

MICHAEL T. FIFE (State Bar No. 203025)
BRADLEY J. HERREMA (State Bar No. 228976)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, California 93101
Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333

Attorneys for: Gene T. Bahlman, William R. Barnes & Eldora M. Barnes Family Trust of 1989, Thomas M. and Julie Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri 2001 Trust, Calmat Land Company, Sal and Connie L. Cardile, Consolidated Rock Products, Del Sur Ranch LLC, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Dennis L. & Marjorie E. Groven Trust, Healy Enterprises, Inc., Hines Family Trust, Habod Javadi, Juniper Hills Water Group, Eugene V., Beverly A., & Paul S. Kindig, Paul S. & Sharon R. Kindig, Kootenai Properties, Inc., Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Malloy Family Partners, Maritorea Living Trust, Jose Richard H. Miner, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., John and Adrienne Reza, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Sahara Nursery, Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Mabel Selak, Jeffrey L. & Nancee J. Siebert, Leo L. Simi, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Tierra Bonita Ranch Company, Beverly Tobias, White Fence Farms Mutual Water Co. No. 3, **collectively known as the Antelope Valley Ground Water Agreement Association ("AGWA")**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668

) Judicial Council Coordination Proceeding
) No. 4408
)

) **Santa Clara Case No. 1-05-CV-049053**
) Assigned to The Honorable Jack Komar
)

) **OBJECTION OF AGWA TO WILLIS**
) **CLASS' MOTION FOR ORDER**
) **GRANTING PRELIMINARY APPROVAL**
) **OF CLASS ACTION SETTLEMENT AND**
) **APPROVING NOTICE TO THE CLASS**

) **Hearing Date: October 7, 2010**

) **Time: 9:00 am**

) **Dept.: 1, Los Angeles Sup. Court**

) Bradley J. Herrema will appear via CourtCall
)

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) objects to the Willis
2 Class *Motion for Order Granting Preliminary Approval of Class Action Settlement*, filed on
3 September 15, 2010. The proposed settlement does not resolve the primary issues associated with
4 the dormant landowners. It is an attempt to piecemeal the issues with the dormant landowners under
5 the guise of a settlement agreement.

6 **I. WILLIS CLASS BACKGROUND**

7 The genesis of both the Willis Class and the Wood Class is in the McCarran Amendment
8 requirement that jurisdiction over the United States can only be established if the adjudication is
9 “comprehensive.” (43 U.S.C. § 666.) However, even if the McCarran Amendment were not an issue
10 in this adjudication, the water right issues associated with both classes would still require that the
11 rights of both of these groups of parties be considered by the Court. In the case of the Willis Class,
12 this is because the Antelope Valley contains a very large amount of dormant land on which there has
13 never been groundwater use. If the right of dormant landowners to access the groundwater basin is
14 not resolved, then any final judgment in the adjudication will be plagued with uncertainty because of
15 the magnitude of potential new uses that could impact the basin.

16 The Willis Class action complaint dated January 10, 2007 and filed with the Court on
17 January 11, 2007, contains three causes of action. The first cause of action requests a declaration of
18 rights primarily focused on the allegation of the PWS that they have established prescriptive rights.
19 The other two causes of action request damages under the California and Federal Constitutions in the
20 event that the PWS are found to have prescriptive rights.

21 Because the Willis Class complaint was so narrowly drawn, and because it requested only a
22 limited adjudication of rights as against the PWS, on May 28, 2009, certain landowner parties filed a
23 motion to dismiss the adjudication based on a failure to join indispensable parties. The heart of this
24 motion was the allegation that the separate complaint filed by the Willis Class would not serve to
25 allow the Court to adequately adjudicate the rights of all parties.

26 After a lengthy period of briefing and argument, on February 24, 2010, the Court entered an
27 Order of Consolidation to resolve these issues. However, in response to procedural arguments made
28

1 by Class counsel, the Order of Consolidation was clear that the consolidation was not to be
2 construed to create adversity between parties that did not exist prior to the consolidation. It is
3 unclear under this Order how the rights of the Willis Class will be adjudicated vis-à-vis the other
4 landowner parties. On the one hand, both groups of parties are now part of a single consolidated
5 case, but on the other hand an adjudication of rights as between the two groups would imply
6 adversity where none existed prior to the consolidation.

7 II. THE WILLIS CLASS SETTLEMENT

8 Unfortunately, the Willis Class settlement does not resolve any of the issues described above.
9 It appears that the approach of the settlement is to “kick the can down the road” and hope that the
10 issues are instead somehow resolved through incorporation of the Willis settlement into a broader
11 physical solution.

12 1. Prescription

13 The Willis Settlement does not resolve the question of prescription against the Class. Rather,
14 the settlement places a limitation on the amount of water the PWS will seek from the Willis Class in
15 the event they prove prescription against the Class. Section IV.C.2.(a) of the settlement says:

16 *The Willis Class Members acknowledge that the Settling Defendants may*
17 *at trial prove prescriptive rights against all groundwater pumping in the*
18 *Basin during a prior prescriptive period. If the Settling Defendants do*
19 *prove prescriptive rights, Settling Defendants shall not **exercise their***
20 ***prescriptive rights** to diminish the Willis Class Members’ Overlying Right*
21 *below a correlative share of 85% of the Basin’s Federally Adjusted Native*
Safe Yield. If the Settling Defendants fail to prove any prescriptive rights,
this Agreement shall not diminish at all the rights of the Willis Class
Members (11:20-27) (emphasis added).

22 The clear implication of this paragraph is that proving prescription against “all groundwater
23 pumping in the Basin” includes proving prescription against the Willis Class members. This
24 interpretation is confirmed by section IV.C.1., which says:

25 *This Stipulation shall neither be construed to recognize prescriptive rights*
26 *nor to limit the Settling Defendants’ prescriptive claims vis-à-vis the Basin*
27 *or any non-settling parties, but rather as an agreement to fairly allocate*
28 *the Settling Parties’ respective rights to use the Basin’s water. (11:3-7.)*

Under the settlement agreement, the PWS will continue to assert prescription against “the Basin” which includes the dormant lands. Thus, all of the issues associated with whether prescriptive rights have, or can, be perfected against dormant lands continue to exist and will still need to be resolved.

2. Subordination

One of the central legal issues associated with the Willis Class is whether, under a Basin-wide prescriptive circumstance, their rights have been subordinated. While the settlement imposes a limit on the prescriptive rights that the PWS will seek against the Willis Class if prescription is proven, it also acknowledges that the issue of subordination of the rights of the dormant lands is not resolved by the settlement. Section IV.C.2.(a) says:

If there is a subsequent Court decision whereby the Court determines that the Willis Class Members do not have Overlying Rights, this Agreement shall not require Settling Defendants to give the Willis Class Members any right to pump from the Native Safe Yield. (12:3-5.)

Because the PWS have agreed in the settlement to only enforce any prescriptive rights to the extent of 15% of the Basin’s Federally Adjusted Native Safe Yield, a situation is created where the Willis Class will of necessity seek to share in the other 85% correlatively with the other landowners.¹ This will force the issue of whether dormant landowners are subordinated under *Long Valley* where prescription has been established against them. (See *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 355.)

The settlement recognizes that the Court will be need to address this issue. If the purveyors are successful in instituting their artificially low yield number, litigation of this issue will be inevitable because the supply will be so drastically curtailed that every acre-foot will become vital to

¹ As an additional point, while the Willis Class motion states that the settlement is based on “extensive” factual analysis, there is no evidence presented to the Court as to whether the Willis Class consulted with any technical experts about the historical pumping of the purveyors that would serve as a basis for a prescriptive claim, and, more importantly, whether the Willis Class has any factual basis whatsoever to concluded that a 15% “cap” on enforcement of the purveyors prescriptive claims is in fact a limitation at all. If it turns out that the purveyors’ prescriptive claim is to 15% or less of the native yield, then the Willis Class will have received nothing from the settlement except what it would have been left with had it proceeded through trial and *lost* on every point.

existing producers. This success is now made more likely because the Willis Class – without any technical basis for doing so – have stipulated to this artificially low number. However, since the PWS have already agreed to limit the exercise of their prescriptive rights, it will be the landowners who will be forced to raise this issue. A complete adjudication of rights will require that the issue be resolved, but in order to do so it will be necessary to clarify the procedures under which a claim can be adjudicated as between the Willis Class and the other landowners and the meaning and effect of the Court’s Order of Consolidation.

III. THE ACCORD

The Willis Class settlement explicitly anticipates that it will be incorporated into a comprehensive resolution of the competing claims to the Basin’s water that provides for management of the Basin. (III.N. (7:26-28).) In fact, due to the failure of the proposed settlement to address any of the primary issues associated with the dormant lands, it *must* either be incorporated into such a comprehensive solution, or litigation with the Willis Class must continue.

While most of the landowners and local public agencies reached just such a comprehensive solution, this solution was rejected by a small number of agencies led by Los Angeles County Waterworks. There are no other comprehensive settlement proposals currently under discussion.

Dated: September 24, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: _____


MICHAEL T. FIFE
BRADLEY J. HERREMA
ATTORNEYS FOR AGWA

PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On September 24, 2010, I served the foregoing document described as:

**OBJECTION OF AGWA TO WILLIS CLASS' MOTION FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVING
NOTICE TO THE CLASS**

on the interested parties in this action.

By posting it on the website at 10:00 a.m. on September 24, 2010.
This posting was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed in Santa Barbara, California, on September 24, 2010.

MARIA KLACHKO-BLAIR

TYPE OR PRINT NAME

SIGNATURE