**COURT OF APPEAL, STATE OF CALIFORNIA**
**FIFTH APPELLATE DISTRICT**
**F075451**

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**ANTELOPE VALLEY GROUNDWATER CASES**

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Appeal from the Superior Court of Los Angeles
Superior Court No. JCCP4408
Hon. Jack Komar

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# APPELLANTS' OPENING BRIEF

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## CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

On behalf of Appellants REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and others similarly situated, I certify that the persons or entities listed below have either (1) an ownership interest of ten percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2):

There are no interested entities or persons that must be listed in this certificate under rule 8.208.

Dated: October 18, 2019

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## INTRODUCTION

In a related appeal, the Willis Class challenges a judgment adopting a Physical Solution purporting to resolve rights to groundwater within the Antelope Valley Basin ("Basin"). Before the trial court adopted the Physical Solution, it approved a settlement between the Willis Class and public water suppliers ("Purveyors"). The settlement agreement ("Willis Class Stipulation") – ultimately reduced to a binding judgment – afforded the Willis Class the right to draw from a percentage of the basin's native supply for reasonable and beneficial use. Years later, however, the trial court adopted a Physical Solution that gave the Willis Class no right to the native supply. Attempting to protect the rights of the Willis Class against nearly 140 adverse parties, its attorneys filed motions, retained expert witnesses, and offered alternative physical solutions that would have protected the groundwater rights of all concerned. Meanwhile, the trial court issued an order requiring that the Willis Class participate in a complex trial that ultimately resulted in the adoption of the Physical Solution. Indeed, any comprehensive resolution of groundwater rights in the Basin would have been impossible absent participation of the Class.

Ultimately, Willis Class counsel was required by court order – as well as their duty to adequately represent their clients' interests – to participate in trial court proceedings that took place after the Willis Class Stipulation was entered. Class counsel incurred 3,618.50 hours and a collective lodestar of $2,143,340.00 (plus costs amounting to $105,107.62) in connection with their work. Nevertheless, the trial court denied Willis Class' motion for an award of attorneys' fees and costs incurred after the trial court approved the 2011 Willis Class Stipulation. That order forms the basis for this appeal.

The trial court erred in denying the motion for two reasons. First, the trial court applied the wrong standards. Specifically, the trial court ignored explicit terms in the Willis Class Stipulation authorizing Class counsel to seek additional attorneys' fees for work undertaken to enforce the agreement, or to defend against new claims. Second, the trial court erred in declining to award attorneys' fees under Code of Civil Procedure Section 1021.5 ("Section 1021.5"). Regardless of whether this Court reverses or affirms the judgment adopting the Physical Solution, longstanding case law confirms that the Willis Class was a successful party that conferred a significant benefit to a large class of people. The trial court's order concluding otherwise

contravenes the parties' express settlement and frustrates the core purpose of the private attorney general doctrine. This Court should therefore reverse with directions that the trial court enter a new order granting the Willis Class' motion.

## STATEMENT OF FACTS

### A. History of the Antelope Valley Groundwater Basin

The Antelope Valley Groundwater Adjudication is one of the largest groundwater adjudications in California's history. What began with two overlying landowners seeking to quiet title over groundwater in 1999 evolved into a *comprehensive* adjudication, bifurcated into six phases, of water rights of all claimants in a Basin that spans over 1,390 square miles. (176JA1157526:16-17.) The Basin is in the Mojave Desert, an arid valley about 50 miles northeast of the City of Los Angeles. (176JA157528-157529,¶3.5.8.) Individuals and households who own property overlying the Basin depend on pumping from water wells for their very existence as they have no other recourse to obtain water. (3AA2063; 43RT24227:13-17.)

Since 1951, actively-pumping landowners and water appropriators (*i.e*. Purveyors) over-pumped the aquifer into severe overdraft. (14JA16379:17-21.) For years, a lack of groundwater

management and uncontrolled pumping harmed the Basin causing depletion of groundwater levels, land subsidence with damage to real property, and significant loss of groundwater storage space. (14JA16380:5-8.) Agricultural and Purveyor interests were the primary cause of the harm to the Basin. (14JA16380:1-4; 17RT7871:14-16.) Limiting pumping amounts to a "safe yield"[1] was crucial to prevent further deleterious effects of overdraft which, if left unmanaged, would erode the aquifer into non-existence. (14JA16380:8-11.) The need for a physical solution was crucial to protect the Basin. (176JA157476:21-25.)

### B. The Purveyor's 2004 Class Case

In or about 2004, the Purveyors filed a class action against all landowners in the Basin seeking to comprehensively adjudicate all rights to produce groundwater. (1JA1467-1492.) This procedural class action device was encouraged by the trial court as the most practical and cost-effective mechanism to secure jurisdiction over the more than 60,000 parcels and over 20,000 landowners in the Basin. (AUG106:1-11; 3AA2070 ["[a]bsent the use of class actions, it would have been

[1] The "safe yield" is defined as the amount of native groundwater that may safely be extracted annually. (176JA157533:11-14.)

impractical to litigate the issues with 70,000 individual parties"].) Hundreds of individuals and entities were personally served while others were included within a class defined as those landowners who can only service their land by using a water well. (AUG122:25-27.) The Purveyors moved to have the State of California serve as a class representative, but the State refused. (AUG125:7-126:16; AUG272:18-23.) Without a defendant class representative, the entire adjudication came to a halt.

For months, the trial court and Purveyors struggled to find class action lawyers to represent the thousands of overlying landowners who would be part of the class and a class representative who could lead the class through the litigation. Few if any lawyers stepped up or took any interest. As Wood class counsel remarked: "The Court was stuck for a better part of a year – actually, over a year – in limbo as to how to get jurisdiction over all these – there's 65,000 parcels, with somewhere around 60,000-plus individuals owning those." (44RT24717:16-20.) In 2007, the law firm of Krause Kalfayan Benink & Slavens, LLP ("KKBS") volunteered to serve as class counsel. (11JA12416:21-22.) KKBS was encouraged by the trial court to participate and file a plaintiff class action complaint against the Purveyors, as opposed to a

defendant complaint as filed by the Purveyors. KKBS undertook the challenge and relied on the private attorney general statute for reimbursement of its fees and costs. (11JA12435:20-22.)

The two largest challenges facing the Class was to overcome the Purveyors' claims of prescription and preserve the Class landowners' correlative water rights to pump groundwater from the native supply. The Purveyors threat of prescription amounted to 32,636.35 acre-feet of the native supply, nearly 40% of the entire supply which would displace the Class. (176JA157466:1-16.) To gain prescription, the Purveyors compelled participation of all overlying landowners. (3AA2063-2064.) The McCarran Amendment additionally required a comprehensive adjudication due to the participation and land holdings of the federal government and its operations of Edwards Air Force Base. (176JA157460:19-24.)

### C. The Willis and Wood Class Actions

On April 10, 2007 Rebecca Lee Willis filed a plaintiff's class action on behalf of Antelope Valley landowners, which was coordinated with the pending proceedings. (2JA1901-1908; 1914-1915.) Ms. Willis alleged: she "purchased her ten (10) acre property in the Antelope Valley in order to build a home and develop a landscape

nursery. She purchased the property with the intent of development in the future, upon retirement from her employment. The most important and fundamental aspect of her purchase was the property right to use water below her land *in the future*, i.e. from the Basin, since the property is not currently within a water district's service area. Her right to use water below the surface of the land is a valuable property right – regardless of whether it is presently exercised or will be exercised in the future. Without the right to use the water below her property, her land is virtually worthless and her dreams of building a home and nursery cannot be accomplished." (2JA1963,¶15, original italics.)

During several case management conferences ("CMC"), the court explored various Willis Class definitions to include both dormant and active pumping overlying landowners within the Willis Class. (AUG136:11-137:12; AUG140:2-14; AUG147:10-26; AUG149:15-27.) However, it became apparent the interests of dormant and actively-pumping landowners could not be adequately represented under one class due to a conflict of interest. (AUG200:10-201:17.) Ultimately, the court certified two classes: the Willis Class as dormant landowners[2]

[2] The Willis Class is defined as "All private (i.e. non-governmental) persons and entities that own real property within the Basin, as adjudicated, that are ***not*** presently pumping water on their

and the Wood class of small pumpers.[3] The two class cases were ***defensive*** to defeat the Purveyors' claims of prescription and preserve the right to pump from the native supply. (13JA15492:8-12 ["The principle cause of action brought on behalf of the [Willis] class…concededly was defensive in substance"]; 3AA2070; 45RT25085:14-17.)

On February 19, 2010 the court consolidated all the cases. (6JA5987-5994.) Significantly, the consolidation order did not preclude any parties from settling claims between or among them as long as any such settlement allowed the court to retain jurisdiction to enter a judgment resolving all claims to groundwater and to enter a physical solution. (6JA5991:20-25.) The order further provided that the court "may enter a final judgment approving any settlements, including the *Willis* and *Wood* class settlements" noting, "[a]ny such settlement can only affect the parties to the settlement and cannot have any [e]ffect

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property and did not do so at any time during the five years preceding January 18, 2006." (176JA157530-157531,¶3.5.22, emphasis added; *see also*, 2JA1994-1997.)

[3] The Wood class is defined to comprise "all private (i.e. non-governmental) persons and entities that own real property within the Basin…that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." (176JA157533,¶3.5.44.)

on the rights and duties of any party who is not a party to any such settlement" (6JA5991:26-5992:3, original italics).

#### a. 2011 Stipulated Settlement Between Willis Class and Purveyors

After years of litigation and months of negotiation, the Willis Class and Purveyors reached a settlement in or about September 2009 (the "Willis Class Stipulation"). The Willis Class Stipulation includes these critical terms: (a) the Purveyors' waiver of any claims of prescription against the Willis Class (10JA12248:3-6; *see also*, 10JA12252-12253,¶VII.A-B); (b) the covenant that the Willis Class members have rights to a correlative share of 85% of the federally adjusted native supply for reasonable and beneficial uses on their overlying land free of any replacement assessment fees and the Class will not object to the Purveyors' use of 15% of the native supply (10JA12247:26-28; 12248:11-13); (c) the Purveyors' agreement to support and "not take any positions or enter into any agreements that are inconsistent with" the Willis Class' correlative right to make reasonable and beneficial use of 85% of the Basin's native supply free of replacement assessment with a similar provision for the benefit of the Purveyors (10JA12248:13-16); (d) the agreement that the Willis Class may recapture return flows that result from the use of imported

water, free of replacement assessment fees (10JA12249,¶4.a.); (e) the recognition that not all parties to the Antelope Valley coordinated action entered into the Willis Class Stipulation and further trial proceedings may be necessary (10JA12254:13-14); and, (f) finally, both the Purveyors and the Willis Class agreed to "cooperate and coordinate their efforts" to ensure any future trial or hearing results in "entry of judgment *consistent* with the terms of [the Willis Class Stipulation]." (10JA12254:14-16.)

To minimize future attorneys' fees and costs, the Willis Class agreed not to seek such an award after final approval of the Willis Class Stipulation except under certain circumstances. (10JA12254:28-12255:24.) The Willis Class Stipulation was preliminarily approved on November 18, 2010. (9JA9796-9800.) Final approval was granted on May 13, 2011 and reduced to a binding judgment (the "2011 Judgment"). (13JA15599-15604; 14JA16905-16910.) The court emphasized that it retained jurisdiction "for purposes of incorporating and merging [the 2011] Judgment into a physical solution or other judgment that may ultimately be entered in the Consolidated Actions." (13JA15604:4-7.)

### b. The Willis Class 2011 Motion for Attorneys' Fees, Costs and Incentive Award

The Willis Class moved for an award of attorneys' fees, reimbursement of expenses, and class representative incentive award under Section 1021.5 on January 24, 2011 for work performed from the inception of the case through December 2010 (the "2011 Fee Motion"). (10JA12379-12395.) Over opposition by other parties, the court granted the motion, found the Willis Class met every Section 1021.5 requirement and confirmed the substantive effect of the critical terms in the Willis Class Stipulation. (13JA15483-15494.)

First, the court found the Willis Class must be considered a "successful party" for "eliminating the [Purveyors'] prescription claims and maintaining correlative rights to portions of the Basin's native yield…." (13JA15487:1-5.)

Next, the court found two ways a significant benefit was conferred. First, despite "not recover[ing] any monetary payment," a significant benefit was achieved for the Willis Class "by preventing the [Purveyors] from proceeding on their prescriptive claims and by maintaining certain correlative rights to the reasonable and beneficial use of water underlying their land." (13JA15487:14-18.) Second, the court found a significant benefit was conferred on "every resident and

property owner in the adjudication area" because the Willis Class action enabled the court to "adjudicate the claims of virtually all groundwater users in the entire Antelope Valley… Without virtually all such users as part of the adjudication, the Court could not have complied with the McCarran Amendment which was necessary to adjudicate all correlative rights in the basin." (13JA15487:18-24.) The court noted, however, that "[e]ven without the federal government involvement, without the filing of the class action, it would have been impossible to adjudicate the rights of all persons owning property and water rights within the valley." (13JA15487:25-27.) The court further elaborated: "The inability of the judicial system to conduct such adjudication in any other way is beyond argument. The benefit to all class members is clear and the benefit to all others living or owning property in the Antelope Valley in enormous – all water rights will ultimately be established and if necessary (as alleged) the reasonable and beneficial use of water will be preserved for all under the California Constitution." (13JA15487:28-15488:5.)

Last, the court found the "burden on any individual class member" to adjudicate the action "would have been significantly higher than any potential benefit to that class member. Only by banding

together in a class action were the members of the Willis Class able to litigate this case." (13JA15488:6-9.)

While Willis Class counsel sought $2,300,618.00 in attorneys' fees, the court awarded fees of $1,839,494.00. (13JA15490:8-9; 15493:21.) The court further awarded the full $65,057.68 in costs and $10,000.00 incentive award as requested. (13JA15493:4-12.)

Shortly thereafter, the Willis Class moved for a supplemental award of fees and costs for services rendered from January 1, 2011 through May 13, 2011 (the "2011 First Supplemental Motion"). (13JA16120:5-8.) Of the $209,624.50 in fees requested, the court awarded $160,662.50. (14JA16775:27-28; 16777:11-12.) In doing so, the court relied on its previous finding that the Willis Class met the requirements of Section 1021.5. (14JA16774:14-16 ["The Court in its previous decision ordering attorneys' fees to the Class did find that the Class was a successful party and did confer a substantial benefit on the public generally under CCP 1021.5"].)

### D. 2014 Breach and Enforcement of the Willis Stipulation

After 2011, the Willis Class remained involved in the Antelope Valley proceedings to ensure the 2011 Judgment was incorporated into and consistent with all future judgments and any physical solution

entered by the court.[4] Unfortunately, and unbeknownst to Willis Class counsel, the Purveyors and the remaining overlying landowners began negotiating a resolution in 2013 that threatened to extinguish the groundwater rights of the Willis Class in direct conflict with the Willis Class Stipulation.

In early 2014, the Purveyors and most of the remaining parties to the adjudication negotiated a Stipulation for Judgment ("Stipulation for Judgment") which incorporated a Stipulated Proposed Physical Solution ("Physical Solution"). (129JA126128:19-21.) Both stipulations were later adopted by the trial court *verbatim* in 2015 ("2015 Judgment") and (1) bound the Willis Class involuntarily to terms unreasonable to the Class; (2) allocated the entire native supply to the stipulating parties ("Stipulating Parties") on a fixed and permanent basis, free of replacement assessment, to the exclusion of the Willis Class; (3) included a joint defense and cooperation clause to oppose the interests of the Willis Class as a non-stipulating party; and, (4) threatened the trial court with dissolution of its terms if any of its

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[4] The Willis Class filed numerous case management conference statements post-2011 explaining its limited involvement and continued monitoring of the Antelope Valley proceedings regarding the issue of consistency with the 2011 Judgment. (*See, e.g.* 14JA16630-16631; 15JA19921-19923; 16JA21552-21553.)

provisions were modified or altered in any way whatsoever in the future. The Stipulation for Judgment and the Physical Solution were dependent, connected and intertwined with one another. (129JA126128:21-22; 126129:21-24.) To ensure adoption and approval before commencement of Phase Six,[5] the Stipulating Parties tied the Stipulation for Judgment and the Physical Solution to the Wood class settlement with the Purveyors ("Wood Class Settlement"). The Wood class moved for preliminary approval of their Settlement before the court entertained any evidence regarding the Physical Solution and the reasonableness of the Stipulating Parties' water uses. The trial court preliminarily approved the Wood Class Settlement on March 26, 2015, thereby preliminarily approving the intertwined Stipulation for Judgment and Physical Solution. (130JA127632.)

The Stipulation for Judgment and Physical Solution dramatically affected the relationship among the parties. Whereas initially all overlying landowners were adverse to the Purveyors in defeating the Purveyors' claims of prescription, the Purveyors and Wood Class were then aligned with each other against the Willis Class for Phase Six.

[5] Phase Six of the bifurcated adjudication was a "fairness hearing" to prove up and approve the 2015 Stipulation for Judgment and Physical Solution. (43RT24101:16-19.)

While there was no formal pleading or claims between other Stipulating Parties and the Willis Class, Purveyors and Stipulating Parties became adverse to the Willis Class by virtue of supporting the Stipulation for Judgment and the Physical Solution. During Phase Six, the Purveyors and Stipulating Parties made themselves incontrovertibly adverse to the Willis Class by cross-examining Willis Class witnesses and experts. (*See, e.g.* 48RT25918:1-25931:3; 48RT26220:2-26228:8.)

The Stipulation for Judgment that promoted adversity between the Willis Class and all Stipulating Parties included (1) a *"dynamite"* provision that threatened the trial court and the court of appeal with dissolution of the Physical Solution or any related judgment if they are altered in any way (129JA126129,¶4 ["If the Court does not approve the Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the trial court, then this Stipulation is *void ab initio*…"]); (2) a *"cooperation"* clause to defeat the Willis Class in its anticipated opposition to the Stipulation or Physical Solution (129JA126129:25-27; 126130:1-3 ["The Stipulating Parties will cooperate in good faith and take all necessary and appropriate actions to support the Judgment until such time as this Judgment is entered by the Court, and appeals, if any, are final, including…Defending the

Judgment against Non-Stipulating Parties…"]; (3) a "*back room"* deal for payment of Wood class attorneys' fees in exchange for water (129JA126131:22-25 ["In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs…the other Stipulating Parties agree that during the Rampdown established in the Judgment, a drought water management program…shall be implemented…"]; and, (4) the "*mandatory participation order"* for the Willis Class to oppose, defend and appear at trial. (129JA126132:5-7 ["The Parties agree that the Case Management Order attached hereto as Appendix 1 is an appropriate process for obtaining such approval"].)

The Physical Solution was inconsistent with the 2011 Judgment and Willis Class Stipulation because (1) it allocated no portion of the native supply to the Willis Class landowners; (176JA157472:22-23; *see also*, 3AA2065 ["The physical solution, it was understood, could require a reduction in actual pumping and ***forbid new pumping from the aquifer*** (***as it ultimately did***)"], emphasis added) (2) required Willis Class members to seek and (if even possible) obtain approval from the Watermaster (with interests starkly adverse to the Willis Class) to pump any groundwater only after enduring a burdensome and expensive discretionary process (176JA157564,¶15.1.1 [no Willis Class member

may serve on the Watermaster board]; 157571-157573,¶18.5.13); (3) even if such approval was granted, it restricted all pumping to imported replacement water, rather than from the native supply, for which a replacement assessment must be paid, perhaps even for simple domestic use of water (176JA157572:2); (4) precluded the Willis Class from rights to the return flow resulting from the imported water they were required to purchase (176JA157545-157546,¶5.22; 157629-157630 [Because the Willis Class is not identified in Exhibit 8, rights to their return flow from imported water belongs to AVEK]); and, (5) provided no portion of any unused Federal Reserve Water Right for the Willis Class, instead allocating all such unused water to the non-overlying Purveyors, resulting in a far greater portion of native supply than the agreed-upon 15%. (176JA157540,¶5.1.4.1.)

The Purveyors agreement to the Stipulation for Judgment and Physical Solution unquestionably violated the 2011 Judgment. The inconsistencies and violations were brought to the court's attention by Willis Class counsel at several status conferences and law and motion hearings. (42RT23532:27-23533:4; 42RT23822:2-25; 43RT24412:11-19.) However, the court's unwavering response was to defer ruling, deny motions without prejudice, and postpone rulings until all the

evidence on the entire Physical Solution in the coordinated and consolidated Phase Six proceeding was submitted. (42RT23813:19-23814:1; 42RT23822:2-25; 43RT24449:1-6; 43RT24438:27-24439:21;43RT24445:4-7.) This left Willis Class counsel with no choice but to oppose the Stipulation for Judgment and Physical Solution in trial.

### E. The Mandated Participation of the Willis Class in Phase Six Trial Proceedings

On November 4, 2014 the trial court entered a Case Management Order ("CMO") presented by the Purveyors that unequivocally required the Willis Class to either oppose or stipulate to the Physical Solution. (127JA123889-123891.)[6] The CMO set forth a schedule for a prove-up of the Wood Class Stipulation and trial of the Physical Solution. As a non-stipulating party, the CMO required the Willis Class to: (1) file a written statement of objections to the proposed Physical Solution, including assertion of any claims or rights to produce groundwater from the Basin; (2) disclose witnesses and exhibits regarding any such objections; (3) participate in discovery regarding these objections; and (4) participate in the trial and hearings regarding the prove-up the

[6] The CMO was twice amended. (*See,* 128JA125522-125525; 130JA127651- 127654.)

Physical Solution, and proofs of claim to produce groundwater by Non-Stipulating Parties. (127JA123890:25-123891:18.)

Class counsel complied and performed the work. This involved: (1) attending numerous hearings; (2) deposing expert witnesses and defending three depositions of Willis Class experts; (3) reviewing voluminous documents generated or relied upon by experts; (4) preparing numerous substantive motions; (5) reviewing hundreds of filings by other parties, involving reviewing cases and other cited material; (6) numerous conversations with counsel for opposing parties and expert consultants regarding the technical, economic, and legal issues raised by the Physical Solution; and, (7) preparing for, appearing at and participating in the fourteen-day Phase Six of trial that took place over five months.

Class counsel opposed the CMO and requested clarification as to whether the Willis Class was subject to its terms. (125JA123126-123133; 128JA125296-125302.) The court confirmed "the prove up by the stipulating parties is something that [Willis Class counsel] might want to appear and address" as it "could impact his client." (41RT22641:17-19; 22641:27-22642:4.) The Purveyors also

demanded the Willis Class' continued involvement as a necessary party that did not stipulate to the Physical Solution because:

> "First, the McCarran Amendment mandates a comprehensive adjudication of water rights in a case not initiated by the United States. Second, the Court cannot approve a final physical solution without considering the reasonableness of all parties' water rights."
>
> "It is critical to the [Wood class] Settlement Agreement and its proposed groundwater management (physical solution) that the unresolved claims of the Non-Settling Parties be determined as soon as possible and before court approval of the Settlement Agreement. Until such time…the Settling Parties may be unable to have a comprehensive physical solution to the overdraft conditions. The reason is that the Non-Settling Parties have not agreed to the physical solution and the Court will need to determine their respective water rights before the court can determine how the proposed physical solution impacts Non-Settling Parties."

(124JA121360:11-26, citations omitted, original paragraphing.) When the court inquired into how many non-stipulating parties the Purveyors expected to "seek to protect their rights to pump in the valley," the Purveyors specifically identified "the Willis Class." (42RT23562:24-26; 23563:2-3.)

The trial court also ***expected*** the Willis Class to participate in Phase Six: "…[Willis Class counsel] you're going to be, I assume, participating in the presentation of evidence, the objections to evidence and ultimately the question of whether or not the court is going to

approve or disapprove the [Physical Solution]." (43RT24439:15-20; *see also*, 44RT24792:11-19 ["…So I look forward to hearing a lot of evidence in September…"].) The Willis Class clearly was a non-stipulating party. (*See, e.g.* 132JA130401; 133JA131700,¶(c).) The court continued to make such assumptions after Phase Six began: "[The Willis Class members] obviously have an aspect of interest in terms of consistency with the [Willis] Stipulated Judgment that they entered into with the [Purveyors]. So in terms of the court's view… there obviously is going to be opposition to the global, so-called, settlement [*i.e*. Physical Solution] by the Willis Class…" (46RT25472:18-25; *see also*, 42RT23567:15-23 ["The court is going to make an independent determination as to all nonsignators through the adjudication process"].)

Regarding the reasonableness of claimed historical pumping by other parties, the court ordered Willis Class counsel to "to review [the declarations] in good faith and to advise the court as to who [he] wish[es] to testify." (45RT25111:24-28; *see also,* 45RT25112:13-20.) On September 28, 2015 the court confirmed to Class counsel that "this is the time to present your evidence." (45RT25147:26-27.)

The Willis Class vehemently opposed the Physical Solution primarily on grounds it was inconsistent with the 2011 Judgment. Yet, the trial court refused to make any ruling as to any of the three consistency motions filed by the Willis Class. (133JA131700,¶1; 42RT23813:19-23814:1["…I cannot and will not interpret the…settlement agreement of the Willis Class today…"]; 42RT23822:2-25 ["And I don't think that I'm interested in hearing the motion today"]; 43RT24449:1-6 ["…and I'm not prepared to make a finding this morning if they are [consistent]"] 43RT24438:27-24439:21 ["Now, at this point, we don't yet have a prove up of the global settlement"]; 43RT24445:4-7["There are lots of arguments to be made and lots of circumstances that I can't all totally envision at this point"].) Regardless of these efforts, Phase Six resulted in the court's adoption of a Physical Solution that encompassed ***all*** parties' water rights, including the Willis Class. (176JA157460:8-11.) Not until the close of evidence did the court finally rule on the consistency between the 2011 Judgment and the Physical Solution. (176JA157483:17-157484:2.)

On December 23, 2015, the trial court issued a judgment adopting the Physical Solution which bound all landowners within the Antelope Valley Basin (the "2015 Judgment").

### F. Willis Class' 2016 Motion for Attorneys' Fees

After Phase Six, the Willis Class moved for attorneys' fees, costs and an incentive award for the work done after entry of the 2011 Judgment (the "2016 Fee Motion"). The Class argued its participation was not only required by the court, but also was a necessary predicate to the court's entry of the Physical Solution and necessary to ensure consistency with its 2011 Judgment. (1AA242:13-16.) The Willis Class moved three times to enforce the 2011 Judgment, though the court deferred ruling on the motions and then denied all of them without prejudice. (132JA130520-130529; 138JA134965-134980; 141JA137726-137727;42RT 23813:19-23814:1.) This required the Willis Class to appear at Phase Six, oppose the Physical Solution, present their own affirmative contrary evidence and oppose the evidence submitted by other parties.

The Willis Class challenged the Wood Class Settlement, Stipulation for Judgment and Physical Solution in motions arguing: (1) the Physical Solution was inconsistent with the 2011 Judgment and the Willis Class Stipulation; and, (2) the process used by the court to evaluate and approve the Physical Solution violated the Willis Class' due process rights. (132JA130520-130529; 130623-130638.)

The Willis Class also requested a court-appointed expert to assess the Physical Solution and present alternatives. The Class argued an expert was necessary to address: (a) present and future reasonable and beneficial uses of the groundwater extracted by the Stipulating Parties; (b) cost and reasonableness of the new pumping requirements imposed by the Physical Solution; (c) availability of alternative sources of water; and, (d) effect of the Physical Solution on the value of property owned by Willis Class members. (129JA126471:25-126472:15). The court denied the request. (130JA127632.) Willis Class counsel was forced to incur the expense of retaining and preparing two experts, Rod Smith and Stephen Roach, to testify at trial.

The Willis Class then moved for an opportunity to submit alternative physical solutions that recognized the Class' correlative right to share in the native supply. (131JA127835-127845; 174JA154829-154893; 174JA155346-155619.) At his own expense, Willis Class counsel presented four alternative physical solutions similar to those adopted by courts in prior California groundwater adjudications as well as one based on the Waldo Accord previously agreed to by all but one party. (131JA127841:3-21.) The Class even presented variations of the Physical Solution presented by the

Purveyors and Wood Class. The trial court, however, refused to consider *any* of Willis Class' proffered alternatives. (176JA157201.)

The Willis Class pointed out a conflict of interest caused by the proposed Physical Solution. (137JA134586-134602.) When the Physical Solution was finally submitted for approval, several members of the Wood class came forward as owners of both pumping and non-pumping parcels. An investigation revealed that about 2,400 pumpers (Wood class members) were also non-pumpers (members of the Willis Class). When Willis Class counsel was asked by some of these "dual class members" what they should do, he realized he could not properly represent those individuals because their interests as pumpers conflicted with interests of the non-pumping Willis Class. (137JA134598:27-134600:3.) Rather than confront the conflict, the court ordered Willis Class counsel to proceed by representing "dual class members"—but only as to their non-pumping parcel, while other counsel represented the same class member as to his/her pumping parcel. (44RT24744:21-24745:12)

Given the trial court's intransigence, the Willis Class filed a "Schedule of Objections and Inconsistencies to the Physical Solution," listing all the inconsistencies and flaws in the key provisions.

(130JA126995-127011.) The Willis Class opposition to the 2015 Settlement and Physical Solution likewise included a separate statement of objections reiterating its concerns with problematic provisions. (131JA127969-127987.) The Willis Class opposed the Wood class' motion for final approval of the 2015 Settlement, explaining that it improperly purported to bind non-stipulating parties with no notice to absent class members. (138JA135244-135254.) The court ultimately overruled all objections asserted by the Willis Class. (176JA157483:17-157484:2.)

Finally, Class counsel participated in fourteen days of trial that spanned over five months. Seven percipient witnesses were examined and cross-examined; ten experts testified including the two retained by the Willis Class; and final arguments along with objections to the Statement of Decision were considered by the trial court. Along with its 2016 Fee Motion, the detailed billing records of Class counsel were submitted to the trial court for review and consideration. (1AA399-671; 2AA679-800.) It is uncontested that this work was performed by Class counsel.

Despite these efforts, the trial court denied Willis Class' 2016 Fee Motion. (3AA2075.) Ironically, the trial court awarded fees to

Wood class counsel based on language in the Stipulation for Judgment whereby Purveyor parties received free water from the native supply – 40% of the native supply worth millions of dollars – in exchange for the payment of Wood class counsel fees. (AA2066-2067.) As argued in the companion merit appeal brief, the native supply under the drought provision could have been reserved for Willis Class members in the event they were to exercise their right to pump groundwater in the future. Instead, the Willis Class was deprived of this benefit so that the Purveyors could pay for the Wood class attorneys' fees.

In the 2016 Fee Order, the court detailed ten bulleted reasons for its denial of the Willis Class fees and costs. In summary, the court found that "none of the work of counsel for the [Willis] Class materially benefitted or positively affected any part of the [Physical Solution] and Judgment" and described it as inappropriate, unnecessary, and misplaced. (3AA2076,¶¶1,6.) Each of the ten points is addressed in Section III, *infra*.

## APPEALABILITY

The 2016 Fee Order is "[a] postjudgment order awarding or denying attorney's fees [and therefore] is separately appealable, as an order made after an appealable judgment" under Code of Civil

Procedure section 904.1, subd. (a)(2). (*P.R. Burke Corp. v. Victor Valley Wastewater Reclamation Authority* (2002) 98 Cal.App.4th 1047, 1053.) Orders denying Section 1021.5 attorney fees are also directly appealable. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.)

## STANDARD OF REVIEW

Willis Class advances two challenges to the trial court's denial of attorneys' fees and costs for Class counsel's post-2011 work in defending the interests of the Willis Class and securing a public right.

**First,** the trial court applied the wrong legal standard to determine Willis Class counsel's entitlement to fees under the parties' classwide settlement agreement. While, in the abstract, fee awards are subject to an abuse of discretion standard of review, the "determination of whether the trial court *selected* the proper legal standards in making its fee determination is reviewed de novo." (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc*. (2016) 6 Cal.App.5th 426, 434, original emphasis.) As the Court of Appeal has straightforwardly put it, "[o]n appeal this court reviews a determination of the legal basis for an award of attorney fees *de novo* as a question of law." (*Sessions*

*Payroll Mgmt., Inc. v. Noble Construction Co., Inc.* (2000) 84 Cal.App.4th 671, 677.)

**Second,** the trial court erred in denying fees to the Willis Class under Section 1021.5, which allows an award of attorneys' fees to a party who positively impacts the court's resolution of an action to enforce an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons; (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate; and, (c) such fees should not in the interest of justice be paid out of the recovery, if any. Review of the lower court's ruling on a party's eligibility for fees under Section 1021.5 implicates a "mixed standard of review." (*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1156.) Where the statutory requirements of an award of attorney's fees must be construed and defined, the review is *de novo*. (*Ibid*.) Whether those requirements were properly applied, however, is reviewed for an abuse of discretion.

## LEGAL DISCUSSION

### I. THE TRIAL COURT IGNORED EXPRESS CONDITIONS IN THE WILLIS CLASS JUDGMENT ALLOWING THE CLASS TO PURSUE ATTORNEYS' FEES FOR POST-2011 WORK

The Willis Class Stipulation specified five limited conditions whereby Willis Class counsel would be entitled to seek attorneys' fees for work performed after entry of the 2011 Judgment. The terms of these conditions were a product of careful and protracted negotiations among the Willis Class and Purveyors and were considered by the trial court before it approved the Willis Class Stipulation and entered the 2011 Judgment. Thus, those five criteria were to govern the trial court's determination of whether Willis Class counsel's 2016 Fee Motion should be granted. For reasons that it never explained, the trial court did not apply these actual criteria, but fashioned a new set in its 2016 Fee Order that denied Willis Class counsel's post-2011 fee request. This amounts to reversible error.

#### A. The Court Failed to Apply the Applicable Standards in the Willis Stipulation to the 2016 Fee Motion

The Willis Class Judgment set forth the following limited conditions under which Class counsel could pursue attorney's fees after entry of the 2011 Judgment:

> (a) any reasonable and appropriate efforts by Willis Class Counsel to enforce the terms of the Stipulation against Settling Defendants in the event Settling Defendants fail to comply with a provision of this Stipulation;
>
> (b) any reasonable and appropriate efforts by Willis Class Counsel to defend against any new or additional claims or causes of action asserted by Settling Defendants against the Willis Class in pleadings or motions filed in the Consolidated Action;
>
> (c) any reasonable and appropriate efforts by Willis Class Counsel that are undertaken in response to a written Court order stating that, pursuant to this provision, Class counsel may seek additional fees for specified efforts from Settling Defendants pursuant to Code of Civil Procedure section 1021.5;
>
> (d) any reasonable and appropriate efforts by Willis Class Counsel that are undertaken in response to a written request by Settling Defendants executed by counsel for all Settling Defendants that Class Counsel participate in future aspects of the Consolidated Actions (e.g., the negotiation of a Physical Solution); or,
>
> (e) any reasonable and appropriate efforts that the Willis Class Counsel render to defend a fee award in their favor in the event the Settling Defendants appeal such a fee award and the Court of Appeal affirms the fee award in the amount of 75 percent or more of the fees awarded by the Superior Court. Willis Class Counsel remain free to seek an award of fees from other parties to the litigation.

(10JA12254:28-12255:24.) The last two of these enumerated criteria are inapplicable to the 2016 Fee Motion. But the first three—particularly, the very first condition—governed and should have been addressed and considered by the trial court in adjudicating Willis Class

counsel's 2016 Fee Motion. It did not do so. Instead, the trial court identified three inconsistent criteria, and in doing so, materially changed the terms of the Willis Class Stipulation. The trial court then found that because Willis Class counsel did not meet these newly-minted standards of the trial court's own making, their 2016 Fee Motion should be denied. Specifically, the trial court's 2016 Fee Order provided that:

> [B]y the terms of the stipulation, the class agreed not to seek further fees or costs from the [Purveyors] except under three very specific circumstances…none of which are applicable here:
>
> a) If counsel was ordered to participate in the proceedings;
>
> b) If counsel engaged in reasonable efforts to defend against new claims or causes of action made against the class;
>
> c) Enforcement of a public right under CCP 1021.5.

(3AA2077,¶10.) Finding none of *these* criteria met, the trial court denied the fee motion.

### 1. Willis Class Counsel Plainly met the First Criteria for Award of Post-2011 Attorneys' Fees and Costs

Glaringly missing from the trial court's recitation of applicable fee criteria under the Willis Class Stipulation was the very first one; namely:

> **(a) any reasonable and appropriate efforts by Willis Class Counsel to enforce the terms of the Stipulation against Settling Defendants in the event Settling Defendants *fail to comply with a provision of this Stipulation***.

(10JA12255:8-11, emphasis added).

The trial court's failure to consider the most applicable criteria for Willis Class counsel's entitlement to post-2011 fees and costs was never explained. The failure, however, plagued the entire 2016 Fee Order. This is so because the whole thrust of Willis Class counsel's post-2011 fee request was that it was required to participate in the 2015 prove-up trial, including the taking of and defending many depositions, filing nearly 15 significant motions, filing multiple opposition briefs, and active participation in the 14-day Phase Six trial. The Purveyors' consent to the Physical Solution and Stipulation for Judgment after entry of the 2011 Judgment amounted to a reneging of the material terms of the Willis Class Stipulation.

The Physical Solution was a clear effort by the Purveyors to disregard the terms of the Willis Class Stipulation, which recognized and secured concrete and important rights for the Class members—rights that the Purveyors and Stipulating Parties sought to extinguish through the further prove-up trial. Whereas, the Willis Class Stipulation established the Willis Class' correlative water rights to 85% of the native supply for future use, the Physical Solution relegated the Willis Class members to only obtain water from replacement water sources for which they would be required to pay, potentially even for basic domestic uses. Thus, Willis Class counsel's work in vigorously objecting to that Physical Solution fell squarely within the Willis Class Stipulation criteria. Willis Class counsel were engaging in "**reasonable and appropriate efforts…to enforce the terms of the Stipulation against Settling Defendants in the event Settling Defendants *fail to comply with a provision of this [2011] Stipulation.*"** (10JA12255:8-11, emphasis added.) Under the express terms of the Willis Class Stipulation, Class counsel were entitled to an award of fees and costs for the further work they undertook to object to and defend against the Purveyors' attempts to renege the critical rights that the 2011 Judgment secured.

The trial court's 2016 Fee Order, however, failed to even mention this first criteria when it denied the 2016 Fee Motion. As a result, the 2016 Fee Order contains no discussion (indeed, no mention) of whether Willis Class counsel satisfied this condition. This alone mandates reversal (or, at the very least, a remand so that the trial court may consider and address the proper fee criteria governing Willis Class counsel's 2016 Attorneys' Fees Motion).

Whether viewed through the "abuse of discretion" standard for review of fee awards or the "*de novo*" review applied to the lower court's application of the wrong legal standard, the result is error meriting reversal. (*See, 569 East County Blvd., supra,* 6 Cal.App.5th at 434 ["although the trial court has broad authority in determining the amount of reasonable legal fees, the award can be reversed for an abuse of discretion when it employed the wrong legal standard in making its determination"); *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-98 ["if the trial court is mistaken about the scope of its discretion the mistaken position may be 'reasonable,' i.e., one as to which reasonable judges could differ. But if the trial court acts in accord with its mistaken view the action is nonetheless error; it is wrong on the law"], internal citation omitted.) As another California Court of Appeal

panel has succinctly put it: "Case law is clear, however, that getting the legal standard wrong means that a subsequent decision becomes *itself* a per se abuse of discretion even if, assuming the wrong standard, the decision is otherwise reasonable." (*Conservatorship of Bower* (2016) 247 Cal.App.4th 495, 506, original emphasis; *see also Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634 ["reversal *is required* where there is no reasonable basis for the ruling *or* when the trial court has applied the wrong test to determine if the statutory requirements were satisfied,"] emphasis added).

### 2. An Award of Post-2011 Fees and Costs Under the 2011 Stipulation did not Require "Successful Party" Status

The first criteria for an award of post-2011 attorneys' fees and costs set forth in the Willis Class Stipulation is separate and distinct from the availability of such fees under Section 1021.5. The requirements of each vehicle for seeking fees are different and not co-extensive.

Significantly, unlike a fee request sought under Section 1021.5, the first criteria in the Willis Class Stipulation does not require Willis Class counsel to show that it was a "successful party" in order to seek fees for its work in seeking to enforce the 2011 Judgement. The Willis Class and Purveyors purposefully and deliberately negotiated for that

distinction. This was so because the gravamen underlying that first criteria for an award of post-2011 fees was a recognition that the Willis Class already was a successful party in securing the 2011 Judgment for the Willis Class, and should be compensated if, having completed their assignment, they were forced to return to court to enforce that result against any attempt by the Purveyors not to comply with the 2011 Judgement terms. This criteria for further fees was geared to compensate for further work that would be needed if the Purveyors' actions were deemed a "failure to comply" with the 2011 Judgment, as opposed to compensation only in the event that Willis Class counsel obtained a further "successful party" status. Were it otherwise, the first criteria would be rendered superfluous because it would merely be redundant of the Section 1021.5 standards. The trial court erred in failing to address the first criteria for an award of post-2011fees and costs set forth in the Willis Class Stipulation.

### B. The Physical Solution Also Presented New Claims Against the Willis Class, Thereby Satisfying Another Fee Criteria of the Willis Stipulation

Another criterion of the Willis Class Stipulation allowed Class counsel to seek additional fees for efforts expended in defending "new or *additional claims"* in pleadings or "*motions filed in the Consolidated*

*Actions.*" (10JA12255:11-13.) While the court dismissed the Willis Class action against the Purveyors after entry of the 2011 Judgment, the Purveyors thereafter stipulated to the Physical Solution, raising new claims against which the Willis Class was then forced to defend. The Physical Solution was in effect a motion asserting new claims against the Willis Class as it modified the Willis Class' right to pump from the native supply. (176JA157554:20-22 ["…the failure of the [Willis Class] members to Produce any Groundwater under the facts here modifies their rights to Produce Groundwater…"].) The court's ruling on Class counsel's opposition to these claims does not negate the fact the Purveyors raised them.

Purveyors asserted an additional claim adverse to the Willis Class by recognizing the Wood class' right to domestic use priority under Water Code Section 106, but failed to do the same as to the Willis Class. (176JA157535:25-26.) By doing so, the Purveyors asserted that the Willis Class landowners should be treated differently than all other domestic use landowners in the Basin. The Purveyors also agreed to an incentive award to Wood Cclass representative, payable yearly in five acre-feet of extra free groundwater. (176JA157539:17-20.) However, this prejudiced the interests of the Willis Class because it further

depleted the already severely limited native supply of groundwater in what is a zero-sum game. The Physical Solution allocated *all* of the available native supply to the exclusion of the Willis Class. (176JA157532:6.) These new claims entitled Class counsel to pursue an award of attorneys' fees and costs under the terms of the Willis Stipulation.

### C. Class Counsel was Ordered to Participate, Thereby Satisfying Another Alternative Ground for Fees Set Forth in the Willis Stipulation and 2011 Judgment

The Willis Class was also entitled to recover its attorneys' fees because it was explicitly ordered to participate in Phase Six by the trial court. The Stipulating Parties submitted a proposed schedule for a prove-up and/or trial of the Physical Solution, which the court entered as an order on November 11, 2014. (127JA123889-123891.) The order required non-stipulating parties to (1) oppose the prove-up of the Physical Solution; (2) assert claims or rights to produce groundwater; (3) disclose witnesses and exhibits related to any objection to the Physical Solution; (4) conduct discovery related to those objections; and, (5) oppose the approval of the Purveyors' settlement with the Wood class. (127JA1238891¶6; 128JA125524¶6; 130JA127653¶6.) The court commented that "the prove up by the stipulating parties is

something that [Willis Class counsel] might want to appear and address…because that is going to be something that could impact his client." (41RT22641:17-19; 22641:27-22642:4.) The terms of the Physical Solution confirmed, "All [Purveyors], landowners, ***Non-Pumper Class*** and Small Pumper Class members and other Persons having or making claims have been or will be ***included as Parties to the Action***." (176JA157526,¶3.2; *see also,* 176JA157531,¶3.5.27.)

As a non-stipulating party to a Physical Solution that failed to honor any crucial terms of the 2011 Judgment and thereby threatened its correlative rights to pump groundwater, Willis Class counsel was compelled, both by duty and court order, to participate in Phase Six, and it did. As the Willis Class's participation in Phase Six was mandated and expected, Willis Class counsel was entitled to seek an award of attorneys' fees and costs under the terms of the Willis Class Stipulation.

## II. THE WILLIS CLASS SATISFIED CRITERIA FOR A FEE AWARD UNDER CCP SECTION 1021.5

Independent of the 2011 Judgment, Class counsel was entitled to an award of attorneys' fees and costs under Section 1021.5. That statute permits a court to award attorneys' fees to "a *successful party* against one or more opposing parties in any action which resulted in the

enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. CCP 1021.5 (emphasis added). The elements of Section 1021.5 are met here.

### A. The Class was a "Successful Party" for Purposes of Section 1021.5

Courts have taken a broad, pragmatic view of what constitutes a successful party. (*See*, *In re Head* (1986) 42 Cal.3d 223, 226, 233 [finding fees may be awarded in proceedings that meet the statutory criteria of Section 1021.5 regardless of "the label or procedural device by which the action is brought…Our construction of section 1021.5 ensures that the legislative purpose will not be frustrated by a restriction of the availability of attorney fee awards where the restriction is not clearly mandated by the language of the statute;"] *see also*, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1293 [though the case was ultimately dismissed, the court found plaintiff's action to enjoin enforcement of state statute requiring school districts to report names of alien children

to federal immigration authorities was "precisely the type of public interest lawsuit that the private attorney general doctrine of section 1021.5 was intended to foster"].)

In determining a successful party under Section 1021.5, the ***impact*** of the action rather than the manner in which the action is resolved is a key factor. (*Graham v. Daimler Chrysler Corp.* ("*Graham*")(2004) 34 Cal.4th 553*,* 565.) A plaintiff is a "successful party" if it obtained some relief from "benchmark conditions." Here, the appropriate benchmarks are (a) the situation immediately before commencement of the suit, and (b) the situation today, and the role if any played by the litigation in effecting any changes between the two. (*Folsom v. Butte Country Ass'n of Gov'ts* (1982) 32 Cal.3d 668, 685, fn. 31 ["with the condition taken as a benchmark, inquiry may then turn to whether as a quite practical matter the outcome…is one to which the fee claimant's efforts contributed in a significant way"]; *See also, Maria P., supra,* 43 Cal.3rd at p.1292 [successful party is a party that "succeed[s] on any significant issue in litigation which achieves some of the benefits the parties sought in bringing the suit"].)

Before entry of the 2015 Judgment, the benchmark situation was the absence of a physical solution – unrestricted pumping, historical

overdraft conditions, and a cumulative deficit of millions of acre-feet. (176JA157476:21-24; 157477:4-13.) The situation after entry of the 2015 Judgment changed significantly. A court-approved Physical Solution is now in place that limits overall pumping to the total safe yield;[7] the Purveyors' waived prescription except as to parties who did not appear at Phase Six or defaulted parties; and, a Watermaster board was empaneled to monitor and address water rights disputes. Thus, the adopted Physical Solution "protect[s] all water rights in the Basin by preventing future overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land subsidence." (176JA157479:23-25.) *Without the participation of the Willis Class, the trial court could not have entered this Physical Solution.*

The court had to comprehensively adjudicate all claims of rights to groundwater per the McCarran Amendment because the United States, as an overlying landowner, was made a party to the lawsuit. (6JA5990:20-5991:9 ["the McCarran Amendment provides a limited waiver of immunity for joinder in *comprehensive* adjudications of all rights to a given water source"], original emphasis.) This required the

[7] The safe yield is quantified as 82,300 acre-feet of native supply water and 28,700 acre-feet of return flows from imported water for a total of 110,000 acre-feet safe yield. (176JA157459:26-157460:2.)

participation of "all parties who have a water rights claim" and "the judgment must bind all parties." (6JA5990:26-5991:1 ["Without consolidation there is risk that the United States [the largest landowner in the Antelope Valley] might attempt to withdraw from the proceedings for lack of a comprehensive judgment"].) Thus, the Willis Class was necessary for entry of a comprehensive adjudication and remained so even after settling its claims with the Purveyors in 2011.

In the 2016 Fee Order, the court specifically recounted the Willis Class was created "to satisfy the McCarran Act objections, and to ensure that all persons and other parties would be subject to the court's judgment" and "[w]ith the creation of the class actions, the court had jurisdiction over all persons who claimed either patent or latent water rights." (3AA2063-2064.)

The Purveyors echoed the need for Willis Class's participation in Phase Six: "[T]he Court cannot approve a final physical solution without considering the reasonableness of all parties' water rights. It is critical to the [Wood Class] Settlement Agreement and its proposed groundwater management (physical solution) that the unresolved claims of the Non-Settling Parties be determined…before court approval of the Settlement Agreement." (124JA121360:13-21, citations

omitted; *see also*, 133JA131458:3-5 ["Once the Court determines the non-stipulating parties' water rights, the Court can impose the physical solution upon all groundwater users within the Basin;"].) The Purveyors continued to caution the court that it "cannot approve a physical solution without considering the reasonableness of all parties' water rights," and until it does ***"the Settling Parties may be unable to have a comprehensive physical solution to the overdraft conditions***…(124JA121360:11-26, citations omitted, emphasis added; *see also*, 50RT27530:1-3.)

This was confirmed in the Statement of Decision. The court recognized that the Willis Class was an objecting party and must have its rights tried as if there was no physical solution. (176JA157472:7-13.) It further stated, "the Statement of Decision contains the Court's findings as to the comprehensive adjudication of all groundwater rights in the Basin including the…Willis Class." (176JA157460:8-11.)

As discussed above, the Willis Class' participation in Phase Six was mandated by the trial court's November 4, 2014 order. The trial court indisputably expected the Willis Class to participate in Phase Six.

As the Class's participation was a necessary predicate to the court's entry of the Physical Solution and its efforts contributed

significantly to the outcome of the adjudication, the Willis Class is a "successful party" for purposes of Section 1021.5. Without the active participation of the Willis Class, the court could not have ordered the comprehensive Physical Solution. (176JA157479:19-21 ["The Court finds that to protect the Basin ***it is necessary that all parties participate*** and be bound by the groundwater management provisions of the Physical Solution"], emphasis added.)

Even if this Court reverses the 2015 Judgment in the related appeal, the Willis Class should still nonetheless be deemed a "successful party." The Willis Class obtained particularized benefits under the Physical Solution adopted by the trial court. The non-settling parties that defaulted lost their water rights to the Purveyors through prescription. (176JA157462:7-157466:22.) By contrast, through concerted efforts that avoided a default, the Willis Class members did not similarly lose all of their groundwater rights through prescription. Both the Purveyors and the trial court acknowledged that the Willis Class maintained limited correlative rights. (176JA157483:25-26; 157484:24-25; 162JA149633:18-19.) The Purveyors sought prescription against all "parties who did not appear at trial" and the "defaulted parties." (176JA157462:9-10.) As noted by Purveyors, had

the Willis Class not appeared at trial, they risked a finding of prescription that would have eliminated their right to pump water. (162JA149632:9-11["But for the Willis Class Stipulation, the Willis Class' never-exercised overlying rights would be subordinate to rights of the landowners and [Purveyors] who used groundwater during the overdraft conditions"].) By contrast to the defaulting parties with no right to pump from the Basin, the Physical Solution provides for particularized procedures for the Willis Class which may entitle Class members to pump groundwater under specified conditions. (*See*, 176JA157536,¶5.1.2; 157571-157573,¶18.5.13.) As the court explained, "Willis Class members will have the opportunity to prove a claim of right to the Court or, like all other pumpers in the Basin, apply to the Water Master for new groundwater production. Thus, the Willis Class' correlative rights are more than fairly protected by the Physical Solution." (176JA157484:21-25, citations omitted.) Though the Willis Class' correlative rights are severely limited – if not entirely extinguished – by the Physical Solution, in contrast, non-settling parties other than the Willis Class have no possible claim of right, having lost such rights via prescription, and cannot obtain any new groundwater production entitlements.

It is true the Willis Class did not obtain all the relief requested. But, a party need not obtain the "primary" or "central" relief sought to obtain fees under Section 1021.5. (*Lyons v. Chinese Hosp. Assn.* (2006) 136 Cal.App.4th 1331, 1345-1346.) A party may instead be deemed to have prevailed if results are achieved by judgment, settlement, or even voluntary corrective action of the defendants, as long as the corrective action was attributable to the lawsuit and resulted in a benefit to the party. (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608).

Although the court eventually denied the Willis Class's oppositions to the Physical Solution, "a prospective private attorney general should not have to reply on the prospect that the court will do the right thing without opposition." (*Hull v. Rossi* (1993) Cal.App.4th 1763, 1768.) Thus, a party may be awarded fees as a successful party even if he/she obtains no relief, if the principle on which the lawsuit was brought is vindicated. (*Harbor v. Deukmejian* (1987) 43 Cal.4d 1078, 1103.) Here, a judgment was entered resolving several coordinated and consolidated lawsuits that involved over 140 parties. The judgment's primary goal was to protect the Basin over the long run and curtail overdraft through a comprehensive adjudication of

groundwater rights. (176JA157476:21-25.) This is precisely what the Physical Solution achieved, which could not be entered without the Willis Class' participation. The Basin was so severely overdrafted that existing pumping had to be limited and constraints placed on all users to preserve the aquifer. (176JA157476:21-24; 157477:4-13.) The court found "the Physical Solution will protect all groundwater rights in the Basin by preventing future overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land subsidence." (176JA157479:23-25.)

Thus, the Willis Class' efforts materially advanced the Antelope Valley adjudication of water rights and allowed for the court's adoption of a physical solution to remedy the effects of overdraft for which they must be deemed a "successful party."

### B. The Action Resulted in the Enforcement of an Important Right

The adjudication unquestionably resulted in a Physical Solution that enforces important public rights. The trial court found that "the Physical Solution is required and appropriate under the unique facts of the Basin. The Physical Solution resolves all groundwater issues in the Basin and provides for a sustainable groundwater supply for all parties now and in the future. The Physical Solution addresses all parties'

rights to produce and store groundwater in the Basin while furthering the mandates of the State Constitution and the water policy of the State of California. The Court finds that the Physical Solution is reasonable, fair and beneficial as to all parties, and serves the public interest." (176JA157486:12-18.)

This action resulted in the enforcement of important groundwater rights affecting a large group of persons. It cannot reasonably be controverted that landowners' ability to make use of the groundwater under their properties is an important right, particularly in an arid environment like the Antelope Valley Basin. Article X, section 2 of the California Constitution declares the public interest in proper use of the State's water resources. Again, absent the Willis Class' involvement, a comprehensive adjudication of the basin was not possible. Thus, Willis Class counsel not only assisted in protecting some of the rights of over 18,000 Class members, their continued involvement after entry of the 2011 Judgement facilitated a resolution of the Basin's overdraft.

### C. The Case Conferred a Significant Benefit on a Large Class of Persons

The Physical Solution ultimately adopted by the trial court unquestionably conferred a significant benefit on the Basin. (176JA157479:23-25; 157480:3-12.) In *Graham, supra*, 34 Cal. 4th at

p.561, there were less than 1,000 affected California purchasers of trucks. This case involves hundreds of groundwater users and tens of thousands of landowners, including the over 18,000 members of the Willis Class. The comprehensive Physical Solution undoubtedly advanced the long-term protection of the Basin to the significant benefit of a large class of persons.

### D. The Necessity and Financial Burden of Private Enforcement

The requirements of necessity and financial burden of private enforcement for an award of fees under Section 1021.5 were also satisfied here. This element involves two issues: whether private enforcement was necessary and whether the financial burdens of private enforcement warrant an award of fees to the plaintiffs.

Both elements were satisfied here. It is clear private enforcement was necessary given the fact no one else stepped to the plate to represent the interests of the non-pumping, dormant small landowners. (*See, City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 88 ["To retrospectively deny attorney's fees because an issue is not considered or because a party's participation proves unnecessary would have the effect of discouraging the intervention of what in future cases may be essential parties"]; *City of Sacramento, supra,* 207 Cal.App.3d at

p.1298 ["'necessity…of private enforcement' addresses the issue of the comparative availability of *public* enforcement, not the causal relationship between the claimant's action and the result"].) The trial court could not adopt ***any*** physical solution unless it adjudicated the rights of ***all*** parties in the Basin. Private enforcement therefore was compelled.

As for the financial burden of private enforcement, the governing standard is whether the members of the Willis Class "had an individual stake that was out of proportion to the costs of the litigation." (*Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 231.) This standard was easily met here. The original Class representative, Rebecca Lee Willis, owned two acres of land. Though very significant to her, such a plot of land could not justify the expenses involved in this complex and protracted litigation. Many larger landowners joined or remained in the Willis Class because of the burdens and expense of getting involved in this complicated case. As with Rebecca Willis, the costs of litigation were out of proportion to the stake of her successor as Class representative, David Estrada. Similarly, the financial burden on each of the individual 18,000 non-pumping landowners of representing themselves in this adjudication

was clearly out of proportion to their stake as individual landowners. This requirement of Section 1021.5 was therefore met.

The criteria justifying a fee award under Section 1021.5 were all met by the Willis Class. Further, although the statute is worded in discretionary terms ("a court *may* award attorneys' fees," emphasis added), the case law is clear that, where the statutory criteria are met, fees *should* be awarded absent special circumstances that mandate a different result. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 633 [finding fees should be awarded unless "special circumstances would render such an award unjust"]; *City of Sacramento*, *supra*, 207 Cal.App.3d at p.1297, fn. 3 [finding no discretion to deny a fee award if criteria are met]; *Schmid v. Lovette* (1984) 154 Cal.App.3d 466, 476 [noting defendant's good faith belief it was complying with law is not a basis to deny or reduce a fee award].)

## III. THE TRIAL COURT'S 2016 FEE ORDER IGNORES PUBLIC POLICY AND THE UNDERLYING RECORD

The court denied the Willis Class' 2016 Attorneys' Fees Motion because it erroneously reasoned the Class failed to establish a benefit to the public or its members and the Class was not a prevailing party in the proceedings after the 2011 Judgment. (3AA2075.) The court's ten enumerated reasons to support its ruling conflict with the policy

principles behind Section 1021.5, the underlying record, and the 2015 Physical Solution.

The policies behind Section 1021.5, which codifies the private attorney general doctrine, are particularly important here. First, the doctrine recognizes privately-initiated lawsuits are often necessary to effect fundamental public policies. (*Woodland Hills Residents Assn. v. City Council* ("*Woodland Hills*") (1979) 23 Cal.3d 917, 933, citing *Serrano v. Priest* ("*Serrano I*") (1977) 20 Cal.3d 25, 43.) Second, the doctrine acknowledges the "expense of litigation would otherwise deter private parties" from initiating such lawsuits to "vindicate statutory and constitutional rights, as well as important public policies." (*In re Head, supra,* 42 Cal.3d at p.228; *see also, Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173,176 [the "statute's purpose is to encourage public interest litigation that might otherwise be too costly to pursue"].) The California Supreme Court has repeatedly held that "without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Woodland Hills, supra*, 20 Cal.3d at p.933, citing *Serrano I, supra*, 20 Cal.3d at p.43; *see also*, *Graham, supra,* 34 Cal.4th at p.565, quoting *Maria P., supra,* 43 Cal.3d at p.1289 ["[T]he

fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases"].)

In discussing Section 1021.5's legislative history, the California Supreme Court underscored that it "address[es] the problem of affordability of such lawsuits. Because public interest litigation often yields ***nonpecuniary and intangible or widely diffused benefits***, and because such litigation is often complex and therefore expensive, litigants will be unable to afford to pay an attorney hourly fees or to entice an attorney to accept the case with the prospect of contingency fees." (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1219, quoting *Woodland Hills*, *supra*, 23 Cal.3d at p.933, emphasis added.)

Notably, fees awarded under Section 1021.5 are meant to encourage important litigation, not punish wrongdoers. (S*an Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 756 [noting such fees are "not intended to punish those who violate the law but rather to ensure that those who have acted to protect public interest will not be forced to shoulder the cost of litigation"].)

Here, in awarding attorneys' fees in 2011, the trial court repeatedly emphasized the public interest served by the Willis Class's participation in the Antelope Valley adjudication: "[W]ithout the filing of the class action, it would have been ***impossible*** to adjudicate the rights of all persons owning property and water rights within the valley…The benefit to all [C]lass members is clear and the benefit to all others living or owning property in the Antelope Valley is enormous – all water rights will ultimately be established and if necessary … the reasonable and beneficial use of the water will be preserved for all under the California Constitution." (13JA15487:25-27; 15488:1-5, emphasis added.) Having recognized the propriety of awarding attorneys' fees and costs to the Willis Class, the court erred in then withholding award of fees and costs for Willis Class counsel's work in defending the very 2011 Willis Class Judgment that the court already deemed merited fees under Section 1021.5, and in responding to the court's CMC order to oppose the Physical Solution.

Appellants respond to each of the court's enumerated reasons for denying Willis Class' 2016 Fee Motion as follows:

(1) "None of the work of counsel for the class materially benefitted or positively affected any part of the Global Settlement and Judgment – the rights of the Willis class were

the rights of all non-pumpers and were never threatened after the stipulation in 2011." (3AA2076,¶1.)

**Response**: First, without the presence of counsel, the court could not have entered any physical solution. (176JA157460:19-24.) The Willis Class was the only party that opposed the Physical Solution. Second, despite entry of the 2011 Judgment, the terms of the Physical Solution severely threatened the Willis Class' ability to extract water from the native supply, raising issues of consistency with the Willis Stipulation and the court's prior judgment. Class counsel thrice moved the court to enforce the 2011 Judgment and sought determination on consistency, however, the court deferred ruling on each motion and expected Class counsel to continue through Phase Six. The court confirmed Class counsel's consistency concerns: "The physical solution…could…forbid new pumping from the aquifer (as it ultimately did)." (3AA2065.) While the Class may be excluded from the native supply, they maintain the ability to pump from imported water, unlike the defaulted parties. Without Class counsel's participation, the Willis Class too could have been permanently precluded from ever extracting groundwater. Despite these efforts, after the 2015 Judgment was entered, the court switched tracks and now claims the work was unnecessary for purpose of attorney's fees and costs. *It is remarkable to declare that the Physical Solution did not threaten the rights of the Willis Class, it clearly did.*

(2) "The class correlative rights were as to 85% of the federally adjusted safe yield which meant that they were immune from prescription by the only party who had such claim- i.e., the [Purveyors], which immunity the class obtained in the 2011 settlement by relinquishing 15% of its otherwise correlative rights basin-wide to the [Purveyors]." (*Id*. at ¶2.)

**Response**: The trial court's statement contradicts the record (saying it doesn't make it true). The 2015 Physical Solution directly contravenes these key benefits guaranteed by the 2011 Judgment: (1) Paragraph 9.2.2 specifically identifies prescription as the bases to modify the rights of the Willis

Class (176JA157554:14-22), (2) Paragraph 3.5.32 specifically allocates the entire native supply to those identified in Exhibits 3 and 4 to the exclusion of the Willis Class; (176JA157532:6), and (3) by permanently allocated the entire native supply to those in Exhibits 3 and 4, the correlative water rights of the Willis Class to the native supply is extinguished. *There are no correlative rights left in a Basin that permanently quantifies and allocates, in perpetuity, the entirety of the native safe yield.*

(3) "The class had stipulated to be bound by ***whatever*** physical solution as non-pumpers the court might establish to resolve aquifer overdraft." (*Id*. at ¶3, emphasis added.)

**Response**: No, they did not. The Willis Class Stipulation was clear and unambiguous. The Willis Class only agreed to be part of any future physical solution if it was "consistent" with the terms of the 2011 Judgment. (10JA12250:2-4.) In fact, the court recognized this "consistency" requirement, but falsely ruled that "this Judgment is consistent with the [Willis Class] Settlement and Judgment." (176JA157483:17-18.) *The class did not blindly give the trial court carte blanche to enter ANY or WHATEVER physical solution the court deemed appropriate.*

(4) "The overlying owners were not an adverse party to the claims of the Willis Class and in fact there were no claims by the class as non-pumpers to an allocation of specific water production. The findings of the court in trial Phases 3 and 4 established that there was no surplus from which any new pumping could occur without further detriment to the aquifer, so that it was necessary that the court could curtail and reduce existing pumping by all water producers, public and private, until the aquifer was in balance. As a matter of law, the court could not take water rights from a water producing entity whose use was reasonable and beneficial and give those rights to a previously non pumping party. And, the Willis Class never requested an allocable quantity of water to be pumped." (*Id*. at ¶4.)

**Response**: This reasoning is flawed for several reasons. First, California law does not support the first-in-time first-in-right principle as to correlative overlying water rights. (*See, City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.) Second, the Willis Class offered the expert opinion of Dr. Rodney Smith who opined about the Willis Class' quantifiable share to be used in the future. (49RT26534:28-26537:4; 26540:15-26541:24; 26543:6.) But for the court's wrongful exclusion of the testimony of this witness, the evidence would have shown the Willis Class requested an allocable share of the native supply that they may have been able to use in the future. Third, overlying owners and Purveyors were adverse-in-fact to the Willis Class during Phase Six, although not by law. (*See*, AUG201:14-17 ["My position going in is that the nonpumpers get zero"].) *The court wrongfully extinguished the Willis Class' overlying correlative water rights in the native safe yield. The Willis Class overlying correlative water right is defined by common law and was protected by the court's 2011 Judgment until the entry of the Physical Solution.*

(5) "The Willis Class was unsuccessful in every request and application to the court. As the court stated frequently to all parties, on the record, if the parties who were water producers failed to come up with a solution, the court would be required to impose such on an involuntary basis – but that could not affect the stipulated relationship between the [Purveyors] and the Willis Class." (*Id*. at ¶5.)

**Response**: The Willis Class need not win to be a successful party under Section 1021.5. (*Graham, supra*, 34 Cal.4th at 565; *Maria P., supra*, 43 Cal.3d at 1290-1291.) It need only have an impact. (*Folsom, supra*, 32 Cal. 3d at 685.) Furthermore, the efforts of class counsel was enforcement work of the Willis Class 2011 stipulation. Here, the court reviewed and denied all of Willis Class' opposition to the Physical Solution. The Court did permit Willis Class representative David Estrada and expert witness Stephen Roach to testify at trial. Unfortunately, the court was blinded by the Physical Solution and forced by the "dynamite

provision" to adopt the Physical Solution wholesale, *verbatim or not at all*. The court refused to modify a single word of the Physical Solution. For example, Willis Class counsel proposed to add the word "modify" to paragraph 6.5 of the Physical Solution as is the custom and practice for water adjudications and other judgments. (50RT27458:18-27460:23.) The court refused. *The court did not properly apply the successful party standard to the court ordered participation of the Willis Class in the Phase Six proceeding.*

(6) "Willis Class participation was neither mandatory nor appropriate beyond ensuring that its stipulation and judgment would be incorporated into the final judgment. However, no party ever objected or made any attempt to modify the stipulation and judgment or to prevent its enforcement and the PWS uniformly always requested incorporation of the Willis Class judgment into the Global settlement and judgment without modification." (3AA2076-2077,¶6.)

**Response**: Again, the trial court's statements are belied by the record. As discussed in Section I.C, *supra*, for fourteen months, the Willis Class tried to convince the trial court to remain consistent with the 2011 Judgment and modify the Physical Solution to incorporate the Willis Class Stipulation. Willis Class counsel filed over 15 motions, three oppositions, retained four experts, and examined and cross-examined multiple witnesses during a fourteen-day trial. Ultimately, the court entered a Physical Solution that denied the Willis Class a right to use the native supply of water existing below the members' land at any time in the future. *It's incredulous to conclude that "no party ever objected or made any attempt to modify the Physical Solution" and/or that the Willis Class' participation was neither mandatory nor necessary.*

(7) "There was no need for the class to be present for the court to make reasonable and beneficial use findings as to the water producers and users, including overlying owners, who pumped and produced water, noting that no claims were made against the class' correlative rights. There were no new claims

or causes of action which would require the defense by class counsel." (3AA2077,¶7.)

**Response**: The Class's correlative rights to the native supply was threatened by the Physical Solution and extinguished when the court adopted the Physical Solution as its own. Thus, Willis Class counsel was duty-bound, as well as court ordered, to oppose a proposed Physical Solution that conflicted with the Class' rights guaranteed by the 2011 Judgment. The trial court's duty in adopting a physical solution was to determine reasonable and beneficial use of the aquifer by all parties with rights thereto. The Willis Class was the only opposing party to the prove-up of the Physical Solution. But for the Willis Class's participation, there would have been no opposition. *The Willis Class was duty bound to oppose and ordered by the court to oppose the Physical Solution.*

(8) "All the benefits to the public and the class occurred in spite of the misplaced opposition of the class counsel to the physical solution which the class now claims to have been at least a partial cause." (*Id*. at ¶8.)

**Response**: The court in 2011 recognized the correlative water rights of the Willis Class in the native supply free of replacement assessment and the Class's immunity from prescription. Willis Class counsel's duty was to protect the water rights of the class. His efforts were not "misplaced" – even if ignored by the trial court. Given the court's intransigence because of the "dynamite provision," Class counsel was left to oppose and make a record of the proceedings. *The court's conflicting judgments are left for the appellate court to resolve.*

(9) "Class did not prevail and has already been paid for all work prior to the 2011 stipulation and judgment." (*Id*. at ¶9.)

**Response**: Detailed in Section I.C, *supra,* the court requested Class counsel's presence after the 2011 judgment was entered. The 2016 Attorneys' Fee Motion sought fees and

costs for the fourteen (14) months of work since the court's entry of the November 4, 2014 Case Management Order. Willis Class counsel participated, enforced, and defended its rights under the 2011 judgment. *All this work was done under the direction, request, and approval of the trial court.*

(10) "… the class agreed not to seek further fees and or costs from the [Purveyors] except under three very specific circumstances as specified in Paragraph VIIID of the stipulation for settlement, none of which apply here:

a. If counsel was ordered to participate in the proceedings;
b. If counsel engaged in reasonable efforts to defend against new claims or causes of action made against the class;
c. Enforcement of a public right under CCP 1021.5.

The court did not require an appearance by the class in any phase of the trial after the stipulation in 2011." (*Id*. at ¶10.)

**Response**: With all due respect to the trial court, there is no other way to address this statement except to simply say it is false. At the November 4, 2014 CMC, Willis Class counsel had one question for the trial court: Is the Willis Class a non-stipulating party under the CMO such that it must oppose the Physical Solution and comply with its terms? The court answered in the affirmative. (41RT226632:21-27; 22634:27-22635:5.) For the ensuing fourteen months from that date, Class counsel appeared countless times in front of the court. *Not once did the court inform counsel that its presence was neither appropriate nor mandatory.*

## IV. CLASS COUNSEL IS ENTITLED TO REASONABLE FEES AND COSTS IN FORCED PARTICIPATION IN PHASE SIX PROCEEDINGS REGARDLESS OF THIS COURT'S DETERMINATION OF THE WILLIS CLASS' APPEAL FROM THE 2015 JUDGMENT

The Willis Class has also appealed the entry of the 2015 Judgment and Physical Solution. If the Court overturns the trial court's decision, the Willis Class certainly is entitled to reasonable attorneys' fees and costs for its forced participation in opposing the Physical Solution and enforcing the 2011 Judgment and Willis Stipulation. However, even if the Court affirms the trial court's judgment, the Willis Class should nonetheless still be entitled to the same reasonable attorneys' fees and costs. The Willis Class succeeded because, without its efforts, a physical solution could not be entered by the court to address the critical overdraft conditions and over-pumping of groundwater in the Antelope Valley basin

Entitlement to fees under Section 1021.5 is based on the impact of the case as a whole. (*Punsly v. Ho* (2003) 105 Cal.App.4th 102, 114.) The fact a physical solution was entered that "will protect all water rights in the Basin by preventing future overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land subsidence" (176JA157479:23-25) is a significant achievement. This

achievement is not negated by the Willis Class' claims that the Physical Solution abrogates the members' overlying, correlative right to the native supply or that its terms are inconsistent with the 2011 Judgment. From the outset of its involvement, the Willis Class sought court intervention to address the severe overdraft and continued depletion of groundwater. (2JA1902:2-5.) Thus, even if the Court upholds the 2015 Judgment, the success of a groundwater management in place to address overdraft and preserve the Antelope Valley Basin is likewise not negated. (*See*, *Maria P., supra*, 43 Cal.3d at 1292 ["plaintiff may be considered prevailing parties for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in brining suit"].)

The award of fees and costs based on interim rulings is not a novel concept. In *Bowman*, *supra*, 131 Cal.App.4th at p.173 the Court of Appeal upheld an award of fees and costs where plaintiffs succeeded in remanding the case on appeal for violation of due process regarding approval of a housing project, even though the project was ultimately reapproved on remand. Similarly, here, this Court should reverse the 2016 Fee Order regardless of the outcome of the Willis Class' appeal of the 2015 Judgment on the merits.

## CONCLUSION

Appellants respectfully request this Court reverse the trial court's 2016 Fee Order denying Appellants' attorneys' fees and costs.

Dated: October 18, 2019

Respectfully submitted,

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By: *s/ Ralph B. Kalfayan*

Attorneys for Appellants, REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and others similarly situated

## CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to rule 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, the Opening Brief of APPELLANTS REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and others similarly situated contains 13,606 words, not including the tables of contents and authorities, the caption page, the verification page, signature blocks, or this certification page.

*s/ Ralph B. Kalfayan*
Ralph B. Kalfayan

## PROOF OF SERVICE

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 2262 Carmel Valley Road, Suite 200, Del Mar, California 92014.

October 18, 2019, I served true copies of the following document(s) described as **APPELLANTS' OPENING BRIEF** on the interested parties in this action as follows:

**BY TRUEFILING (EFS):** I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling portal operated by ImageSoft, Inc. Participants in the case who are registered EFS users will be served by the TrueFiling EFS system. Participants in the case who are not registered TrueFiling EFS users will be served by mail or by other means permitted by the court rules.

**BY ELECTRONIC SERVICE:** By posting the document(s) to the Antelope Valley Watermaster website regarding the Antelope Valley Groundwater matter with e-service to all parties listed on the website Service List. Electronic service and electronic posting completed through www.avwatermaster.org via Glotrans.

**BY FEDERAL EXPRESS:** I served a true and correct copy by Federal Express or other overnight delivery service, for the delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown below.

**Honorable Jack Komar**
c/o Rowena Walker
Complex Civil Case Coordinator
Superior Court of California, County of Santa Clara
191 N. 1st Street, Departments 1 and 5
San Jose, CA 95113

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 18, 2019, at Del Mar, California.

*s/ Ralph B. Kalfayan*
Ralph B. Kalfayan