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9 Palmdale Water District

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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Coordination Proceeding
Special Title (Rule 1550 (b))

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**Public Water Suppliers' Opposition To Willis
Class Motion For Court-Appointed Expert**

Date: March 26, 2015

Time: 10:00 a.m.

Place: Los Angeles Superior Court
Old Dept. 1 (Room 222)

1. All the Willis Class claims have been resolved by a final judgment.

The motion for a court-appointed expert is based on the faulty premise that the Willis Class stands in the same position as any other non-stipulating party. For example, the motion states: "Every significant party to this 16-year litigation has either retained experts or, in the case of the Wood Class, had one appointed by the court. The Willis Class stands alone" (Motion p. 4:16-17.) That premise, however, is incorrect. Unlike the claims of other non-stipulating parties, all the claims of the Willis Class in this litigation have been resolved by court-approved settlement, which was embodied in an

1 amended final judgment entered September 22, 2011 (“Willis Judgment”)¹. As part of that settlement,
2 the water rights of the class, as between it and the Public Water Suppliers, were fully and finally
3 determined. The Willis Class released all claims against the Public Water Suppliers. (Willis Class
4 Stipulation of Settlement (“Willis Settlement”)² para. VII.A, pp. 14-15; Willis Judgment, para. 17, pp.
5 4-5.) The Willis Class has not claimed any rights as against any other party. In fact, it has repeatedly
6 denied that it has any claims against other parties. (See, e.g., Rebecca Willis’ and the Class’
7 Memorandum of Points and Authorities in Opposition to Motion to Consolidate, filed Aug. 3, 2009, p.
8 2:4-12).

9 The Willis Settlement provides that the Willis Class members hold an overlying right to a
10 correlative share of the adjusted native safe yield in the basin. The settling parties agreed to be part of a
11 later physical solution, to the extent it was consistent with the terms of the stipulation, and to be subject
12 to court-administered rules and regulations consistent with California and federal law and the terms of
13 the stipulation. (Willis Settlement p. 2:2-4.) The court retained jurisdiction for that purpose. (Willis
14 Judgment p. 5:25-28.) “Physical Solution” was defined as “a mechanism that comprehensively resolves
15 the competing claims to the Basin’s water and provides for the management of the Basin.” (Willis
16 Settlement p. 7:7-9.)

17 The Proposed Judgment and Physical Solution, filed March 4, 2015, contains findings that it is
18 consistent with the Willis Settlement. (Para. 5.1.2, p. 16:23-24). In order to approve the stipulation, the
19 court must approve the judgment, including this finding. (Stipulation for Judgment para. 4, p. 2:21-24.)

20 The Willis Class action, along with all other complaints and cross-complaints seeking a
21 determination of water rights, was consolidated with this coordinated action on February 19, 2010 (See
22 Order Transferring and Consolidating Actions for All Purposes, filed Feb. 19, 2010.). As a party to this
23 consolidated action, the Willis Class has the right to object to the Proposed Judgment and Physical
24 Solution on grounds that it is not consistent with the Willis Settlement. Under the court’s case
25 management order, any such objections must be filed by April 1, 2015, and they will be determined as
26 part of the approval process beginning August 3. The question whether the two documents are

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28 ¹ Appendix A to the Proposed Judgment and Physical Solution filed March 4, 2015.

² Appendix B to the Proposed Judgment and Physical Solution filed March 4, 2015.

1 consistent with each other and with California law is itself a question of law. As such, expert testimony
2 is not necessary for its determination. In particular, expert testimony is not needed for all the issues
3 listed on pages 3 and 4 of the motion, because these issues do not come into play in determining
4 consistency.

5 Allowing the Willis Class the opportunity to object to the Proposed Judgment and Physical
6 Solution fulfills the requirements of the Willis Settlement as well as any due process requirements.
7 Expert testimony is not required, and the motion should be denied.

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9 **2. The court is not permitted to appoint an expert for a party.**

10 As this court has recognized, “experts appointed under section 730 are necessary only when the
11 court sees the need for an assessment by a disinterested and impartial expert who is not advocating on
12 behalf of a party to the action.” (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394 fn. 4, citing *Mercury*
13 *Casualty Co. v. Superior Court* (1986) 179 Cal.App.3d 1027, 1032, 1033.) Even the case cited by the Willis
14 Class for the authority of the court to appoint experts in civil cases (*California v. Superior Court (Woolsey)*,
15 66 Cal.App.4th 421,440 (1998)) was for the appointment of an expert to advise the court on “on the
16 questions of class action management.” (*Woolsey* at 440.)

17 Here, the Willis Class improperly seeks a court-appointed advocate for its own interests. It
18 requests the appointment of an expert to “determine the reasonable and beneficial uses of groundwater of
19 each of the parties to the adjudication, evaluate the future reasonable and beneficial uses of the Willis Class
20 if the court approved a permanent allocation of the Native Safe Yield, and assist the parties in preparing a
21 physical solution consistent with the Willis Class Judgment.” (Motion p. 2:7-10.) The Willis Class has
22 made no showing that the court needs an expert to evaluate such uses, or physical solution alternatives.
23 The settling parties will prove up their respective claims to reasonable and beneficial uses and the court
24 may evaluate the claims based on the evidence. Further, the need for a determination of future reasonable
25 and beneficial uses of the Willis Class supports only the Willis Class argument that groundwater must be
26 “‘set aside’ for future use of the Willis Class Members.” (Motion p. 8:6). No other party has taken this
27 position. Finally, the need for a court-appointed expert to prepare a physical solution consistent with the
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1 Willis Judgment is completely groundless. The settling parties have agreed on a physical solution that is
2 consistent with the Willis Class Judgment.

3 Contrary to the assertion in the motion (see Motion p. 6:11-12), this court did not appoint an expert
4 for the Wood Class. The court appointed a neutral expert to assist the court with the determination of the
5 water use of the Wood Class members. The court approved the scope of work and required that all
6 communications with the expert be copied to Mr. Dunn and a landowner representative. (See Order re:
7 Motion for an Order Authorizing Court-Appointed Expert Work, filed Dec. 11, 2012.)

8 In any case, there is no authority for ordering a civil litigant to pay the adverse party's expert
9 witness costs pending resolution of the case. Although the motion relies upon Evidence Code section 730,
10 that section merely provides that the court may appoint an expert and "may fix the compensation . . . at the
11 amount as seems reasonable to the court." Section 730 does not allow the court to impose expert witness
12 costs upon the adverse party, and no case authority exists to require an adverse party to bear such expert
13 witness costs pending case resolution.

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15 **3. The court should not decertify the Willis Class.**

16 The Willis Class asserts that the court should, alternatively, decertify the Willis Class. The
17 motion states that decertification would protect class members from the res judicata effects of the
18 physical solution on their groundwater rights, but does not explain how this would be so, given the
19 existing settlement that requires them to be part of the physical solution. The motion does not request
20 that the court vacate the Willis Judgment, nor has it established any grounds for doing so.

21 Willis asserts that "[d]ecertification may be ordered at any time, including post-judgment."
22 (Motion p. 13:5-6, citing *Grogan-Beall v. Ferdinand Roten Galleries, Inc.*, 133 Cal.App.3d 969, 977
23 (1982).) This is not an accurate statement of California law. First, in *Grogan-Beall*, the class was
24 decertified after trial, but before judgment was entered, unlike the present case. (133 Cal.App.3d at
25 975.) Second, the ground for decertification was that defendants' liability to each unnamed plaintiff
26 would have to be individually litigated in various respects, a consideration not present here. (*Id.* at 976.)
27 Third, the California Supreme Court has made it clear that a trial court's authority to certify or decertify
28 a class after a decision on the merits requires "a clear showing of changed circumstances." (*Fireside*

1 *Bank v. Superior Court*, 40 Cal.4th 1069, 1084.) The precedential value of *Grogan-Beall* is highly
2 suspect in light of *Fireside Bank* and earlier Supreme Court precedent holding that it is improper to
3 decertify a class after the merits of the matter have been decided, absent very unusual circumstances not
4 present here. (See also *Green v. Obledo* (1981) 29 Cal.3d 126, 148-49 (reversing trial court
5 decertification order after summary judgment).) Finally, the court in *Grogan-Beall* expressly
6 predicated its ruling permitting post-judgment decertification on the fact that the trial court certification
7 order was conditional. (*Grogan-Beall* at 977.)

8 Willis has made no showing of changed circumstances in the motion, and there have been none.
9 The Willis Class position currently remains exactly as it has been since the time of entry of judgment in
10 2011 – at which time the class agreed in writing to be subject to a future determination by this court of a
11 physical solution. (Willis Settlement, para. V.B.)

12 Decertification would of course necessarily mean loss of jurisdiction over the United States, and
13 would undermine much or all of the court’s rulings in substantive phases of trial in this matter. Given
14 the very profound impacts that decertification of the Willis Class would have, the court should not
15 consider such an order absent, at a minimum, a true and very clear showing of changed circumstances.
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17 **4. Conclusion**

18 The stipulation presented to the court contemplates that the court determine whether the
19 Proposed Judgment and Physical Solution is consistent with the Willis Settlement. The court can make
20 this determination without an expert. The Willis Class will have ample opportunity to present and argue
21 its position, and class counsel and the class representative can adequately represent the class in that
22 process. The motion should be denied.
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24 Dated: March 13, 2015

Lagerlof, Senecal, Gosney & Kruse LLP

25 By: _____

26 Thomas S. Bunn III

27 Attorneys for Palmdale Water District
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