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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES _____ RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; et al. Defendants.	Judicial Council Coordination Proceeding No. 4408 (Honorable Jack Komar) Case No.: BC 391869 **OPPOSITION TO WILLIS' CLASS MOTION TO WITHDRAW BASED ON CONFLICT OF INTEREST OR, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE OF THE PHASE VI PHYSICAL SOLUTION TRIAL** **[filed concurrently with Declaration of Michael D. McLachlan; Declaration of Richard A. Wood]** Date: August 25, 2015 Time: 10:00 a.m. Dept: 12 (San Jose)

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Counsel for the Willis Class has filed a frivolous and sanctionable Motion to Withdraw on the ground that there is a conflict of interest that Willis counsel has just discovered. Substantively, there is no cognizable conflict or any legal basis for Willis Class counsel to withdraw at this late hour. Indeed, what Willis suggests – that dormant parcels should be put into the Small Pumper Class or otherwise be unrepresented – either creates a conflict of interest that did not exist, or turns a decade of litigation squarely on its head. In actuality, Willis Class counsel has known about the issue for many years, and has never objected to the situation until now, underscoring the bad faith and sanctionable nature of this Motion.

II. FACTUAL BACKGROUND

A. The Willis Class Definition

On September 11, 2007, after failed attempts by the Public Water Suppliers to certify a defendant class, the Court certified the Willis class as a plaintiff class, defined as follows:

> 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 property and did not do so at any time during the five years preceding January 18, 2006 ("the Class"). The Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such landowners.
>
> The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons to the extent their properties are connected to a municipal water system, public utility, or mutual water company from which they receive or are able to receive water service, as well as owners of properties within the service areas of the foregoing water purveyors as to which there is a water system agreement or

water service agreement providing for the provision of water service by such purveyors.

(McLachlan Decl., Ex. 1, (Order Certifying Plaintiff Class, Sept. 11, 2007).)

After a long period of unsuccessful efforts to locate counsel to represent the small pumpers, the Public Water Suppliers moved to amend this order to include properties on which groundwater had been pumped. (Dkt. No. 1169, January 30, 2008.) On May 22, 2008, the Court modified the Willis Class definition to exclude the Small Pumpers (amendments redlined):

> 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 property and did not do so at any time during the five years preceding January 18, 2006 ("the Class"). The Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such landowners.
>
> The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons who only own property(ies) within the basin that are connected to and receive water service from a municipal supplier, public utility, or mutual water company. The Class ***excludes all property(ies)*** that are listed as "improved' by the Los Angeles County or Kern County Assessor's office, unless the owners of such properties declare under penalty of perjury that they do not pump water on their property and did not do so during the five years preceding January 18, 2006. ~~to the extent their properties are connected to a municipal water system, public utility, or mutual water company from which they receive or are able to receive water service, as well as owners of properties within the service areas of the foregoing water purveyors as to which there is a water system agreement or water service agreement providing for the provision of water service by such purveyors.~~

(McLachlan Decl., Ex. 2 (Plaintiff Willis' Order Modifying Class Definition, May 22, 2008), ¶ 1 (emphasis added in bold).)

On September 2, 2008, concurrently with the certification of the Small Pumper Class, the Court made further clarifications to the Willis Class definition

at the request of and using the language drafted by Willis Class counsel:

> 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 property and did not do so at any time during the five years preceding January 18, 2006 ("the Class"). The Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such landowners.
>
> The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons who only own property(ies) within the basin that are connected to and receive water service from a municipal supplier, public utility, or mutual water company. The Class [further] ***excludes all property(ies)*** that are listed as "improved' by the Los Angeles County or Kern County Assessor's office, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties ~~their property and did not do so during the five years preceding January 18, 2006~~. The Willis Class shall exclude all persons ***to the extent*** they own properties within the Basin on which they have pumped water at any time.

(McLachlan Decl., Ex. 3 (Plaintiff Willis' Second Order Modifying Definition of Plaintiff Class, September 2, 2008), ¶¶ 1-2 (emphasis added in bold.) In that same Order, the Court made clear that "[i]n order to achieve a comprehensive, binding, and lasting adjudication of the water rights at issue in this matter, it is important that all landowners within the Antelope Valley Basin be made parties to this proceeding." (*Id.* at ¶ A.)

The Willis Class counsel subsequently used a class definition that is not consistent with the Court's orders, without any apparent authorization to do so. For example, the second to last sentence in the definition of the Willis Class contained in the Willis Class Judgment modifies the third to last sentence above, as follows (showing redline as against Exhibit 2): "The Class also excludes all persons ~~who only own~~ ~~properties within the Basin that~~ to the extent their properties are connected and receive service from a municipal water system,

public utility, or mutual water company." (McLachlan Decl., Ex. 4 (Final Judgment Approving Willis Class Action Settlement); *cf.* Ex. 2 at ¶ 1.C.) More importantly, Class counsel has excluded from its version of the Class definition the last sentence in Exhibit 3 quoted above: "The Willis Class shall exclude all persons to the extent they own properties within the Basin on which they have pumped water at any time." (Id. at ¶ 5; *cf.* Ex 3 at ¶ 1.)[1]

B. The Conflicts of Interest Issue

Plaintiff Richard Wood ("Plaintiff") filed this action on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who have been pumping less than 25 acre feet year ("afy") of groundwater from the Antelope Valley Groundwater Basin ("Basin"). The court certified the Small Pumper Class Action by Order dated September 2, 2008, in which the court defined the Class as:

> All private (i.e., non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present. The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company.

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[1] The Amended Final Willis Judgement also contains another substantive omission of import in the class definition section. On page three, at line 7, the following language is missing "all propert(ies) that are listed as 'improved' by the Los Angeles County or". (McLachlan Decl., Ex. 5 (Amended Final Judgment Approving Willis Class Action Settlement, 3:7; *cf* Ex. 4, 3:11.) Hence, the last sentence of the class definition in the operative Final Willis Judgment reads, non-sensically: "The Class shall [further] exclude Kern County Assessor's office, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties." The Willis Judgement will have to be amended to correct these errors and omissions. Plaintiff Richard Wood will file such a motion if Willis will not stipulate to it.

C. The Willis Class Counsel' Actual Position on the "Dual" Class Membership Issue Has Been the Opposite of That Now Being Represented to the Court

Willis represents to the Court that "[i]t is and has always been the position of Willis Class counsel that no person who pumped groundwater in the past can be in the Willis Class." (Motion, 2:8-9.) This position is nowhere to be found in the Court record (until the filing of this Motion), but it has been discussed amongst counsel for many years.

Willis Class counsel's position at the time of notice in 2009, and throughout this litigation, has been as follows:

> So that my position is clear, I have no problem with allowing people to participate as members of both classes if they own one or more properties on which they pump and one or more on which they don't pump water.

(McLachlan Decl., Ex. 6 (E-mail of March 20, 2009 from Zlotnick to McLachlan, Kalfayan, *et al.*); *see also*, Ex. 7 (E-mail of March 20, 2009) ("I have no problem with people being members of both classes with respect to distinct properties.").) In subsequent discussions on this topic, Willis Class counsel's position has remained the same, which may explain why counsel has never requested further clarification or amendment to the Willis Class definition. (McLachlan Decl., ¶¶ 8-13.) This remained the case until June 18, 2015. (*Id.* at ¶ 11.)

Willis Class counsel states that it has most recently informed "dual" class member Mr. Landsgaard that they are not in the Willis Class. (Kalfayan Decl. ¶ 4.) Previously, however, Willis Class counsel has advised Class members directly to the contrary. (McLachlan Decl., Ex. 8 (E-mail of March 20, 2009, advising "dual" class member Scott Savage to file forms in each Class).)

D. Willis Class Counsel Has Been Fully Aware of the Overlapping Class Membership.

Willis Class counsel claims that they "first learned of this conflict of interest crisis when they were contacted by Mr. Olaf Landsgaard, one of the dual

Wood/Willis Class Members." (Motion, 2:15-16; Kalfayan Decl. ¶ 3.) The actual truth of the matter is that Willis Class counsel has had extensive discussions about this matter over the years with other counsel and class members. (McLachlan Decl., ¶¶ 8-13; Exs. 6-8.)

Mr. Kalfayan has stated that his firm has received and responded to calls and emails from over 1,500 Willis Class members over the years. (McLachlan Decl., ¶ 14, Ex. 9 (Declaration of Ralph B. Kalfayan in Support of Motion for An Award of Attorneys' Fees) ¶ 40 (Dkt. No. 4240, January 24, 2011).) If there is in fact an overlap of dual class membership of nearly 80% (*see* Declaration of Cindy Barba, ¶ 5), basic principles of statistics would dictate that over 1,200 "dual" Class members have contacted Willis Class counsel. Over the years, at least as many as 50 Small Pumper Class members have raised the "dual" Class membership issue with Small Pumper Class counsel. ((McLachlan Decl., ¶ 14.)

Willis Class counsel has not explained why they purportedly never previously reviewed the Willis or the Small Pumper Class lists. Willis Class counsel has had the final version of the Willis Class list since at least March 31, 2011, and earlier versions since approximately 2009. (McLachlan Decl., Ex. 10, pp. 1 & 4.)

III. ARGUMENT

The Motion raises two primary issues: (1) what are the boundaries of the Class cases, and (2) does dual Class membership present a conflict of interest. Plaintiff will address those issues in order, along with several other associated arguments.

A. The Scope of the Willis Class Includes All Persons that Own Dormant Property

The threshold problem with this Motion is that it misstates the Court's Orders concerning the scope of the Willis Class. The actual final Class definition, set forth above at Section II.A, includes the following exclusionary language

which was adopted simultaneously with the formation of the Small Pumper Class:

> The Class [further] excludes ***all property(ies)*** that are listed as "improved' by the Los Angeles County or Kern County Assessor's office, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties. The Willis Class shall exclude all persons ***to the extent*** they own properties within the Basin on which they have pumped water at any time.

(McLachlan Decl., Ex. 3, Order, September 2, 2008, ¶¶ 1-2 (emphasis added).)

Willis is wrong in concluding that persons who own both dormant and pumping properties are excluded from the Willis Class. The two exclusionary clauses contained in the Court's final order on the Willis Class make it perfectly clear that what is excluded from the Willis Class are any pumping properties alone. The persons who own such pumping properties are only excluded "to the extent" of their ownership of those properties, i.e. they are in the Willis Class only as to the extent of their dormant parcel ownership. If the Willis' reading of its own definition were correct, it would read as follows:

> The Class [further] excludes persons who own ~~***all***~~ ***property(ies)*** that are listed as "improved' by the Los Angeles County or Kern County Assessor's office, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties. The Willis Class shall exclude all persons that ~~***to the extent***~~ ~~they~~ own properties within the Basin on which they have pumped water at any time.

Willis Class counsel did not draft the language in this manner, however, because it was fully aware of the Court's mandate for a comprehensive adjudication.

Under Willis' reading of its Class definition today, the "to the extent" language is a surplus and meaningless. In the context of the two exclusionary clauses, and the larger order in which they are contained, this limiting language cannot be ignored, otherwise the two limiting provisions do not line up with each other.

Of equal importance, if interpreted in the overly broad fashion that Willis asserts, these two limiting provisions would not be consistent with one of the fundamental reasons for creating the classes: to obtain a comprehensive adjudication of all water rights in the Area of Adjudication. The Court's Order of September 2, 2008, as well as a litany of earlier and later Court transcripts and orders, makes perfectly clear that since the addition of the United States, the Court has always had the primary goal of achieving a comprehensive adjudication, i.e. obtaining jurisdiction over all landowners and adjudicating all of the water rights in the Basin.[2] Indeed, the Court commenced the Order of September 2, 2008, as follows: "[i]n order to achieve a comprehensive, binding, and lasting adjudication of the water rights at issue in this matter, it is important that all landowners within the Antelope Valley Basin be made parties to this proceeding."

The Willis response today is that the "dual" class members are only in the Small Pumper Class, and are so as to both their pumping and non-pumping properties. As discussed in more detail in the following section, this position is not only inconsistent with the Class definitions but if accurate, would create the very conflict of interest that was the basis for Willis Class counsel advocating for the creation of the Small Pumper Class in the first instance. (McLachlan Decl. ¶¶ 17, 20-21, Exs. 11, 14-15.) There is universal agreement that one counsel cannot represent dormant and pumping properties simultaneously because those interests are likely to be legally adverse to one and other. Willis Class counsel's attempt to create this conflict now is almost certainly tactical – a procedural attempt to destroy the Small Pumper Class and bring the adjudication to a halt.

The other alternative outcome of the incorrect reading Willis offers of its

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[2] The issues of comprehensiveness are ubiquitous in the record, both in the transcripts and orders. Some of those references are contained in the McLachlan Declaration, at paragraphs 18 and 19, and Exhibits 12 and 13.

class definition is that these "dual" class members are not in either Class. The Court would then no longer have a comprehensive adjudication. These several thousand parties would have to individually named and served because they could not be represented on a class-basis as to both their unexercised and their exercised rights. Again, this is not an outcome the Court ever sanctioned, nor were the Class members therefore ever given such notice.

B. There is No Basis for Withdrawal

The punch line of this Motion is that if the Court believes the "dual" class members are in fact in the Willis Class to the extent of their ownership of dormant parcels, Willis Class counsel have an "irreconcilable conflict[] of interest." (Motion, 2:3.) As the basis for this position, Willis cites to Rule of Professional Conduct 3-310. (Motion, 10:21.) Although not articulated well, the purported conflict at issue appears to arise within individual class members who own both dormant and pumping parcels, each of which has potentially different legal rights by virtue of the nature of their water rights claims. The Court and nearly every party to this litigation have long recognized that one counsel cannot represent both Classes, thereby leading to the creation of a separately represented Class of Small Pumpers instead of a sub-class. (McLachlan Decl., ¶¶ 17, 20-21, Exs. 11, 14-15.)

Willis also claims that the "dual" Class members are in conflict with the "dormant-only" Willis Class members. (Motion 10:9-10.) There are numerous problems with this assertion, beyond the threshold observation that Willis Class counsel is expressly *not* called upon to represent Willis Class members with regard to their potential rights relating to pumping properties; rather, Willis counsel has the singular and non-conflicting duty to represent class members to the extent of their ownership of dormant parcels.

The implication of the Motion is that members of the same class cannot have differences in their respective issues. That notion has long been rejected by

a wide array of state and federal opinions. (*See, e.g., Bash v. Firstmark Standard Life Ins. Co.* (7th Cir. 1988) 861 F.2d 159, 161 (class members often do not have identical interests).) While we do not have the benefit of any class opinions in the water rights context, there are many involving conflicting interests among members to the same class, or conflicting interests between the same class members existing in parallel class proceedings, i.e. separate but competing classes chasing the same *res*, typically money held by a common defendant.

One of the oldest California cases, *Trotsky*, involved two competing class actions against the same defendant for related conduct. The claims in each case were distinct, although the classes contained overlapping class members all suing the same defendant on the same contract. (*Trotsky v. Los Angeles Federal Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 144, 151.) In *Trotsky*, the Court noted that it was not mandatory to consolidate the distinct claims of the common class members of both classes. (*Id.* at 152.) There are numerous other cases on point, a number of them are referenced in the following sections.

1. Legal Standard For Assessing Conflicts

Courts addressing conflict of interest issues in class actions nearly unanimously concur that "traditional rules that have been developed in the course of attorneys' representation of the interests of clients outside the class action context should not be mechanically applied to problems that arise in . . . class action litigation." (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729, 735, *quoting In re "Agent Orange" Prod. Liab. Litig.* (2nd Cir. 1986) 800 F.2d 14, 19; *see also Lazy Oil Co. v. Witco Corp.* (3rd Cir. 1999) 166 F.3d 581, 589 ("Moreover, the conflict rules do not appear to be drafted with class action procedures in mind and may be at odds with the policies underlying class action rules.")

Numerous California state and federal courts have recognized these principles. In *Kullar v. Foot Locker, Inc.*, the Court did not disqualify counsel

even though plaintiff's counsel represented objectors to a primary class settlement while also seeking to represent two parallel classes containing individuals who favored the primary class action settlement. (*Kullar v. Foot Locker, Inc.* (2011) 191 Cal.App.4th 1201, 1207, *rev. denied* Cal.S.C., April 27, 2011.; *see also Bash v. Firstmark Standard Life Ins. Co.* (7th Cir. 1988) 861 F.2d 159, 161 (class members often do not have identical interests).)

The question of disqualification is one of the Court's discretion, which "depends on the circumstances of the particular case in light of competing interests." (*White v. Experian Info. Solutions* (C.D.Cal. 2014) 2014 U.S.Dist.Lexis 614433 at *32, *citing Oaks Mgmt. Corp. v. Sup. Ct.* (2006) 145 Cal.App.4th 453, 462-65.) Hence, in class cases, California Courts use a balancing test when assessing conflicts and disqualification issues (and not the automatic disqualification rule). (*Ibid.*) The applicable standard in California has been summarized as follows:

> 'The court must weigh the combined effects of a party's right to counsel of choice, an attorney's interest in representing a client, the financial burden on a client of replacing disqualified counsel and any tactical abuse underlying a disqualification proceeding against the fundamental principle that the fair resolution of disputes within our adversary system requires vigorous representation of parties by independent counsel unencumbered by conflicts of interest.'
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> *Raley, 149 Cal. App. 3d at 1048*. However, "[t]he paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar." *SpeeDee Oil, 20 Cal. 4th at 1145*. But, because motions to disqualify are often tactically motivated, such motions are strongly disfavored and subject to "particularly strict judicial scrutiny." *Optyl Eyewear Fashion Intern. Corp. v. Style Companies, Ltd., 760 F.2d 1045, 1050 (9th Cir. 1985)* (citation omitted); *see Sharp, 163 Cal. App. 4th at 424* ("Motions to disqualify counsel are especially prone to tactical abuse because disqualification imposes heavy burdens on both the clients and courts . . .").

(*White*, at *33.) This standard should be equally applicable to a motion to withdraw based upon a purported conflict of interest.

2. Application of the Balancing Test Strongly Disfavors Permitting Withdrawal

Here, as noted above, the presence of the same people in both classes does not present either Class counsel with conflicting duties because each counsel is charged with the narrow task of representing one set of distinct legal interests. With Willis, that interest is the pursuit of claims arising from the unexercised correlative rights held by landowners. For the Small Pumper Class counsel, the singular task is to represent those small landowners who have exercised their water rights. One attorney could not represent both groups to judgment, and for that reason, we have two sets of class counsel. (McLachlan Decl., ¶¶ 17, 20-21, Exs. 11, 14-15.) Moreover, Willis has presented the Court with no evidence of any burden or concern this purported conflict has imposed upon the Willis Class counsel's representation of the Willis Class. In fact, Willis Class counsel has had no issues properly representing its Class for the last seven years, including communications with more than 1500 Willis Class members – more than 1,000 of which were likely "dual" Class members – without any issues arising whatsoever. (McLachlan Decl., ¶ 14, Ex. 9 (Declaration of Ralph B. Kalfayan in Support of Motion for An Award of Attorneys' Fees) ¶ 40.)

As for the "tactical" factor, this Motion has every indicia of being tactical in nature. There is ample information to support a finding that Willis Class counsel was fully aware of the "dual" class membership, and accepted it. (McLachlan Decl., ¶¶ 8-13, Exs. 6-8.) Willis Class counsel has not explained how it could be possible that none of the over 1,500 Willis Class members who have contacted counsel have never raised the "dual" class membership issues until 2015. In contrast, the Small Pumper Class members have raised this issue with a high degree of frequency. (McLachlan Decl., ¶ 10.)

If Willis Class counsel can convince the Court somehow that he did not have actual knowledge of the "dual" class membership issue – notwithstanding

the body of evidence to the contrary – counsel clearly had ample opportunity to investigate what he certainly knew to very likely be the case. (*See* Sections II.C-D, above; Exs. 6-8.)[3] If this issue was so critical, as Willis now claims, why did counsel wait for over six years to investigate the matter? Willis Class counsel will also have trouble explaining why it publicly took the position that dual membership was fine until now. (McLachlan Decl., Exs. 6-8.) The only logical explanation for the evidence at hand is that Willis Class counsel has been paid their several millions of dollars and now simply want out of the case by way of this Motion (McLachlan Decl., ¶ 15), or worse, the real purpose of this Motion is to destroy the Small Pumper Class.[4] It would be manifestly unfair to the class members, and to all the litigants, who have collectively spent many millions of dollars over the past decade to litigate the matter to this point, to allow Willis Class counsel to hit the reset button at this late date.

The Court must weigh heavily the fact that granting the Motion, either in

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[3] Willis Class counsel implies that the presence of "dual" class members in both classes, and the attendant alleged conflict, was caused through some dereliction of the Public Water Suppliers in assembling the class lists. (Motion, p. 5, FN2.) The clear suggestion is that the Court was ordering or condoning Willis Class counsel's abdication of its fiduciary duties at the critical stage of class notice. The Court did not do that. (McLachlan Decl., Ex. 1, p. 3, ¶ 4.) Regardless of what mistakes the Water Suppliers may have made in their role in class notice – and indeed, because of the possibility of such mistakes – Class counsel had an absolute duty to closely examine the class lists and supervise every phase of class notice. (McLachlan Decl., ¶ 22.) Had Willis Class counsel taken those duties seriously, it would have confirmed the substantial "dual" class membership issue six years ago (assuming, of course, that it was even concerned about the issue at that time).

[4] When the Court reviews Willis' Opposition Small Pumper Class Motion for Final Approval in conjunction with the Motion to Withdraw, it becomes more clear that the real purpose here is simply to manufacture a means for destroying the Small Pumper Class. The lead argument in the Opposition to the Motion for Final Approval is that the Small Pumper Class has a "massive and irreconcilable conflict of interest." (Opp. to Motion for Final Approval, 3:13-15.) Almost all of the first five pages of that filing are devoted to this topic.

whole or in part, would have catastrophic impact on the all of the parties to this lawsuit, and in particular, on the members of the Classes. (*Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 434.) If the Court were to adopt the Willis reading of its class definition, and rule that many thousands or dormant parcels were being represented by the Small Pumper Class counsel, that Class would lose its counsel and the global settlement would be gone. In that event, the Small Pumper Class counsel is then ostensibly responsible for representing the interests of those dormant parcel rights. It is impossible for one counsel to argue for two sets of legal rights that are so directly opposed. (*William H. Raley Co. v. Sup. Ct.* (1983) 149 Cal.App.3d 1042, 1048.) Of course there are also a litany of technical issues involving class notice and representation. For example, Richard Wood does not and never has owned a dormant parcel (Declaration of Richard Wood, ¶ 3), and is thus an inadequate class representative for those holding dormant rights. (*First American Title Ins. Co. v. Sup. Ct.* (2007) 146 Cal.App.4th 1564, 1573.)

If the Court permitted Willis Class counsel to withdraw due to a purported conflict of interest, there would be no way to find replacement counsel. The net result would likely be the post-judgment dissolution of the Willis Class, and a very long delay while the Water Suppliers individually named and served all of the Willis Class members. That could take years. In reality, the withdrawal of the Willis Class counsel might make it impossible to achieve a comprehensive adjudication of this Basin. Additionally, the Willis Class members would lose counsel with eight years' of experience in this litigation.

The following holdings are entirely applicable here:

> The California Rules of Professional Responsibility cannot be construed so as to prohibit this type of advocacy. Further, they cannot be construed so as to hurt class members, under the guise of protecting them.

(*Sharp* at 435 (holding that class counsel need not obtain signed conflict waivers from each member of a class.)

Willis also raises concerns about attorney-client confidentiality. (Motion, 11:4-12:23.) As with the general rules on conflicts of interest in the class action context, the standard rules relating to attorney-client communications are not properly applied to class cases. "[A]lthough the importance of maintaining client confidences cannot be minimized, a rigid 'prophylactic rule' in the area of client confidentiality in class actions would appear to be inappropriate." (*In re Corn Derivatives Antitrust Litigation* (3rd Cir. 1984) 748 F.2d 157, 165.) As noted above, Willis offers no evidence that "dual" class membership has adversely impacted either Class counsel's ability to effectively represent their clients. Furthermore, the Small Pumper Class counsel has been careful to respect the Willis representation of "dual" clients, as no doubt has been the case for the Willis Class counsel in return. (McLachlan Decl. ¶ 14.)

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff Richard Wood respectively requests that the Court deny this Motion in its entirety.

DATED: July 26, 2015

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

Michael D. McLachlan

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