

# **EXHIBIT 23**

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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  
DISTRICT NO. 40; CITY OF LANCASTER;  
18 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.*  
25  
26  
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28

RELATED CASE TO JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' MOTION TO ENFORCE  
SETTLEMENT AGREEMENT WITH  
DEFENDANT PUBLIC WATER SUPPLIERS**

Date: June 15, 2015

Time: 10:00 AM

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

Judge: Hon. Judge Komar

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

2 **PLEASE TAKE NOTICE** that on June 15, 2015 at 10:00 am or as soon thereafter as the  
3 matter may be heard, before the Honorable Judge Komar, Superior Court of California, Santa Clara  
4 County Superior Court, 191 N. 1<sup>st</sup> St., San Jose, CA 95113, Dept. 1, the undersigned law firm,  
5 Class Counsel for the Willis Class, will and hereby does move for an Order to Enforce Willis Class  
6 Settlement Agreement with Defendant Public Water Suppliers.<sup>1</sup>

8 This Motion is based on this Notice, the attached Memorandum of Points and Authorities  
9 with exhibits, the Declaration of Lynne M. Brennan, and such other and further evidence as may  
10 be presented at the hearing.

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**  
12 **ENFORCE WILLIS SETTLEMENT AGREEMENT WITH DEFENDANT PUBLIC**  
13 **WATER SUPPLIERS**

14 By virtue of becoming signatories to the Wood Class Settlement and incorporated  
15 Stipulation of Judgment and Proposed Physical Solution (“SPPS”) in December 2014 and early  
16 2015, Defendant Public Water Suppliers have willfully breached and violated the Stipulation of  
17 Settlement that they entered into with the Willis Class on July 13, 2010 (“Willis Settlement  
18 Agreement”). The Willis Settlement Agreement was entered as an Amended Final Judgment by  
19 this Court on September 22, 2011. Simply stated, the Public Water Suppliers have reneged on the  
20 deal they made with the 65,000-Member Willis Class resulting in catastrophic losses in property  
21 rights for the Willis Class. The Public Water Suppliers must be held accountable in Law and Equity  
22 for their intentional breach of the Willis Settlement Agreement.<sup>2</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> The Willis Class hereby incorporates in their entirety by this reference the concurrently filed Motion to Enforce Due  
27 Process Rights of Willis Class and Motion for Court Order for Payment of Expert Witness Fees for the Willis Class  
28 for Physical Solution Proceedings as though fully set forth herein.

<sup>2</sup> The Superior Court of the State of California for Los Angeles County shall retain jurisdiction over the  
implementation, enforcement, and performance of this Stipulation [Willis Settlement Agreement], and shall have  
exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Stipulation [Willis  
Settlement Agreement] or the applicability of this Stipulation. *Willis Settlement Agreement*, ¶ VIII.E, Exh. A.

1 **TERMS OF THE WILLIS SETTLEMENT AGREEMENT BREACHED BY DEFENDANT**  
2 **PUBLIC WATER SUPPLIERS:**

3 Pumping of the Settling Parties' share of Native Safe Yield is not subject to any Replacement  
4 Assessment.

4 *Willis Settlement Agreement*, ¶ III.K. (Exh. A)

5 The Settling Parties agree that the Settling Defendants and the Willis Class Members each have  
6 rights to produce groundwater from the Basin's Federally Adjusted Native Safe Yield.

6 *Willis Settlement Agreement*, ¶ IV.D.

7 The Settling Parties agree that the Willis Class Members have an Overlying Right to a correlative  
8 share to produce up to 85% of the Basin's Federally Adjusted Native Safe Yield free of  
9 Replacement Assessment. The Settling Defendants will not take any positions or enter into any  
10 agreements that are inconsistent with the exercise of the Willis Class Members' right to produce  
and use their correlative share of 85% of the Basin's Federally Adjusted Native Safe Yield.

10 *Willis Settlement Agreement*, ¶ IV.D.2.

11 The Settling Parties acknowledge and agree that they all have the right to recapture Return Flows  
12 from Imported Water that they put to reasonable and beneficial use in the Basin, consistent with  
13 California law. The Settling Parties will not be subject to any Replacement Assessment for their  
14 production of an amount equal to the Return Flows from Imported Water that they put to  
reasonable and beneficial use in the Basin.

14 *Willis Settlement Agreement*, ¶ IV.D.4.a.

15 The Settling Parties recognize that not all parties to the Coordinated Actions have entered  
16 into this Stipulation and that a trial may be necessary as against non-settling parties. The Settling  
17 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; . . .

18 *Willis Settlement Agreement*, ¶ VIII.B.

19 The Settling Defendants are permanently barred and enjoined from . . .prosecuting, or continuing  
20 to prosecute, either directly or indirectly, any Released Claim against any of the Class Members.  
..

21 *Amended Final Judgment*, ¶ 19. (Exh. B)

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1 **TERMS OF THE SPPS THAT CONSTITUTE A BREACH OF THE WILLIS**  
2 **SETTLEMENT AGREEMENT BY DEFENDANT PUBLIC WATER SUPPLIERS:**

3 **SPPS Term:**

- 4 1. Production Rights Claimed by Non-Stipulating Parties. Any claim to a right to Produce  
5 Groundwater from the Basin by a Non-Stipulating Party shall be subject to procedural or  
6 legal objection by any Stipulating Party [includes Defendant Public Water Suppliers].  
*SPPS, ¶ 5.1.10 (Exh. C)*

7 **Indisputable Breach by Public Water Suppliers:** Public Water Suppliers are a “Stipulating  
8 Party” to the SPPS, however, they have no right to object, either procedurally or substantively, to  
9 Willis Class Members’ right to pump groundwater from the Basin:

10 The Settling Parties agree that the Settling Defendants and the Willis Class Members each  
11 have rights to produce groundwater from the Basin’s Federally Adjusted Native Safe  
12 Yield.

12 *Willis Settlement Agreement, ¶ IV.D.*

13 . . . . The Settling Defendants [Public Water Suppliers] will not take any positions or enter  
14 into any agreements that are inconsistent with the exercise of the Willis Class Members’  
15 right to produce and use their correlative share of 85% of the Basin’s Federally Adjusted  
16 Native Safe Yield.

16 *Willis Settlement Agreement, ¶ IV.D.2.*

17 **SPPS Term:**

- 18 2. The Non-Pumper Class Stipulation of Settlement, executed by its signatories and  
19 approved by the Court in the Non-Pumper Class Judgment, specifically provides for  
20 imposition of a Replacement Water Assessment on Non-Pumper Class members. . . .  
*SPPS, ¶ 9.2.1*

21 **Indisputable Breach by Public Water Suppliers:** The Public Water Suppliers agreed that the  
22 Willis Class has the right to pump up to 85% of the Native Safe Yield free of replacement  
23 assessment:

24 Pumping of the Settling Parties’ share of Native Safe Yield is not subject to any  
25 Replacement Assessment.

25 *Willis Settlement Agreement, ¶ III.K.*

26 The Settling Parties agree that the Willis Class Members have an Overlying Right to a  
27 correlative share to produce up to 85% of the Basin’s Federally Adjusted Native Safe  
28 Yield **free of Replacement Assessment**. The Settling Defendants will not take any  
positions or enter into any agreements that are inconsistent with the exercise of the Willis

1 Class Members' right to produce and use their correlative share of 85% of the Basin's  
2 Federally Adjusted Native Safe Yield.  
3 *Willis Settlement Agreement*, ¶ IV.D.2. (emphasis supplied).

4 **SPPS Term:**

5 3. Evidence presented to the Court demonstrates that Production by one or more Public  
6 Water Suppliers satisfies the elements of prescription and that Production by overlying  
7 landowners during portion(s) of the prescriptive period exceeded the Native Safe Yield.  
8 At the time of this Judgment the entire Native Safe Yield is being applied to reasonable  
9 and beneficial uses in the Basin. Members of the Non-Pumper Class do not and have  
10 never Produced Groundwater for reasonable beneficial use as of the date of this Judgment.  
11 **Pursuant to *Pasadena v. Alhambra* (1949) 33 Cal 2d 908, 931-32 and other applicable**  
12 **law, the failure of the Non-Pumper Class members to Produce any Groundwater**  
13 **under the facts here modifies their rights to Produce Groundwater except as**  
14 **provided in this Judgment.** Because this is a comprehensive adjudication pursuant to the  
15 McCarran Amendment, consistent with the California Supreme Court decisions, including  
16 *In Re Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339, this Court  
17 makes the following findings: (1) certainty fosters reasonable and beneficial use of water  
18 and is called for by the mandate of Article X, section 2; (2) because of this mandate for  
19 certainty and in furtherance of the Physical Solution, any New Production, including that  
20 by a member of the Non-Pumper Class must comply with the New Production Application  
21 Procedure specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-  
22 Pumper Class has established a Production Right to the reasonable and beneficial use of  
23 Groundwater based on their unexercised claim of right to Produce Groundwater; (4) if in  
24 the future a member of the Non-Pumper Class proposes to Produce Groundwater for  
25 reasonable and beneficial use, the Watermaster as part of the New Production Application  
26 Procedure, has the authority to determine whether such a member has established that the  
27 proposed New Production is a reasonable and beneficial use in the context of other  
28 existing uses of Groundwater and then-current Basin conditions; and (5) the Watermaster's  
determinations as to the approval, scope, nature and priority of any New Production is  
reasonably necessary to the promotion of the State's interest in fostering the most  
reasonable and beneficial use of its scarce water resources. All provisions of this  
Judgment regarding the administration, use and enforcement of the Replacement Water  
Assessment shall apply to each Non-Pumper Class member that Produces Groundwater.  
. The Court finds that this Judgment is consistent with the Non-Pumper Stipulation of  
Settlement and Judgment.  
*SPPS*, ¶ 9.2.2 (emphasis supplied).

23 **Indisputable Breach by Public Water Suppliers:** In addition to the fact that this term is legally  
24 and factually invalid, the Public Water Suppliers are precluded from entering into an agreement  
25 that states that the Willis Class does not have the right to pump groundwater from the Native Safe  
26 Yield:  
27  
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1 Pumping of the Settling Parties' share of Native Safe Yield is not subject to any  
2 Replacement Assessment.

3 *Willis Settlement Agreement, ¶ III.K.*

4 The Settling Parties agree that the Settling Defendants and the Willis Class Members each  
5 have rights to produce groundwater from the Basin's Federally Adjusted Native Safe  
6 Yield.

7 *Willis Settlement Agreement, ¶ IV.D.*

8 The Settling Parties agree that the Willis Class Members have an Overlying Right to a  
9 correlative share to produce up to 85% of the Basin's Federally Adjusted Native Safe  
10 Yield free of Replacement Assessment. The Settling Defendants will not take any  
11 positions or enter into any agreements that are inconsistent with the exercise of the Willis  
12 Class Members' right to produce and use their correlative share of 85% of the Basin's  
13 Federally Adjusted Native Safe Yield.

14 *Willis Settlement Agreement, ¶ IV.D.2.*

15 The Settling Defendants are permanently barred and enjoined from . . .prosecuting, or  
16 continuing to prosecute, either directly or indirectly, any Released Claim against any of  
17 the Class Members. . . .

18 *Amended Final Judgment, ¶ 19.*

19 **SPPS Term:**

20 4. **New Production Procedure** [Applicable to all Willis Class Members]

21 . . . the Watermaster Engineer has authority to recommend that the application for New  
22 Production be denied, or approved on condition of payment of a Replacement Water  
23 Assessment.

24 *SPPS, ¶ 18.5.13*

25 **Indisputable Breach by Public Water Suppliers:** Even assuming that a Willis Class Member  
26 has the financial resources and time to comply with the onerous and expensive requirements to  
27 apply for the right to pump groundwater, there is no guarantee that the Willis Class Member's  
28 application will be approved. Further, even if approved, the Willis Class Member must still pay a  
Replacement Water Assessment. Therefore, this SPPS term constitutes a breach of the Willis  
Settlement Agreement because the Public Water Suppliers agreed that the Willis Class has the  
right to pump up to 85% of the Native Safe Yield free of replacement assessment:

Pumping of the Settling Parties' share of Native Safe Yield is not subject to any  
Replacement Assessment.

*Willis Settlement Agreement, ¶ III.K.*

1  
2 The Settling Parties agree that the Settling Defendants and the Willis Class Members each  
3 have rights to produce groundwater from the Basin's Federally Adjusted Native Safe  
4 Yield.

*Willis Settlement Agreement, ¶ IV.D.*

5 The Settling Parties agree that the Willis Class Members have an Overlying Right to a  
6 correlative share to produce up to 85% of the Basin's Federally Adjusted Native Safe  
7 Yield free of Replacement Assessment. The Settling Defendants will not take any  
8 positions or enter into any agreements that are inconsistent with the exercise of the Willis  
9 Class Members' right to produce and use their correlative share of 85% of the Basin's  
10 Federally Adjusted Native Safe Yield.

*Willis Settlement Agreement, ¶ IV.D.2.*

11 **THE NET EFFECT OF THE TERMS OF THE SPPS IS TO PERMANENTLY EXCLUDE**  
12 **THE WILLIS CLASS FROM THE RIGHT TO PUMP GROUNDWATER FROM THE**  
13 **NATIVE SAFE YIELD WHICH IS AN UNEQUIVOCAL BREACH OF THE WILLIS**  
14 **SETTLEMENT AGREEMENT BY THE DEFENDANT PUBLIC WATER SUPPLIERS**

15 Non-Overlying Production Rights. The Parties listed in Exhibit 3 have Production Rights in the  
16 amounts listed in Exhibit 3. Exhibit 3 is attached hereto, and incorporated herein by reference.

*SPPS, ¶ 5.1.6*

17 Overlying Production Rights. The Parties listed in Exhibit 4, attached hereto and incorporated  
18 herein by reference, have Overlying Production Rights.

*SPPS, ¶ 5.1.1*

19 The Stipulating Parties listed in Exhibits 3 and 4 to the SPPS have been permanently allocated the  
20 entire Native Safe Yield of 82,300 AF.<sup>3</sup> There are no terms contained in the SPPS whereby a  
21 Willis Class Member ever gains the right to pump groundwater from the Native Safe Yield. The  
22 Public Water Suppliers unequivocally agreed in the Willis Settlement Agreement that the Willis  
23 Class had the right to pump groundwater from the Native Safe Yield and further agreed not to  
24 enter into any agreements that were inconsistent with this right. Thus, the Public Water Suppliers  
25 breached the Willis Settlement Agreement when they signed the SPPS.

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28 <sup>3</sup> 168 AF was not allocated under the SPPS, but the 5 remaining Non-Stipulating Parties (other than the Willis Class and Phelan Pinon Hills) will likely join the SPPS and use up the as-yet-unallocated 168 AF.



1 **DEFENDANT PUBLIC WATER SUPPLIERS' BREACH OF THE WILLIS**  
2 **SETTLEMENT AGREEMENT BY ENTERING INTO THE SPPS IS NOT EXCUSED BY**  
3 **THE COURT'S SUBSEQUENT INCORPORATION AND MERGER OF THE WILLIS**  
4 **SETTLEMENT AGREEMENT INTO A PHYSICAL SOLUTION**

5 The fact that the Willis Class agreed to be bound by a later Physical Solution entered by the  
6 Court in no way provides a legally cognizable excuse for the Public Water Suppliers' breach of the  
7 Willis Settlement Agreement. Both the Consolidation Order and the Amended Final Judgment  
8 entered by this Court mandate that the class action settlement agreements will be *merged* and  
9 *incorporated* into any later Physical Solution:

10 “ . . . the Court may enter a final judgment approving any settlements, including the *Willis*  
11 and *Wood* class settlements, that finally determine all cognizable claims for relief among  
12 the settling parties **for purposes of incorporating and merging the settlements into a**  
13 **comprehensive single judgment containing such a declaration of water rights and a**  
14 **physical solution.**

15 *Order Transferring and Consolidating Actions for All Purposes* dated February 19, 2010  
16 at 4:25 to 5:1 (emphasis supplied) (Exh. D).

17 and

18 “In addition, **without effecting the finality of this Judgment, the Court retains**  
19 **jurisdiction over the Parties for purposes of incorporating and merging this**  
20 **Judgment into a physical solution** or other Judgment that may ultimately be entered in  
21 the Consolidated Actions.”

22 *Amended Final Judgment*, ¶ 20 (emphasis supplied).

23 Further, the Public Water Suppliers explicitly agreed to be part of a Physical Solution to the  
24 extent it is *consistent* with the terms of the Willis Settlement Agreement:

25 The Stipulating Parties expect and intend that this Stipulation will become part of a  
26 Physical Solution entered by the Court to manage the Basin and that the Court will retain  
27 jurisdiction in the Coordinated Actions. **The Settling Parties agree to be part of a**  
28 **Physical Solution to the extent it is consistent with the terms of this Stipulation** and to  
be subject to Court-administered rules and regulations consistent with California and  
Federal law and the terms of this Stipulation.

*Willis Settlement Agreement*, ¶ V.B. (emphasis supplied).

1 Thus, the Public Water Suppliers had absolutely no legal basis to ignore and then intentionally  
2 breach the Willis Settlement Agreement by entering into the SPPS. The terms agreed upon by the  
3 Public Water Suppliers, including the Willis Class' right to pump water from the Native Safe Yield,  
4 were to be merged and incorporated into the Physical Solution. Instead, the Public Water Suppliers  
5 knowingly and intentionally breached the terms of the Willis Settlement Agreement by entering  
6 into the SPPS which strips away the rights of the Willis Class to pump groundwater from the Native  
7 Safe Yield free of replacement assessment or otherwise.  
8

9 Any argument from the Public Water Suppliers that the Willis Class Members' share of the  
10 Native Safe Yield can be zero under the Willis Settlement Agreement is utterly without merit and,  
11 indeed, sanctionable. In awarding attorneys' fees to Willis Class Counsel as the "prevailing party"  
12 pursuant to C.C.P. Section 1021.5, this Court ruled correctly and obviously that the Willis  
13 Settlement Agreement had conferred "substantial benefits" on the Willis Class:  
14

15 By eliminating the Public Water Suppliers' prescription claims and maintaining correlative  
16 rights to portions of the Basin's native yield, the Willis Class members achieved a large  
17 part of their ultimate goal - to protect their right to use groundwater in the future and to  
18 maintain the value of their properties. Under these circumstances, they must be considered  
19 "successful parties" for purposes of Code of Civil Procedure § 1021.5.

20 *Order Awarding Attorneys' Fees* at 5:1-5 (Exh. E).

21 The Willis Settlement Agreement, the Willis Judgment, and the Court's Order Awarding Attorneys'  
22 Fees would all be rendered absolutely meaningless if the Willis Class' "share" of the Native Safe  
23 Yield could be zero under the Physical Solution adopted by the Court. Such an absurd interpretation  
24 by the Public Water Suppliers of these legally-enforceable documents makes a mockery of the  
25 judicial system and the Willis Class Members' substantive and procedural rights under the laws of  
26 California and the U.S. Constitution.

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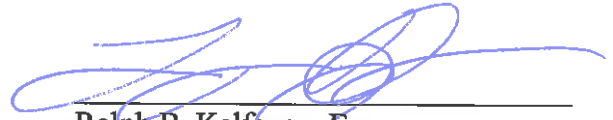
1 **CONCLUSION**

2 For all the foregoing reasons, it is clear that the Public Water Suppliers have breached the  
3 Willis Settlement Agreement by entering into the SPPS. To rectify this breach, this Court has the  
4 power and the jurisdiction to enter an Order stating that the SPPS is null and void as to the Public  
5 Water Suppliers based on their breach of the Willis Settlement Agreement.  
6

7  
8 Dated: May 21, 2015

Respectfully submitted,

9 KRAUSE, KALFAYAN, BENINK &  
10 SLAVENS, LLP

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14 Ralph B. Kalfayan, Esq.  
15 Lynne M. Brennan, Esq.  
16 Class Counsel for the Willis Class  
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