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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**

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**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

Lead Case No. BC 325201

Case No.: BC 391869

**[proposed] ORDER DENYING  
WILLIS CLASS MOTION TO  
WITHDRAW BASED ON  
CONFLICT OF INTEREST**

1 On August 25, 2015, the Court held a hearing on the Willis Class' Motion to  
2 Withdraw. Numerous counsel appeared in Court and telephonically, as further  
3 reflected in the minutes and the hearing transcript.

4  
5 **The Prior Orders Regarding the Scope of the Willis Class**

6 The Willis Class has raised a concern about what it perceives as an  
7 ambiguity in the Orders concerning the Willis Class definition relating to persons  
8 who potentially meet both class definitions. Willis argues that a person cannot  
9 be a member of both classes. The Court does not share this view.

10 On September 2, 2008, the Court entered an order entitled "Plaintiff Willis  
11 Second Order Modifying Definition of Plaintiff Class," which reads in pertinent  
12 part:

- 13 1. The Court hereby modifies its prior Class Certification order in the  
14 following respects: The Willis Class shall exclude all persons ***to the***  
15 ***extent*** they own properties within the Basin on which they have  
16 pumped water at any time.
- 17 2. Paragraph 1.D of the Court's Order of May 22, 2008 is hereby  
18 revised to provide as follows: 'The Class [further] excludes ***all***  
19 ***property(ies)*** that are listed as "improved" by the Los Angeles  
20 County or Kern County Assessor's office, unless the owners of such  
21 properties declare under penalty of perjury that they do not pump  
22 and have never pumped water on those properties.'
- 23 3. The Court's prior Class Certification Order remain binding in all  
24 other respects.

25 (Order, September 22, 2008, at p. 3 (emphasis added).)

26 These paragraphs, as well as the preceding Orders, make clear that the  
27 class membership was determined based upon the nature of the water use for a  
28 given property. In this fashion, neither counsel was charged with simultaneously  
advocating for both dormant and pumping interests.

1                   **The Court Does Not Find a Basis for Withdrawal**

2                   Willis Class counsel contends that the presence of individuals in both  
3 Classes creates a conflict of interest that should result in the disqualification of  
4 the Krause Kalfayan firm. The question of disqualification is one of the Court's  
5 discretion, which "depends on the circumstances of the particular case in light of  
6 competing interests." (*Oaks Mgmt. Corp. v. Sup. Ct.* (2006) 145 Cal.App.4<sup>th</sup> 453,  
7 462-65.) Hence, in class cases, California Courts use a balancing test:

8                   The court must weigh the combined effects of a party's right to counsel of  
9 choice, an attorney's interest in representing a client, the financial burden on  
10 a client of replacing disqualified counsel and any tactical abuse underlying a  
11 disqualification proceeding against the fundamental principle that the fair  
12 resolution of disputes within our adversary system requires vigorous  
13 representation of parties by independent counsel unencumbered by conflicts  
14 of interest.

15 (*William H. Raley Co. v. Superior Court* (1983) 149 Cal. App. 3d at 1048.)

16                   "The paramount concern must be to preserve public trust in the scrupulous  
17 administration of justice and the integrity of the bar." (*People ex rel. Department of*  
18 *Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4<sup>th</sup> 1135, 1145.)

19 However, because motions to disqualify are often tactically motivated, such motions  
20 are strongly disfavored and subject to "particularly strict judicial scrutiny." (*Optyl*  
21 *Eyewear Fashion Intern. Corp. v. Style Companies, Ltd.* (9<sup>th</sup> Cir. 1985) 760 F.2d  
22 1045, 1050 (9<sup>th</sup> Cir. 1985) (citation omitted); see *Sharp v. Next Entertainment, Inc.*  
23 (2008) 163 Cal. App. 4<sup>th</sup> 410, 424("Motions to disqualify counsel are especially  
24 prone to tactical abuse because disqualification imposes heavy burdens on both the  
25 clients and courts . . .").)

26                   As a threshold matter, the Court does not find dual class membership  
27 creates a conflict of interest because neither sets of class counsel are charged with  
28 simultaneously representing adverse interests. Willis class counsel represents  
unexercised overlying rights. The Small Pumper Class, which was formed in  
large part to avoid the conflict Willis now raises, contains a group of overlying

1 landowners who have produced groundwater on their land.

2           Nevertheless, Willis counsel has asserted several scenarios that counsel  
3 believes create an actual conflict, including potentially having to cross-examine  
4 some dual class members. While there is no indication that this scenario will  
5 come to pass, if it did the Court believes it can be appropriately handled. More  
6 importantly, balancing this sort of concern against the substantial harm that  
7 would result from the disqualification of the Willis Class counsel at this late date  
8 leads the Court to conclude that disqualification is highly unwarranted. If Willis  
9 Class counsel were disqualified, the lack of counsel would result in profoundly  
10 adverse consequences to both the Willis Class members and to all the other  
11 parties to this adjudication. Disqualification may in fact result in the inability of  
12 this Court comprehensively adjudicate the Antelope Valley groundwater basin  
13 because of the very real possibility that the approximately 65,000 members of the  
14 Willis class could not be individually named and served.

15           Willis Class counsel also raises a concern over the ability to communicate  
16 effectively with class members, and related arguments arising from Rule 2-210 of  
17 the Professional Rules of Conduct. The Court finds that counsel have comported  
18 themselves appropriately and the dual class membership has not hindered  
19 counsels' ability to zealously represent the Classes to which they were appointed.

20           The Court also takes note of the lack of any meaningful objection by any of  
21 the class members to the representation by separate counsel. According to  
22 declarations filed by various employees of the Krause Kalfayan firm, they  
23 estimate that more than approximately 2,400 people appear on both class lists.  
24 It is not disputed that the parties on both class lists have been given mailed notice  
25 on multiple occasions. Yet, the Court has not received any objections to the Small  
26 Pumper Class settlement, nor to the dual representation. The only class member  
27 filing on this topic, the Declaration of Olaf Landsgaard dated July 10, 2015, did  
28 not purport to be an objection to the settlement nor an objection to the dual

1 representation. Indeed, it was Mr. Landsgaard's opinion that he was represented  
2 by both counsel. (Hearing Transcript, August 4, 2015, 16: 13-15.) In short, there  
3 is no indication that the class members are concerned about or adversely  
4 impacted by the procedural posture of their representation by separate counsel  
5 for the distinct legal interests circumscribed by the definitions of the two classes.

6 For these reasons, and those expressed on the record at oral argument, the  
7 Court DENIES the Motion to Withdraw.

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Dated: \_\_\_\_\_

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Judge of the Superior Court