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11 a California corporation, CRYSTAL ORGANIC
12 FARMS, a limited liability company, GRIMMWAY
13 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 Coordination Proceeding Special Title
17 (Rule 1550 (b))

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

20 Included actions:

21 Los Angeles County Waterworks District No.
22 40 vs. Diamond Farming Company
23 Los Angeles Superior Court
24 Case No. BC 325201

25 Los Angeles County Waterworks District No.
26 40 vs. Diamond Farming Company
27 Kern County Superior Court
28 Case No. S-1500-CV 254348 NFT

Diamond Farming Company vs. City of
Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**OBJECTION TO PROPOSED
PRELIMINARY APPROVAL OF
WILLIS CLASS SETTLEMENT**

Date: October 7, 2010
Time: 9:00 a.m.
Dept: 1

Diamond Farming Company, Inc., Crystal Organic Farms, LLC, Grimmway Enterprises, Inc.,
and LAPIS Land Company, LLC hereby file their Objection to Proposed Preliminary Approval of Willis
Class Settlement.

I.

INTRODUCTION

These objecting parties do not dispute nor contest the policy favoring settlement of litigation. However, these objecting parties object to the approval of the proposed settlement to the extent that the same contemplates that the contractual agreement between the settling parties will be reduced, upon approval, to a "Final Judgment Approving Class Action settlement." As is set forth more fully below, the stipulated contractual settlement between the settling parties, cannot, at this time, be entered as a separate final judgment. To the extent that the same purports to be a stipulated judgment, it, by its own terms, confirms that it is, and will remain, interlocutory until the entire adjudication has been concluded. The Willis Class settlement and Proposed Stipulated Judgment by their own terms contemplates, indeed necessitates, further litigation before a final judgment can be entered, and expressly contemplates that the contractual terms and conditions agreed upon as between the Willis Class and the settling purveyors would only then be incorporated into that "final judgment." Thus, the proposed stipulated judgment, if approved, would at best be only "interlocutory."

It is axiomatic that a "final judgment" is that decree which constitutes the final determination of the rights of the parties in an action or proceeding. California Code of Civil Procedure section 577. A final judgment presupposes an immediate right of appeal by an aggrieved party. California Code of Civil Procedure section 904.1(a)(1). Where no issues is left for future consideration except the fact of compliance or noncompliance with the terms of the decree, it is final; but where anything further in the nature of judicial action on the part of the trial court is necessary to a final determination of the rights of the parties, the decree is interlocutory. *Bakewell v. Bakewell* (1942) 21 Cal.2d 224.

The proposed "Final Stipulated Judgment," is patently, at best, interlocutory, for essentially three reasons.

1. First, the agreement itself contemplates additional and further litigation, specifically, the future litigation of the settling purveyors prescription claims not only against the non-settling overlying landowners, but "against all groundwater pumping in the basin," and therefore presumably as against all parcels of real property within the basin. The settlement contemplates the Willis Class giving to the settling purveyors a right to pump

1 fifteen percent of the basin's "Federally Adjusted Native Safe Yield," but only if, in a
2 subsequent phase of trial, the settling purveyors successfully prove prescription as against
3 all groundwater pumping. The agreement by its terms does not address nor establish the
4 rights as between the settling Willis Class and the settling purveyors in the event that the
5 settling purveyors were to prove prescription as against some overlying parcels currently
6 pumping, but fail to prove prescription as against all and/or others. Thus, until the phase
7 of trial on the issue of prescription has been concluded, the final rights as between the
8 settling parties in the Willis Class proposed "Final Judgment," cannot and will not, until
9 then, be determinable. The proposed stipulated judgment is therefore interlocutory.

10 2. On February 24, 2010, this court entered its order of consolidation. That order of
11 consolidation was of all actions and for all purposes. Consequently, there can be but one
12 final judgment in these now consolidated actions. The proposed "Final Stipulated
13 Judgment," proffered by the Willis Class with the pending motion, itself presupposes that
14 it will ultimately be melded into that final judgment which will conclude at the trial court
15 level all consolidated actions.

16 3. The proposed judgment itself presupposes that there will be a future phase of trial for the
17 purpose of defining and establishing a "physical solution." The proposed stipulated
18 judgment is by its terms dependent upon numerous specifically and narrowly defined
19 terms such as "Federally Adjusted Native Safe Yield," "Native Safe Yield,"
20 "Replacement Assessments," and by its terms contemplates a Water Master. None of the
21 concepts nor any of the specifically defined terms within the proposed stipulated
22 judgment have yet to be litigated, and none of those terms have yet to be considered nor
23 defined by this court. Thus, it is clear that further judicial action by this court is
24 necessary in future phases of trial, not yet scheduled, and until then, the rights of these
25 settling parties, cannot be determined as between themselves, and therefore the proposed
26 judgment is at best interlocutory.

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II.

CONCLUSION

The case of *Harrington-Wisely v. State of California* (2007 2d. Dist.) 156 Cal.App.4th 1488, is instructive. There, the trial court entered a stipulated judgment after having granted summary adjudication on ten causes of action in favor of various government entity defendants, in an action arising out of the search of visitors at various California prisons. The stipulated judgment provided for the entry of a "final judgment" but did not by content resolve on the merits any of the plaintiff visitors' claims for injunctive and declaratory relief, leaving a variety of constitutional and statutory issues open for further determination by the trial court. Although the stipulated judgment resolved the plaintiff visitors' damage claims, it did not address nor resolve the declaratory relief and equitable injunctive claims. As such, the appellate court there confirmed that because further judicial action on the part of the trial court was necessitated, the judgment, although labeled "final," was nonetheless non-appealable and only interlocutory. The proposed Willis Class settlement, by its terms presupposes and in fact necessitates further judicial action by this trial court before it can have meaning and constitute a "final determination," as between the settling parties. Thus, the judgment, if approved, at best is and can only be interlocutory.

Respectfully submitted,

Dated: September 24, 2010

LeBEAU • THELEN, LLP

By: 

BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY,
a California corporation, CRYSTAL ORGANIC
FARMS, a limited liability company, GRIMMWAY
ENTERPRISES, INC., and LAPIS LAND
COMPANY, LLC

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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On September 24, 2010, I served the within

OBJECTION TO PROPOSED PRELIMINARY APPROVAL OF WILLIS CLASS SETTLEMENT

■ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

□ (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

■ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on September 24, 2010, in Bakersfield, California.


DEQUETTA HANSEN