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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 _____)
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JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFF
WILLIS' MOTION FOR CLASS
CERTIFICATION

Hearing:

Date: August 20, 2007

Time: 9:00 a.m.

Place: Dept. 1 (L.A. Super. Ct.)

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I.
INTRODUCTION

Plaintiff Rebecca Lee Willis (“Willis”) filed this class action in late 2006 on behalf of a class of Antelope Valley landowners who were not then represented in this water rights adjudication. She filed a First Amended Complaint (“FAC”) on June 20, 2007, which limited the class definition 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 have not done so within the last two (2) years (“the Class”). 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, 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 from which they receive or are able to receive water service.

Because the legal and factual issues in this case impact a large class of persons identically, and because there is a need for a comprehensive adjudication of the water rights in the Basin, this case is ideally suited for class treatment.

II.
THE ALLEGATIONS

Willis’ Amended Complaint seeks an adjudication of the rights of “dormant” (i.e., non-pumping) overlying landowners. She alleges as follows:

The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a groundwater divide and on the north by various geographic features that separate it from the Fremont Valley Basin. Par. 7.

Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the Basin’s recharge comes from runoff from the surrounding mountains and hills – in particular, from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other portions of the Valley. The Basin’s natural recharge averages approximately 48,000 acre feet per year. Par. 8.

1 The Basin has two main aquifers – an upper aquifer, which is the primary source of
2 groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin have been
3 productive and have met the needs of users in conjunction with other sources of water, including the
4 State Water Project. In recent years, however, population growth and agricultural demands have
5 led to increased pumping and declining groundwater levels, particularly along Highway 14. That
6 has caused subsidence of the ground surface in certain parts of the Valley. Although the Basin is in
7 an overdraft condition, rights to the Basin’s groundwater have not been adjudicated and there are no
8 present legal restrictions on pumping. Each of the Defendants is pumping water from the Basin
9 and/or claims an interest in the Basin’s groundwater. Pars. 9-10.

10 Various water users have instituted suit to assert rights to pump water from the Basin. In
11 particular, Defendant L.A. Waterworks District 40 and other municipal purveyors have brought suit
12 asserting that they have prescriptive rights to pump water from the Basin, which they claim are
13 paramount and superior to the overlying rights of Plaintiff and the Class. Those claims threaten
14 Plaintiff’s right to pump and use the water underlying her property. Moreover, by taking water in
15 reliance on those erroneous claims, Defendants have decreased the amount of available water in the
16 Basin and made it more difficult for Plaintiff and the Class to use that water. Par. 11.

17 The Amended Complaint seeks declaratory and injunctive relief defining the Class’ rights
18 to use the Basin’s groundwater, and challenging the public water authorities’ claims to prescriptive
19 rights to such water, which they claim are superior to the rights of Plaintiff and the Class.

20 III.

21 ARGUMENT

22 A. CLASS CERTIFICATION MOTION IS AUTHORIZED

23 Willis brings this motion under Cal. Rules of Ct., Rule 1854(a)(1), which authorizes any
24 party to file a motion to certify a class. Willis is a member of the Class and seeks to protect the
25 interests of small landowners in the Basin, like herself, in connection with this adjudication of the
26 water rights in the Antelope Valley.

27 ///

1 **B. CALIFORNIA CLASS ACTION STANDARDS**

2 Section 382 of the Code of Civil Procedure authorizes a class action suit “when the question
3 is one of a common or general interest, of many persons, or when the parties are numerous, and it
4 is impracticable to bring them all before the court . . .” C.C.P. § 382; *see also*, *Reyes v. Board of*
5 *Supervisors of San Diego County*, (1987) 196 Cal.App.3d 1263, 1270 (*citing*, *Richmond v. Dart*
6 *Industries, Inc.*, (1981), 29 Cal.3d 462, 470 and *Miller v. Woods*, (1983) 148 Cal.App.3d 862, 872).
7 Although Section 382 lacks precise statutory requirements, it has been construed to require the
8 showing of: (1) an ascertainable class; and (2) a well-defined community of interest in questions of
9 law and fact among the members of that class. *Reyes, supra*, 196 Cal.App.3d at 1270 (*citing*,
10 *Richmond, supra*, 29 Cal.3d at 470, *Occidental Land, Inc. v. Superior Court*, (1976) 18 Cal.3d 355,
11 360; *Daar v. Yellow Cab Co.*, (1967) 67 Cal.2d 695, 704, and *Stephens v. Montgomery Ward & Co.*,
12 (1987) 193 Cal.App.3d 411, 417).

13 In addition, the California Supreme Court has directed state courts to follow the procedures
14 set forth in Fed. R. Civ. Proc. § 23 (“Rule 23”), whenever California authority is lacking. *City of San*
15 *Jose v. Superior Court*, (1974) 12 Cal.3d 447, 453; *see also*, *Reyes, supra*, 196 Cal.App.3d at 1270-
16 1271 (*citing*, *Richmond, supra*, 29 Cal.3d at 469-470, fn.7; *Green v. Obledo*, (1981) 29 Cal.3d 126,
17 145-146; *Vasquez v. Superior Court*, (1971) 4 Cal.3d 800, 821; and *Schenider v. Vennard*, (1986)
18 183 Cal.App.3d 1340, 1345).

19 In conducting its analysis, the court must avoid reviewing the merits of the underlying action
20 and focus strictly on the prerequisites of class certification. *Reyes, supra*, 196 Cal.App.3d at 1271
21 -1272 *citing*, *Stephens, supra*, 193 Cal.App.3d at 418; *Eisen v. Carlisle and Jacqueline*, (1974) 417
22 U.S. 156, 178). Moreover, the court should look to the allegations of the complaint and the
23 declarations of the plaintiffs and the attorneys for the plaintiff class in determining certification.
24 *Reyes, supra*, 196 Cal.App.3d at 1272 (*citing*, *Richmond, supra*, 29 Cal.3d at 478).

25 **C. THE SIZE OF THE CLASS SUPPORTS CLASS CERTIFICATION**

26 Section 382 is disjunctive in that it authorizes a representative suit if 1) those to be
27 represented are “many” and have a common or general interest in the questions presented by the

1 complaint or 2) it is impracticable to bring “numerous” parties before the court. *Bowles v. Superior*
2 *Court*, (1955) 44 Cal.2d 574, 587. [citations omitted.] (emphasis added.)

3 Under either standard, the size of the class makes class certification appropriate. The Class
4 here is comprised of an undefined but clearly large number of property owners, who number in the
5 thousands. Joinder of these persons would be impracticable. Also, the questions presented by the
6 complaint are common to these “many” persons, as discussed, *infra*, in Section E.

7 **D. THE CLASS IS ASCERTAINABLE**

8 Whether a class is ascertainable is determined by examining (1) the class definition, (2) the
9 size of the class, and (3) the means available for identifying class members. *Reyes, supra*, 196
10 Cal.App.3d at 1274 (citing, *Vasquez, supra*, 4 Cal.3d at 821-822, and *Miller, supra*, 148 Cal.App.3d
11 at 873). The determination of whether the class is ascertainable is relatively simple. *Richmond,*
12 *supra*, 29 Cal.3d at 478.

13 **1. The Class Definition Makes Class Members Ascertainable**

14 Willis seeks to certify a class composed of property owners who can be identified from
15 County tax and property records. Based on this definition, the class members are readily identifiable
16 -- putative class members, the Court, and the parties can easily determine whether or not someone
17 is a member of the class.

18 **E. THE CLASS SATISFIES THE COMMUNITY OF INTEREST REQUIREMENTS**

19 The community of interest requirement consists of three factors: “(1) predominant common
20 question of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
21 class representatives who can adequately represent the class.” *Reyes, supra*, 196 Cal.App.3d at 1271
22 (citing, *Richmond, supra*, 29 Cal.3d at 470; *Miller, supra*, 148 Cal.App.3d at 874).

23 **1. The Claims of the Designated Class Representative are Common to the** 24 **Members of the Classes**

25 Common issues are found to predominate where the common issues would be the principal
26 issues in any individual action, both in terms of time to be expended in their proof and of their
27 importance, and where, if a class suit is not permitted, a multiplicity of legal actions dealing with

1 identical basic issues would be required to permit recovery. *Vasquez, supra*, 4 Cal.3d at 810.

2 The requirement of a community of interest does not depend upon an identical recovery, and
3 the fact that each member of the class must prove a separate claim to a portion of any recovery by
4 the class is not a bar to class certification. *Vasquez, supra*, 4 Cal.3d at 809; *City of San Jose, supra*,
5 12 Cal.3d at 459.

6 The questions of law and fact common to all the members of the Class include the following:

- 7 1. The relative priorities of the competing claimants to the Basin's water.
- 8 2. The amount of water that can be safely withdrawn from the Basin.
- 9 3. The extent and efficacy of any efforts by the municipal purveyors to perfect
10 prescriptive rights to the Basin's water.

11 In short, the entire focus of this case is on the relative rights that the Class of "dormant" land
12 owners have to use the Basin's water as compared to the rights of the municipal purveyors and
13 overlying landowners who are currently pumping water. These material questions of law and fact
14 are common to all members of the Class.

15 **2. The Claims of the Designated Class Representative Are Typical of the Members**
16 **of the Class**

17 Willis' claims satisfy the typicality requirement because they arise from the same event or
18 course of conduct that gives rise to claims of other class members and the claims are based on the
19 same legal theories. *Schwartz v. Harp*, (C.D. Cal. 1985) 108 F.R.D. 279, 282. "Typicality" does not
20 mean that all the claims asserted by the class must be identical. *Weinberger v. Thornton*, (S.D. Cal.
21 1986) 114 F.R.D. 599, 603. The test, generally, is whether other members have the same or similar
22 injury, whether the action is based on conduct that is not unique to a single class member, and
23 whether other class members have been injured by the same conduct. *Id.* Willis handily meets this
24 test.

25 **3. The Designated Class Representative Will Adequately Represent the Class**

26 The U.S. Supreme Court, in interpreting Rule 23(a) for adequate representation, requires that
27 (1) the interests of the representative plaintiff coincide with those of the class; (2) the representative

1 plaintiff vigorously prosecute the claims on behalf of the class; and (3) counsel for the representative
2 plaintiff be qualified, experienced and generally able to conduct the litigation. *Eisen v. Carlisle and*
3 *Jacqueline*, (1974) 417 U.S. 156, 159. "[O]nly a conflict that goes to the very subject matter of the
4 litigation will defeat a party's claim of representative status." *Richmond, supra*, 29 Cal.3d at 470.
5 The discussion above setting forth the presence of common questions of law or fact and the typicality
6 of his claims establishes that Willis' interests coincide with those of the rest of the Class. There is
7 no evidence that Willis has any antagonistic interests which go to the subject matter of this action.
8 Moreover, Willis intends to vigorously prosecute the claims on behalf of the class.

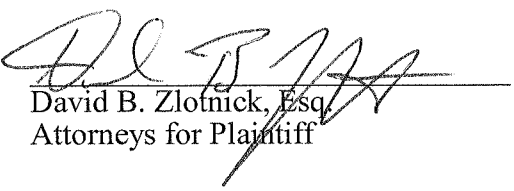
9 In addition, Willis' counsel are experienced in complex class action litigation. The
10 experience of Plaintiff's counsel and the commitment of the designated Class representative to
11 prosecute this action vigorously should leave no doubt that Willis is an adequate class representative.

12 **IV.**
13 **CONCLUSION**

14 The critical issues in this case revolve around the rights of competing claimants to make use
15 of the groundwater in the Antelope Valley Basin. Because the rights of all non-pumping overlying
16 landowners are necessarily shared, this case is perfectly suited for class action certification. Plaintiff
17 respectfully requests that the Court certify the class as to both causes of action, designate Rebecca
18 Lee Willis as the lead plaintiff, and designate her counsel as class counsel.

19 Dated: July 23, 2007

KRAUSE KALFAYAN BENINK
& SLAVENS

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