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15 Attorneys for Plaintiff Richard Wood and the Class

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding
19 Special Title (Rule 1550(b))

20 ANTELOPE VALLEY GROUNDWATER
21 CASES

22 RICHARD A. WOOD, an individual, on
23 behalf of himself and all others similarly
24 situated,

25 Plaintiff,

26 v.

27 LOS ANGELES COUNTY
28 WATERWORKS DISTRICT NO. 40; et
al.

Defendants.

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325201

Case No.: BC 391869

**OPPOSITION TO WILLIS CLASS'
NOTICE AND RENEWED
MOTION TO ADD LEAD
PLAINTIFF**

Location: Santa Clara Superior Court,
San Jose, California
Dept: 1
Time: 10:00 a.m.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Richard Wood opposes the Willis Class' Notice of Renewed
3 Motion to Add a Lead Plaintiff.

4 It is not disputed that Rebecca Willis lost her standing to represent the
5 Willis Class after certification had occurred. She has since been replaced by an
6 individual landowner, David Estrada ("Estrada"), who is a member of the Class.
7 Class Counsel now seeks to add another Class Representative, the Archdiocese of
8 Los Angeles (the "Archdiocese"), for reasons unknown. The Archdiocese is
9 apparently not even yet a member of the Class, requiring leave of Court to join
10 the very class it now seeks to represent. (Davitt Declaration, ¶ 2, Ex. A (Opt-In
11 Form) (November 21, 2014, D.E. 9460).)

12 Class Counsel has failed to establish why the addition of the Archdiocese is
13 necessary, or in the best interest of the Willis Class. The Court should consider
14 very seriously the propriety of the proposed substitution of large corporate
15 interest to represent a class of landowners known to be predominantly
16 individuals and small landowners.

17 The Willis Class list is predominantly individual owners of small,
18 residential sized parcels.¹ (McLachlan Decl. ¶ 3.) Rebecca Willis owned a 10-acre
19 parcel – the typical size for larger residential parcels. (McLachlan Decl. ¶ 4, Ex.
20 1.) By comparison, the Archdiocese has eleven parcels totaling over 247 acres.
21 The Archdiocese has indicted that it plans to develop the properties for uses
22 unspecified other than for a cemetery. (Davitt Declaration, ¶ 2 (November 21,
23 2014, D.E. 9460).)

24 What remains unclear, is whether the Archdiocese, who previously did not
25

26 ¹ In nearly all cases, residential lots in the Antelope Valley are either 10
27 acres or 2.5 acres in size. (McLachlan Decl. ¶ 2.) Richard Wood, for example,
28 owns a 10-acre parcel.

1 see fit to join the Willis Class, is actually pursuing its position as Class
2 Representative to advance its own interests, or whether it is actually going to
3 represent the interests common to the larger absent class members, none of who
4 require water for a cemetery, and very few of whom are likely to use water for
5 commercial purposes.

6 Since the inception of the use of the class action procedural mechanism,
7 Courts have addressed the due process violations that arise when class
8 representatives do not have interests that are aligned with the absent class
9 members. (*Hansberry v. Lee* (1941) 311 U.S. 32, 43-45 (“a selection of
10 representatives for purpose of litigation, whose substantial interests are not
11 necessarily or even probably the same as those whom they are deemed to
12 represent, does not afford that protection to absent parties which due process
13 requires.”); *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26
14 (discussing conflicts among class members with different legal interests in the
15 context of division of a limited asset).)

16 California courts have similarly expressed concerns over conflicts of
17 interest between and among class members. In *Global Minerals & Metals Corp*
18 *v. Superior Court*, the Court of Appeal reversed a trial court certification order in
19 part due to potential conflicts among class members. ((2003) 113 Cal.App.4th
20 836, 854, 860 (reversing certified plaintiff class of various business (represented
21 by Krause & Kalfayan)).) “The finding of adequate representation will not be
22 appropriate if the proposed class representative’s interests are antagonistic to the
23 remainder of the class.” (*J.P. Morgan & Co. v. Superior Court* (2003) 113
24 Cal.App.4th 195, 212 (same)).

25 The real problem that could arise in the near future is the Archdiocese
26 taking a position against the Judgment and Physical Solution that is not in the
27 interest of the Class. This potentially serious conflict cannot be evaluated until
28 the global settlement is filed. It is, however, curious that the Archdiocese is only

1 now choosing to opt into the Willis Class, immediately prior to the filing of the
2 global settlement. It is also curious that, notwithstanding the fact that the Willis
3 Class now has a viable class representative (Mr. Estrada), the Archdiocese is
4 fighting so hard to become a class representative itself.

5 The potential conflict arises not from the claims the Willis Class is
6 pursuing, but from the distinctions that arise in the law by virtue of Archdiocese'
7 contemplated water use (the cemetery).

8 For example, if the Physical Solution were, hypothetically, to provide the
9 Willis Class members with rights by agreement of the parties that they otherwise
10 could not obtain or would unlikely to be obtain at law or equity if the issues were
11 litigated, a conflict would exist if the class representative chose to attack such
12 agreement to the potential detriment of most or all of the absent Willis Class
13 members. For example, if the Willis Class members were presented with a right
14 to use groundwater for domestic purposes that was superior to right of use for
15 commercial use – in keeping with priorities established under Water Code
16 section 106² – the Archdiocese would be motivated to fight against such an
17 arrangement, even though it benefits all or substantially all of the absent Willis
18 Class Members.

19 The question of whether the Archdiocese is attempting to hijack the Willis
20 Class for its own purposes is something that cannot be fully evaluated at this
21 moment, but something that can be more fully understood after the global
22 settlement is filed. Therefore, this Motion should be denied as unnecessary, or
23 perhaps continued to some future date after the Court has before it the
24

25
26 ² California Water Code section 106 states, in full: “It is hereby declared to
27 be the established policy of this State that the use of water for domestic purposes
28 is the highest use of water and the next highest is for irrigation.” (*See also Deetz v. Carter* (1965) 232 Cal.App.2d 851, 854-55 (in condition of overdraft, non-domestic users properly enjoined to the preference of domestic users).

1 documents that will describe in full the Willis Class' interests in the global
2 settlement and propose Physical Solution.

3
4 DATED: January 8, 2015

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

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8 By: _____
9 Michael D. McLachlan
10 Attorneys for Plaintiff
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DECLARATION OF MICHAEL D. MCLACHLAN

I, Michael D. McLachlan, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently. I am counsel of record of record for Richard Wood and the Small Pumper Class, and am duly licensed to practice law in California.

2. Over the past seven years, I have obtained substantial familiarity with the zoning and tract configurations in the area of adjudication, and particularly the residential parcels, which are, with a few limited exceptions, either 10 acres or 2.5 acres in size.

3. I have the 2009 version of the Willis Class list, which has a very limited number of corporate landowners. The vast majority of the class is composed of individual owners. A limited survey of the parcel sizes shows that they are predominantly residential sized parcels, like the one formerly owned by Rebecca Willis.

4. Attached as Exhibit 1 is true and correct copy of a public records summary for Rebecca Willis' parcel which, like Richard Woods and so many other residential landowners, is 10-acres in size.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 8th day of January, 2015, at Hermosa Beach, California.

Michael D. McLachlan

Exhibit 1

Real Property Tax Assessor Record**Source Information**

Tax Roll Certification Date: 07/11/2014
Owner Information Current Through: 12/12/2014
County Last Updated: 12/24/2014
Current Date: 01/08/2015
Source: TAX ASSESSOR LOS ANGELES, CALIFORNIA

Owner Information

Owner(s): CHIODO FRANK S
Property Address: VAC/AVE B/VIC 200 STW
FAIRMONT, CA 93536
Mailing Address: PO BOX 34148
GRANADA HILLS, CA 91394-4148

Property Information

County: LOS ANGELES
Assessor's Parcel Number: 3256-006-001
Property Type: VACANT
Land Use: DESERT
Zoning: LCA25*
Lot Size: 433277
Lot Acreage: 9.9467
Legal Description: NE 1/4 OF NE 1/4 OF NE 1/4 (EX OF ST) OF LOT 8
Lot Number: 8
Range: 15
Township: 08N

Section: 08

Tax Assessment Information

Tax Year: 2013
Calculated Land Value: \$25,615.00
Calculated Total Value: \$25,615.00
Assessed Land Value: \$25,615.00
Assessed Total Value: \$25,615.00
Valuation Method: ASSESSED
Tax Amount: \$434.86
Tax Code Area: 9608

Building/Improvement Characteristics

Total Area: 7000433277

Last Full Market Sale Information

Sale Date: 02/28/2012
Seller Name: WILLIS REBECCA L
Sale Price: \$25,000.00
Consideration: FULL
Deed Type: GRANT DEED
Type of Sale: RESALE
Recording Date: 05/04/2012
Document Number: 666728
Title Company: LAWYERS TITLE

Previous Transaction Information

Previous Document Number: 3013681
Sale Date: 09/03/2003