdown of the 67,548 parcels in the Willis class is as follows:
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8 Under 5 acres	49,070 parcels
9 Between 5 and 20 acres	14,157 parcels
10 Between 20 and 100 acres	3,683 parcels
11 Over 100 acres	638 parcels

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13
14 Because they generally have no access to public water supplies, the Native Safe Yield is
15 the primary means for Willis Class members to utilize their properties and it is central to a
16 physical solution. Denying them the right to use the water under their properties will render
17 those properties useless and worthless.

18 **II. ARGUMENT**

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20 The Willis Class has two fundamental objections to the proposed scheduling order insofar
21 as that order purports to govern the Class. First, the Willis Class is not a non-settling party but
22 rather fully and finally settled all claims that it had asserted in this proceeding in its 2010
23 Settlement Agreement with the Public water Suppliers, which was approved by this Court's Final
24 Judgment and Order dated September 22, 2011. Second, despite the fact that almost 8 years have
25 passed since Willis became a party to this proceeding none of the landowners or other parties
26 have ever asserted a claim against the Class. The Class cannot be forced to engage in discovery
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1 and go to trial when no one has asserted claims against it and the Class has settled all of the
2 claims it asserted.²

3 **A. The Correlative Groundwater rights of the Willis have been defined by Final**
4 **Judgment**

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6 On November 18, 2010, the court preliminarily approved a settlement between the Willis
7 class and all of the Public Water Suppliers. After notice to over 65,000 landowners, the court
8 approved the settlement as fair, adequate, and reasonable. On September, 22, 2011, the court
9 entered a final judgment based on the Stipulation of Settlement. The judgment was amended at
10 the request of the Public Water Suppliers to incorporate an award of attorneys' fees. Certain
11 Public Water Suppliers appealed the attorneys' fees portion of the judgment. After mediation, the
12 issues on appeal were resolved by the parties and the court of appeal issued a remittitur. For all
13 purposes in this action, the Willis judgment has now become a final, non-appealable judgment
14 with res judicata effect as to the stipulating parties.

15
16 The following material terms were specified in the Stipulation of Settlement:

17 **1. Correlative rights free of replacement assessment**

18
19 “The Settling Parties agree that the Willis Class Members have an Overlying Right to a
20 correlative share of 85% of the Federally Adjusted Native Safe Yield for reasonable and
beneficial uses on their overlying land *free of any Replacement Assessment.*”

21 **2. PWS agree not to impair those rights**

22
23 “The Settling Defendants will not take any positions or enter into any agreements that are
inconsistent with the exercise of the Willis Class Members' Overlying Right to produce and use
their correlative share of 85% of the Basin's Federally Adjusted Native Safe Yield.”

24 **3. PWS agree to cooperate with Willis Class**

25
26 “The Settling Parties agree to cooperate and coordinate their efforts in any such trial or
hearing so as to obtain entry of judgment consistent with the terms of this Stipulation...”

27
28 ² The issues raised by these objections are fairly weighty and merit a separate brief. If the court
requests, class counsel may submit a substantive brief on these objections at a designated time.

1 **4. The Willis settlement will be incorporated into the future physical solution**

2 "Physical Solution means a mechanism that comprehensively resolves the competing
3 claims to the Basin's water and provides for the management of the Basin. The Settling Parties
4 anticipate that this Settlement will later be incorporated into a Physical Solution."

5 **5. Any physical solution must be consistent with the Willis settlement**

6 "The Settling Parties agree to be part of such a Physical Solution to the extent it is
7 consistent with the terms of this Stipulation..."

8 In essence, the judgment defined the groundwater rights of the Willis class members as
9 overlying and correlative with other overlying landowners. Since the date the Willis Class
10 judgment was entered no party has taken a position to the contrary, i.e. that the Willis Class has
11 no overlying rights or that the Willis Class rights are not correlative. Thus it is not clear what a
12 trial for the Willis Class would accomplish in this adjudication as their groundwater rights have
13 already been defined by judgment. Furthermore, it is not clear who is adverse to the class in this
14 proposed trial proceeding.

15 **B. No Landowner has made a claim against Willis**

16 The original Willis action was directed against the Public Water Suppliers. Only ten
17 Public Water Suppliers were named as defendants in the case. Importantly, Willis did not sue any
18 landowner in the basin. The aim of the action was to defeat the Public Water Suppliers claim of
19 prescription. That action ended in a final and now non-appealable judgment with a full release of
20 claims and Civil Code section 1542 waivers. All claims of prescription were released and the
21 Public Water Suppliers agreed that the Willis class have correlative rights to the Native Safe
22 Yield, *free of replacement assessment*. To our knowledge, no Landowner has filed or served a
23 claim against the Willis class before or after the Willis Class judgment. Not having sued the
24 Willis class, it is unclear what claim could possibly be tried as to the Willis Class. For instance,
25 who is making the claim, what rights are being determined, and what elements will be required to
26 be determined at trial. The Court has already adjudged that the Willis class has overlying rights
27 to the water in the Basin.
28 to the water in the Basin.

1 and those overlying rights are correlative. There was no ambiguity in the Stipulation of
2 Settlement as to those matters. Nor have any parties disputed the Class' correlative rights.

3 **C. A physical solution is available consistent with the Willis Class judgment**

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5 The Public Water Suppliers and Willis class counsel contemplated that the physical
6 solution for the basin would provide for two overlying pools- one correlative overlying pool for
7 85% of the Native Safe Yield and one Public Water Supplier pool for 15% of the Native Safe
8 Yield. Allocation or quantification on an annual basis was to be left up to a watermaster to be
9 designated by the Court as part of an overall physical solution in a given year. It was anticipated
10 that the watermaster would make annual allocations of the overlying pool to those landowners
11 who submitted claims based on demand, supply, and water code priorities, all under direction of
12 the Court. Class counsel relied on this approach in crafting and finalizing the Willis Stipulation of
13 Settlement. If a party now seeks permanent quantification, subordination, or extinguishment of
14 the Willis Class' groundwater rights, then the class is entitled to know who is making the claim,
15 what is being claimed, the legal and factual bases of the claims and how the absent class members
16 will get notice of these proceedings.
17

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19 **D. Due process considerations must be addressed before the class is subjected to a trial**

20 The Willis class has no objection to a physical solution that allocates groundwater to
21 overlying landowners on an annual basis to all those who plan to make reasonable and beneficial
22 use of the groundwater in a given year. Indeed the Public Water Suppliers and class counsel
23 anticipated such a physical solution at the time they entered into a Stipulation of Settlement.
24 Willis is however opposed to a physical solution that subordinates or extinguishes its interest in
25 favor of all other pumping landowners. A proposed physical solution which permanently
26 allocates the Native Safe Yield to certain overlying landowners free of replacement assessment
27 (hereinafter a "free production allowance") and then proceeds to exclude the Willis Class from
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1 sharing in the same Native Safe Yield is discriminatory and inherently unfair. The impact is
2 especially repugnant when the free production allowance is coupled with transfer rights. When so
3 coupled, there is no chance for Willis Class members to have any right to share the Native Safe
4 Yield and their rights will for all practical purposes be *extinguished*.

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6 Thus, if the Public Water Suppliers, or the Landowners, or the United States now request
7 a trial to determine the groundwater rights of the Willis class in order to quantify those rights, on a
8 permanent and transferrable basis, then due process considerations must be met before the class
9 may be subjected to a trial. Similarly, if the Public Water Suppliers, or the Landowners, or the
10 United States request a trial to subordinate or extinguish the groundwater rights of the Willis class
11 then again due process considerations must be met.

12
13 Due process considerations include but are not limited to: an actual pleading filed against
14 the Willis Class, notice to the Willis Class members advising them that their groundwater rights
15 are being challenged by pumping landowners, a court appointed expert to determine the quantity
16 of groundwater that may reasonably be needed in the future for the Willis Class, discovery as to
17 the reasonable and beneficial uses made by other landowners in the basin, and discovery on other
18 matters relevant to the claims being asserted.

19 **E. Conclusion**

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21 Apparently, a settlement will be presented to this Court by certain Settling Parties on or
22 before January 15, 2015. It is the position of Class Counsel that this proposed settlement imposes
23 onerous terms on the Willis Class and is inconsistent with the terms of this Court's prior
24 Judgment. Consequently, Class Counsel stands ready to object to this settlement within the time
25 limits prescribed by the Proposed CMO. The Court will then have the chance to evaluate the
26 proposed settlement and rule on the objections. Willis Class counsel respectfully requests that the
27 Proposed CMO exempt the Willis Class from trial proceedings at this time or ensure that due
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process considerations have been met before imposing a trial date. As this Court has recognized on a number of occasions, it is fundamentally unfair to foreclose a parties' rights under the guise of a settlement between other parties. This is precisely what the Settling Parties seek to do.

Dated: October 29, 2014

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
Attorney for Plaintiffs and the Class