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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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
325201;

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-CV-
254-348;

Wm. 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,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all
other similarly situated v. A.V. Materials, Inc., et
al., Superior Court of California, County of Los
Angeles, Case No. BC509546

Judicial Council Coordination
Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS’
OPPOSITION TO WILLIS CLASS’
SECOND MOTION TO ENFORCE
SETTLEMENT**

*[Filed Concurrently with Declaration
of Jeffrey V. Dunn]*

Date: August 4, 2015
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111 N. Hill Street
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Los Angeles County Waterworks District No. 40, City of Palmdale, City of Lancaster, Rosamond Community Services District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Palmdale Water District, Quartz Hill Water District, and California Water Service Company (collectively, “Public Water Suppliers”) hereby oppose the Willis Class’ Second Motion to Enforce Settlement Agreement (“Motion”) as follows:

I. INTRODUCTION

The [Proposed] Judgment and Physical Solution (“Physical Solution”) is consistent with the Willis Class Stipulation of Settlement (“Stipulation”) which was only with the Public Water Suppliers. As the Court has already recognized, the Stipulation did not and cannot establish a water rights determination binding upon all parties in these coordinated and consolidated adjudication proceedings. Water rights are to be determined by the Court as part of a comprehensive physical solution to the Basin’s chronic overdraft condition.

The Stipulation does not include any of the landowners or many other parties in these proceedings. The Stipulation merely recognizes that the Willis Class members can receive whatever is to be later determined by the Court as their reasonable correlative right to the Basin’s native safe yield for actual reasonable and beneficial uses. Accordingly, the proposed Physical Solution provides a reasonable correlative overlying right for *all* landowner parties including the Willis Class members and it is consistent with Stipulation for many reasons, including:

- (1) The Stipulation recognizes that there would be court-imposed limits on the Willis Class’ correlative share of overlying rights because the Basin is and has been in an overdraft condition for decades;
- (2) But for the Stipulation, the Willis Class’ never exercised overlying rights would be subordinated to rights of the landowners and Public Water Suppliers who used groundwater during the overdraft conditions;

- (3) No member of the Willis Class has yet established any right to produce groundwater for reasonable and beneficial use based on their unexercised overlying claim; and
- (4) The Physical Solution recognizes the Willis Class' share of correlative overlying rights and does not unreasonably burden its members' rights given the significant reductions in groundwater pumping and increased expense incurred by the stipulating parties in the Physical Solution. At the time of this Motion and the Physical Solution, the entire native safe yield is being applied to reasonable and beneficial uses.

It is important to note that Willis Class members' correlative overlying rights are not determined by the Stipulation. The nature and extent of their rights are to be determined by the Court as it considers the rights of the landowners who used groundwater in the overdrafted Basin. Those overlying landowner pumpers were not sued by the Willis Class and are not bound by the Willis Class agreement with the Public Water Suppliers. Thus, the Willis Class Motion seeks a priority right over the existing overlying landowner pumpers for its unexercised claim.

The Physical Solution provides a fair and just correlative right to the native safe yield for the Willis Class' future reasonable and beneficial use. As explained herein, the Physical Solution *is* consistent with the Stipulation and with applicable law.

II. THE STIPULATION RECOGNIZES THAT WILLIS CLASS MEMBERS HAVE CORRELATIVE OVERLYING RIGHTS

The Stipulation states that Willis Class members have correlative overlying rights *and that those rights are subject to limits under California law*:

“Correlative Rights” means the principle of California law, articulated in *Katz v. Walkinshaw* (1903) 141 Cal. 116, 136, and subsequent cases, that Overlying Owners may make reasonable and beneficial use of the water in a Basin and that, if the supply of water is insufficient for all reasonable and beneficial needs, each Overlying Owner is entitled to a fair and just proportion of the water available to the Overlying Owners.
(Motion at Ex. A [Stipulation], ¶III.D at 5:26-6:2.)

1 In *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 298, the court stated that
2 “when it is alleged that the water supply is insufficient to satisfy all users the court must
3 determine the quantity needed by those with overlying rights And it stands to reason that
4 when there is a shortage, the court must determine how much each of the overlying owners is
5 using in order to fairly allocate the available supply among them.” In the Stipulation, the
6 “Settling Parties agree that net groundwater production from the Basin needs to be reduced over a
7 period of time from current levels to no more than the Basin’s Total Safe Yield.” (Motion at Ex.
8 A [Stipulation], ¶V.C. at 12:9-10.) Here, the Willis Class acknowledged that it had only a
9 correlative overlying right to a fair and just proportion to be later determined by the Court as part
10 of a physical solution.

11 The Stipulation has additional limitations on the Willis Class correlative overlying right.
12 First, the Willis Class agreed its correlative overlying right is limited by the reasonable and
13 beneficial use of other overlying landowners with correlative rights: “The Willis Class Members
14 recognize that other Overlying Owners may have the right to pump correlatively with them 85%
15 of the Federally Adjusted Native Safe Yield of the Basin for reasonable and beneficial use on
16 their overlying land.” (Motion at Ex. A [Stipulation], ¶IV.D.3 at 11:4-6.)

17 Second, courts may limit correlative overlying rights in an overdrafted basin. (*City of*
18 *Barstow v. Mojave Water Agency* (“*Barstow*”) (2000) 23 Cal.4th 1224, 1252.) Article X, section
19 2 of the California Constitution requires all correlative overlying right uses to be reasonable and
20 allows courts to reasonably burden the use of the overlying right. (*Tulare v. Lindsay-Strathmore*
21 *Irrigation District* (1935) 3 Cal.2d 489, 524-25). A court’s reasonableness determination is
22 unique to each groundwater basin: “What is a beneficial use, of course, depends upon the facts
23 and circumstances of each case. What may be a reasonable beneficial use, where the amount of
24 water is sufficient for all needs, would not be a reasonable beneficial use during great scarcity and
25 great need. What is a beneficial use at one time may, because of changed conditions, become a
26 waste of water at a later time.” (*Id.* at 567.)

27 Here, the Willis Class seeks an unreasonable correlative right for new groundwater
28 pumping in an overdrafted basin. A court-approved physical solution to the overdraft condition

1 should not allow the Willis Class to exercise an unburdened right to pump new amounts of
2 groundwater. To do so would put the Basin into an even worse condition and unreasonably harm
3 the many stipulating parties in the Physical Solution, all of whom have agreed to significantly
4 reduce their pumping.

5 Finally, the Stipulation limits the Willis Class Member's correlative overlying rights
6 because they agreed to be subject to a later court-approved physical solution to the overdraft
7 condition:

8 The Settling Parties expect and intend that this Stipulation will
9 become part of a Physical Solution entered by the Court to manage
10 the Basin and that the Court will retain jurisdiction in the
11 Coordinated Actions. The Settling Parties agree to be part of such a
12 Physical Solution to the extent it is consistent with the terms of this
13 Stipulation and to be subject to Court-administered rules and
14 regulations consistent with California and Federal law and the terms
15 of this Stipulations. The Settling Parties agree that the Physical
16 Solution may require installation of a meter on any groundwater
17 pump by a Willis Class Member before a Willis Class Member may
18 produce groundwater. The responsibility for the cost of such meters
19 will be determined by the Court. (Motion at Ex. A [Stipulation],
20 ¶V.B. at 11:28-12:7.)

21 As part of the Stipulation, the Willis Class agreed to pay groundwater "Replacement
22 Assessments" under a physical solution:

23 The Settling Parties recognize the right of any Settling Party to
24 produce groundwater from the Basin above their share of the Native
25 Safe Yield, subject to the Physical Solution and to any Replacement
26 Assessment. The Settling Parties agree to provide or purchase
27 Imported Water for all groundwater pumping that exceeds a Settling
28 Party's share of the Federally Adjusted Native Safe Yield. The
Settling Parties Agree that any Settling Party who produces more
than its annual share of the Federally Adjusted Native Safe Yield in
any year will be responsible to provide Replacement Water or pay a
Replacement Assessment to the Watermaster so that the
Watermaster can purchase Imported Water to recharge the Basin.
(Motion at Ex. A [Stipulation], ¶IV.D. at 12:19-26.)

29 The above burdens on the Willis Class members' overlying rights were approved by the
30 Court when it approved the Stipulation. The February 24, 2011 Notice of Proposed Willis Class
31 Action Settlement and Settlement Hearing ("Notice") recognized all these limitations and that the

latter Physical Solution might modify the Stipulation. Paragraph 9 of the Notice provides: “the Parties will be required to comply with the terms of the Physical Solution that may be imposed by the Court to protect the Basin, and the Court will not be bound by the Settling Parties’ agreements in that regard.” (Declaration of Jeffrey V. Dunn [Dunn Decl.], Ex. “B” at ¶9.)

The Stipulation commits the Willis Class to participate in a Physical Solution that can require them to pay for replacement water for when they pump groundwater. Yet, the Motion focuses on only one aspect of the Stipulation merely describing the correlative right and language that references the ability of the Willis Class to produce their correlative share without a water replacement assessment. *But the language did not and cannot determine the nature or extent of the Willis Class overlying right; the Stipulation parties did not and could not do so. Only the Court can determine the nature of the Willis Class overlying right as part of its consideration of all landowner overlying rights in a physical solution.* As the Willis Class acknowledged in the Stipulation, however, their correlative overlying share and all aspects of it depend upon the existing and historical pumping of all other overlying landowners. (Motion at Ex. A [Stipulation], ¶IV.D.3 at 11:4-6.)

The Court did not bind the other overlying landowners to the terms of the Stipulation. (Motion at Ex. B [Willis Judgment], ¶9 at 3:23-26 [“As provided in the Consolidation Order, this Final Judgment shall not be construed to prejudice the rights of any of the Non-Settling Parties in the Consolidated Actions nor shall it prejudice the claims and defenses that the Settling Parties may assert with respect to such Non-Settling Parties.”]). The Willis Class never objected to other overlying owners not being bound to the Stipulation, thus acknowledging that the Court could reasonably condition the to-be-determined Willis Class correlative overlying right along with that of all the overlying pumping as part of the ultimate Court approval of a physical solution.

III. THE PHYSICAL SOLUTION IS CONSISTENT WITH THE SETTLEMENT STIPULATION IN RECOGNIZING WILLIS CLASS MEMBER’S CORRELATIVE RIGHTS

The Stipulation is consistent with the Physical Solution because it recognizes the Court’s continuing jurisdiction to impose an assessment on all new pumping – not just new pumping, if

1 there ever is any, by Willis Class members. The Willis Class members are not treated any
2 differently than any other party to the Physical Solution. The Physical Solution requires all new
3 pumping to pay a replacement assessment. Here, each of the many stipulating parties to the
4 Physical Solution have agreed to make significant reductions in their use of native groundwater.
5 Should any party to the Physical Solution use groundwater over the reduced amount, that party
6 shall pay a replacement assessment that will fund the purchase of new water supplies for the
7 Basin. That is because pumping over the total agreed-upon reductions in the Physical Solution is
8 new pumping and the Basin does not distinguish whether it is new pumping from a stipulating
9 party to the Physical Solution, a Willis Class member, or anyone else for that matter.

10 When the Court approved the Stipulation, terms of the proposed Physical Solution had not
11 been determined let alone presented to the Court. It was not known that all overlying pumpers
12 would have to make substantial reductions in their historical and present groundwater use, pay an
13 assessment on a portion of their current overlying pumping for reasonable and beneficial uses,
14 and pay a replacement assessment for any new pumping.¹ Yet, the *Barstow* court foresaw the
15 situation, here, of a groundwater basin with so much undeveloped land and in such severe
16 overdraft that constraints on new overlying pumping could be required to protect the basin:

17 If Californians expect to harmonize water shortages with a fair
18 allocation of future use, courts should have some discretion to limit
19 the future groundwater use of an overlying owner who has
20 exercised the water right and to reduce to a reasonable level the
amount the overlying user takes from an overdrafted basin.
(*Barstow*, *supra*, 23 Cal.4th at 1249, fn. 13.)

21 In addition to the *Barstow* court's guidance, it is highly instructive that the California
22 Supreme Court has already upheld burdening *unexercised* riparian rights in *In re Waters of Long*
23 *Valley Creek Stream System* (1979) 25 Cal.3d 339.² Although *Long Valley* was a statutory stream
24 adjudication by the State Water Resources Control Board, courts and the State Water Resources

25
26 ¹ See generally, Motion at Exhibit C [Physical Solution], ¶7.3, lines 22-26 & ¶9.2, lines 9-11.

27 ² See also, *In re Water of Hallett Creek Stream Sys.* (1988) 44 Cal.3d 448, 471-72; *Jordan v. City of Santa Barbara*
28 (1996) 46 Cal.App.4th 1245, 1268 ["Even riparian rights can be regulated and future unexercised riparian rights may be subject to lower priority over prior authorized appropriative rights."]. Overlying rights are analogous to riparian rights. (*Barstow*, *supra*, 23 Cal.4th at 1241-42.)

Control Board have concurrent jurisdiction over water rights. Imposing burdens upon the parties' water rights as party of a physical solution do not create due process concerns here because this is a McCarran Amendment adjudication requiring all users and potential users to be parties; an adjudication more comprehensive than a State Water Resources Control Board statutory adjudication which can omit users of less than 10 acre feet.³ Thus; the Court has authority to reasonably burden the parties' water use to protect the Basin.⁴

In *Long Valley*, the California Supreme Court identified the burdens that can be imposed upon water uses by dormant users such as the Willis Class:

[T]he limitations on unexercised riparian claims that are constitutionally permissible and thus authorized As previously discussed, when the Board determines all rights to the use of the water in a stream system, an important interest of the state is the promotion of clarity and certainty in the definition of those rights; such clarity and certainty foster more beneficial and efficient uses of state waters as called for by the mandate of article X, section 2. Thus, the Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Moreover, to the extent that an unexercised riparian right may also create uncertainty with respect to permits of appropriation that the Board may grant after the statutory adjudication procedure is final, and may thereby continue to conflict with the public interest in reasonable and beneficial use of state waters, the Board may also determine that the future riparian right shall have a lower priority than any uses of water it authorizes before the riparian in fact attempts to exercise his right. . . In other words, while we interpret the Water Code as not authorizing the Board to extinguish altogether a future riparian right, the Board may make determinations as to the scope, nature and priority of the right that it deems reasonably necessary to the promotion of the state's interest in fostering the most reasonable and beneficial use of its scarce water resources. (*Long Valley, supra*, 25 Cal.3d at 358-359.)

³ See 43 U.S.C. § 666 [McCarran Amendment]; Cal. Water Code section 2503; *Barstow, supra*, 23 Cal.4th at 1249, fn. 13 ["*Wright* does suggest that, in theory at least, a trial court could apply the *Long Valley* riparian right principles to reduce a landowner's future overlying water right use below a current but unreasonable or wasteful usage, as long as the trial court provided the owners with the same notice or due process protections afforded the riparian owners under the Water Code" (citing *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 87-89)].

⁴ See *EDF v. E. Bay Mun. Util. Dist.* (1980) 26 Cal.3d 183, 200 ["we are satisfied that the courts have concurrent jurisdiction with the legislatively established administrative agencies to enforce the self-executing provisions of article X, section 2."].

1 Here, the Physical Solution carefully follows the *Long Valley, supra*, requirements for
2 reasonably burdening the new use of water by an unexercised correlative right, including the
3 following:

4 [R]eevaluating a future riparian right when the riparian owner
5 actually proposes to exercise it, even though more than three years
6 may have elapsed from the time of the adjudication procedure.
7 Thus, in order to implement the fundamental water policies
8 expressed in the Constitution and Water Code, we conclude that at
9 any time after the statutory adjudication has taken place, the Board
10 has the authority to evaluate the riparian's proposed use of his
11 unexercised right in the context of other proposed uses of water in
12 the stream system, and to determine whether the riparian use should
13 be permitted in light of the state's interest in promoting the most
14 efficient and beneficial use of state waters. Because the statutory
15 adjudication procedure and section 2900 are designed to promote
16 finality and certainty, however, the Board may not grant the
17 unexercised riparian claim a priority with respect to existing rights
18 that is higher than it granted at the time the decree became final.
19 (*Id.* at 362, fn. 15.)

20 Paragraph 9.2.2 of the Physical Solution provides that the Court, through the Watermaster
21 and subject to judicial review (Paragraph 20.3), will consider the proposed new groundwater use
22 at the time it comes into being. The Court may then allow reasonable and beneficial use if it will
23 not materially harm the Basin. It is important to note, again, all new uses must pay a replacement
24 assessment because all current pumpers are not only paying a replacement assessment on a
25 substantial portion of their existing pumping but also on all new pumping. To allow the Willis
26 Class to start a new use and pump groundwater without a replacement assessment, would give a
27 water right to the Willis Class that is superior to existing rights and contrary to the California
28 Supreme Court decision in *Long Valley, supra*.

23 **IV. THE WILLIS CLASS CORRELATIVE RIGHTS WOULD HAVE BEEN**
24 **SUBORDINATED WITHOUT THE SETTLEMENT STIPULATION**

25 In determining the consistency of the Stipulation and Physical Solution as well as the
26 reasonableness of the Physical Solution, it is essential that the Court consider the rights of the
27 Willis Class absent their Stipulation with the Public Water Suppliers. (*Barstow, supra*, 23 Cal.4th
28 at 1249-50.) In an overdrafted basin where public water suppliers are prescriptively pumping

1 groundwater and the overlying groundwater pumping (i.e., “self-help”) by itself exceeds the
2 basin’s native safe yield, the unexercised overlying rights are subordinate to the prescriptive and
3 self-help rights. If unexercised overlying rights were not subordinate, the law would reach an
4 absurd conclusion: self-help pumping by landowners would mean nothing if a dormant landowner
5 had the same right as landowners who had established self-help pumping. Stated simply, under
6 the absurd result which the Willis Class seeks, self-help pumping would have no meaning or
7 recognition under California law.

8 The case law is clear that in an overdrafted basin where prescription is occurring,
9 overlying landowners can retain a portion of their rights by self-help pumping. (*Barstow, supra*,
10 23 Cal.4th at 1241.) In *Santa Maria, supra*, 211 Cal.App.4th at 279, the most recent California
11 groundwater adjudication, the Court of Appeal reaffirmed that self-help pumping is the way for
12 landowners to retain a portion of their overlying rights:

13 Overlying landowners who fail to seek an injunction preventing an
14 adverse use may nevertheless protect their interests by means of
15 self-help. Self-help in this context requires the landowner to
16 continue to pump nonsurplus water concurrently with the adverse
17 users. When they do, the landowners retain their overlying rights,
18 losing only the amount of the prescriptive taking. (*Hi-Desert
County Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23
Cal.App.4th 1723, 1731-32, citing *Los Angeles v. San Fernando*
(1975) 14 Cal.3d 199, 293 and *City of Pasadena v. City of
Alhambra* (1949) 33 Cal.2d 908, 931-33.)

19 If an overlying owner fails to pump, the prescriptive rights have a higher priority: “If the
20 original owners of water rights had been ousted completely or had failed to pump for a five-year
21 period, then there would have been no interference whatsoever on the part of the owners with the
22 use by the wrongdoers, and the wrongdoers would have perfected prior prescriptive rights to the
23 full amount which they pumped.” (*Pasadena v. Alhambra, supra*, 33 Cal.2d at 931-32.)

24 Prescriptive rights have a higher priority even if the overlying landowners pumped but
25 could not prove their pumping. In *Santa Maria, supra*, certain landowner parties “lost the right to
26 exclude Santa Maria and GSWC from taking nonsurplus water equal to the volume of their
27 prescriptive taking” because they failed to prove self-help pumping. (*Santa Maria, supra*, 211
28

1 Cal.App.4th at 299-300.) That prescription can subordinate an overlying right is also apparent
2 from riparian rights cases. (*San Bernardino v. Riverside* (1921) 186 Cal. 7, 13.)

3 Although subordination of unexercised overlying correlative rights by self-help
4 groundwater pumping has not been directly addressed by the courts, they have addressed the
5 analogous situation of riparian rights holders prescribing against other riparian right holders. In
6 *Moore v. California Oregon Power* (1943) 22 Cal.2d 725, 735, an upstream riparian stored water
7 and obtained a prescriptive right against the downstream riparian: “The law is so well-established
8 in this state as to require no extended citation of authorities that an upper riparian owner may
9 acquire a prescriptive right to the waters of a stream as against a lower riparian owner by an
10 adverse use of said waters for the prescriptive period.” (*Ibid.*)

11 In the case at bar, the Court found that pumping has been above the safe yield for over
12 fifty years and that landowner self-help pumping was over 300,000 acre feet for decades. *Thus,*
13 *landowner self-help pumping alone has exceeded the native safe yield.* (Dunn Decl., Ex. “A”
14 [Scalmanini Trial Testimony] at 310:1-7, 312:6-12; Ex. “C” [Statement of Decision Phase Three
15 Trial] at 6:1-4 [“Since 1951[] there is evidence of periods of substantial pumping . . . coinciding
16 with periods of drought, with almost continuous lowering of water levels and severe subsidence
17 in some areas extending to the present time”].) No member of the Willis Class has yet
18 established any right to produce groundwater for reasonable and beneficial use based on their
19 unexercised overlying claim.

20 *Because an overlying right is only a right to a correlative share of the native safe yield,*
21 *and because the landowner self-help pumping alone exceeded the native safe yield while Public*
22 *Water Supplier prescriptive pumping was taking place, the unexercised overlying rights of the*
23 *Willis Class were subordinated to the overlying rights of all landowner parties who exercised*
24 *self-help pumping.* To hold otherwise would create an absurd result: a landowner party exercising
25 self-help pumping would get no benefit as against a non-pumping landowner.
26
27
28

1 **V. THE PHYSICAL SOLUTION DOES NOT UNREASONABLY BURDEN THE**
2 **WILLIS CLASS CORRELATIVE RIGHT**

3 In *Barstow*, the California Supreme Court held that, to determine if a physical solution is
4 reasonable and enforceable as against all parties, a court had to first consider their water rights.
5 (*Barstow, supra*, 23 Cal.4th at 1249-50.) Here, the Willis Class members' rights would have
6 been subordinated to other parties' overlying or prescriptive rights but for the Stipulation *and*
7 certain provisions in the Physical Solution. For that reason alone, the Willis Class overlying right
8 is not unreasonably burdened. Without the Physical Solution and the Stipulation, the Willis Class
9 could have no ability to pump groundwater from the overdrafted Basin.

10 Even if the Court were to find that the Willis Class members' rights would not have been
11 subordinated absent the Physical Solution, it does not unreasonably burden their rights:

12 In ordering a physical solution, therefore, a court may neither
13 change priorities among the water rights holders nor eliminate
14 vested rights in applying the solution without first considering them
15 in relation to the reasonable use doctrine. (*Barstow, supra*, 23
Cal.4th at 1250 [citing 1 Rogers & Nichols, Water for California
(1967) § 404].)

16 Prior court decisions have stated that the costs of exercising a right under a physical
17 solution cannot "unreasonably and adversely" affect a prior right or be "material" or require the
18 expenditure of "vast sums of money." (*Lodi v. EBMUD* (1936) 7 Cal.2d 316, 339-41; *Allen v.*
19 *California Water & Tel. Co.* (1946) 29 Cal.2d 466, 483-84.) Moreover, the *Barstow* decision is
20 consistent with *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 561-62 in which the court
21 made clear that the overarching standard for the cost that may be placed on a senior right is the
22 article X, section 2 doctrine of reasonableness.

23 Here, the question for the Court is whether the expense the Willis Class members may
24 have to bear if they ever pump new groundwater is unreasonable given all the facts and
25 circumstances of the overdraft in the Basin *and* the significant reductions in groundwater use by
26 the parties in the Physical Solution. The Physical Solution protects the Basin so that all
27 reasonable and beneficial uses of its safe yield can be fully achieved. Without the Physical
28 Solution requiring all users to bear some burden (i.e., reduction in existing groundwater use and

1 payment by all users to pump new amounts of groundwater), the Basin will remain in an
2 overdrafted condition.


3 The Physical Solution is consistent with California law that “either or both [water right
4 holders] can be required to endure a reasonable inconvenience or incur a reasonable expense in
5 order that water may be reasonably used by the other” (*Rancho Santa Margarita, supra*, 11
6 Cal.2d at 561). Parties can be ordered to endure “some inconvenience or incur reasonable
7 expenses” to protect a public water supply. (*People ex. rel. State Water Resources Control Board*
8 *v. Forni* (1976) 54 Cal.App.3d 743, 751-52.) The burden imposed by the Physical Solution on
9 the Willis Class members, whose rights would have been subordinated absent the Stipulation, is
10 reasonable and should be imposed for the benefit of the Willis Class and the other overlying users
11 to ensure sustainability of the Basin consistent with the mandate of Article X, Section 2.

12 For the above reasons, the Court should deny the Motion and find that the Physical
13 Solution is consistent with the Stipulation.

14
15 Dated: July 24, 2015

BEST BEST & KRIEGER LLP

16
17 By



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JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On July 24, 2015, I served the within document(s):

PUBLIC WATER SUPPLIERS' OPPOSITION TO WILLIS CLASS' SECOND MOTION TO ENFORCE SETTLEMENT



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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 24, 2015, at Los Angeles, California.



Rosanna R. Pérez

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