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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

10 REBECCA LEE WILLIS, on behalf of herself )  
11 and all others similarly situated, )

12 Plaintiff, )

13 vs. )

14 LOS ANGELES COUNTY WATERWORKS )  
DISTRICT NO. 40; CITY OF LANCASTER; )  
15 CITY OF LOS ANGELES; CITY OF )  
PALMDALE; PALMDALE WATER )  
16 DISTRICT; LITTLEROCK CREEK )  
IRRIGATION DISTRICT; PALM RANCH )  
17 IRRIGATION DISTRICT; QUARTZ HILL )  
WATER DISTRICT; ANTELOPE VALLEY )  
18 WATER CO.; ROSAMOND COMMUNITY )  
SERVICE DISTRICT; MOJAVE PUBLIC )  
19 UTILITY DISTRICT; and DOES 1 through )  
1,000; )

20 Defendants. )  
21

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4408

**CLASS PLAINTIFFS WILLIS' AND  
WOOD'S RESPONSE TO LOS ANGELES  
COUNTY WATERWORKS DISTRICT  
NO. 40'S PROPOSED CLASS NOTICE**

Date: November 25, 2008

Time: 10:30 a.m.

Dept: 17 (Santa Clara County)

22 **INTRODUCTION**

23 Without even consulting Class counsel, who have labored with the Court and other counsel  
24 for many hours to define the classes and craft neutral and readable class notices, Los Angeles County  
25 Waterworks District Number 40 ("District 40") has unilaterally proposed a joint notice to the Willis  
26 and Wood Classes that (1) incorrectly describes the Wood Class in several significant respects, (2)  
27 will confuse recipients, and (3) will not allow a clear determination of which persons belong in  
28 which Class. The Court should approve the prompt mailing of the Notice to the Willis Class and

1 schedule a further conference in the near future to approve a form of Notice to the Wood Class.  
2 Further, the Class members should have at least 60 days to respond to the Notice.

3  
4 **ARGUMENT**

5 **A. District 40's Proposed Notice Does Not Accurately Describe the Wood Class.**

6 The single most significant flaw in District 40's Proposed Notice is that it does not accurately  
7 describe the Wood Class. Subject to certain exclusions, that Class was defined by the Court's  
8 September 2, 2008 Order as follows:

9 "All private (i.e, non-governmental) persons and entities that own real property within  
10 the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year  
11 on their property during any year from 1946 to the present."

12 By contrast, District 40's proposed notice describes the Wood Class as follows: "the Wood class  
13 includes all landowners who pump groundwater or *have ever had groundwater pumped on their*  
14 *property* (emphasis added)." That is a grossly misleading description of the small pumper Class  
15 certified by the Court after great effort by the parties. Besides the fact that the Wood Class, as  
16 certified, (1) only includes persons who have pumped less than 25 acre-feet per year, and (2) is  
17 limited to persons who have pumped since 1946, District 40's definition improperly includes  
18 property owners whose predecessors in interest may have pumped water on the relevant properties.  
19 If District 40 wishes to expand the definition of the Wood Class in this important respect, it must  
20 make an appropriate motion. It cannot simply unilaterally change the Class definition the Court has  
21 approved.

22  
23 **B. District 40's Notice Improperly Eliminates the Option of Existing Parties to**  
24 **Participate as Class Members.**

25 The Court previously ordered that persons previously served could opt to participate as  
26 members of the Willis Class. The form of Notice that Willis submitted provided for that stating that  
27 existing parties were excluded but could opt to join the Class. The proposed notice submitted by  
28 District 40 denies landowners that right.

1 The ability to participate in the Class is important to many landowners who are being  
2 seriously burdened with the costs of this litigation. *See, e.g.*, November 20, 2008 CMS of Jung N.  
3 Tom, Trustee, and November 21, 2008 CMS of Randall Blayney. District 40's unilateral decision  
4 to deprive those persons of the ability to participate as Class members is unjustifiable.

5  
6 **C. District 40's Proposed Joint Notice Will Confuse Recipients**

7 Notably, unlike the Willis Class, the Wood Class includes (1) persons who own properties  
8 larger than 100 acres, (2) persons whose properties are connected to a public water system, and (3)  
9 persons who are already parties to this litigation. Those important differences between the two  
10 Classes make a joint Notice inherently confusing to the over one hundred thousand lay persons who  
11 will receive the Notice(s). For example, the hundreds of thousands of residents of Lancaster and  
12 Palmdale who do not pump water must receive Notice of the Wood Class action, but are excluded  
13 from the Willis Class and should not receive that Notice. If there is a joint Notice, those persons will  
14 likely not understand which Class they belong in or how they should respond. Such confusion can  
15 easily be limited, if not totally eliminated, by mailing two separate notices to the two distinct  
16 Classes, which, as noted above, have many substantial differences in their definitions.

17  
18 **D. District 40's Notice Proposal Does Not Make Clear Which Persons Belong in the**  
19 **Willis Class and Which Belong in the Wood Class.**

20 A final reason making separate Notices necessary is that there will be no way to know how  
21 to deal with the thousands of persons who receive District 40's proposed notice and do not respond.  
22 Despite the parties' admonitions, the simple fact is that many people will simply not respond to any  
23 notice. If separate notices are sent (the Willis Notice to unimproved properties, which may be  
24 presumed to be owned by non-pumpers and the Wood Notice to improved properties, which may be  
25 presumed to be owned by pumpers), the parties will know how to deal with persons who do not  
26 respond. By contrast, with the District 40 proposal, there is no appropriate way to advise persons how  
27 they will be treated if they do not respond. For this reason also, there must be distinct Notices to the  
28 two Classes.

1           **E.     The Willis Notice Should Be Mailed Forthwith and Class Members Should Be**  
2           **Given a Reasonable Period to Opt Out.**

3           A proposed form of Notice to the Willis Class was approved by the Court in May and, with  
4           the minor changes noted in Willis' CMC statement, should be sent to the Class Members forthwith.  
5           Those persons should be given at least 60 days to respond, given the holiday season and the fact that  
6           many of the notices will be returned and have to be re-mailed. Further, this case is not a consumer  
7           Class Action involving a de minimus amount of money, but rather involves vital property rights.  
8           Class Members should be given a reasonable period in which to consult with their advisors and decide  
9           whether to remain in the Class or opt out. District 40's proposal that they be required to respond in  
10          15 days is fundamentally unfair.

11           **F.     Timing Of Class Notices**

12          For various reasons, the notice to the Wood Class should be sent after the Willis response  
13          period has run. The Willis notice will be sent to a very large class of approximately 60,000 owners  
14          of unimproved properties. The parties are agreed that those who are sent this notice but fail to respond  
15          will be presumed to be non-pumpers and therefore remain in the Willis Class. There will, however,  
16          certainly be some persons who respond to the Willis notice by identifying themselves as pumpers.  
17          Those persons should then be added to the service list for the Wood notice.

18          Under this scenario, the Wood Class notice would then be sent to the following groups: (1)  
19          the roughly 7,500 owners of improved parcels outside the municipal water service areas; (2) the  
20          recipients of the Willis notice who respond by identifying themselves as pumpers; and (3) all those  
21          inside the water service areas. This approach will minimize the confusion that would be caused by  
22          an unwieldy joint notice and will save the taxpayers money by avoiding the need to send the Wood  
23          notice to the approximately 60,000 owners of unimproved properties. This will also allow Wood  
24          class counsel to work with the purveyors counsel on a new list of owners of improved properties that  
25          is now being assembled.

26          ///

27          ///

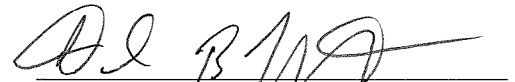
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10 Attorneys for Plaintiff Wood

11 Dated: November 24, 2008

KRAUSE KALFAYAN BENINK  
& SLAVENS



Ralph B. Kalfayan, Esq.  
David M. Watson, Esq.  
David B. Zlotnick, Esq.  
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I, Ashley Polyascko, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a  
4 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,  
5 California, 92101. On **November 24, 2008**, I served the within document(s):

6 **CLASS PLAINTIFFS WILLIS' AND WOOD'S RESPONSE TO LOS ANGELES  
7 COUNTY WATERWORKS DISTRICT NO.40'S PROPOSED CLASS NOTICE.**

8 ☒ by posting the document(s) listed above to the Santa Clara County  
9 Superior Court website in regard to the Antelope Valley Groundwater  
10 matter.

11 ☐ by placing the document(s) listed above in a sealed envelope with postage  
12 thereon fully prepaid, in the United States mail at San Diego, California  
13 addressed as set forth below:

14 ☐ by causing personal delivery by Cal Express of the document(s) listed  
15 above to the person(s) at the address(es) set forth below.

16 ☐ by personally delivering the document(s) listed above to the person(s) at  
17 the address(es) set forth below.

18 ☐ I caused such envelope to be delivered via overnight delivery addressed as  
19 indicated on the attached service list. Such envelope was deposited for  
20 delivery by UPS following the firm's ordinary business practices.

21 I am readily familiar with the firm's practice of collection and processing correspondence  
22 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
23 day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on  
24 motion of the party served, service is presumed invalid if postal cancellation date or postage  
25 meter date is more than one day after date of deposit for mailing in affidavit.

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

28 Executed on **November 24, 2008**, at San Diego, California.

Ashley Polyascko  
Ashley Polyascko