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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

This Pleading Relates to Included Action: REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; PHELAN PINON HILL COMMUNITY SERVICE DISTRICT; and DOES 1 through 1,000;

Defendants.

RELATED CASE TO JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

WILLIS CLASS' OPPOSITION TO INFORMAL DISCOVERY CONFERENCE

Date: January 22, 2015
Time: 11:00 AM
Place: Santa Clara County Superior Court, 191 N. 1st St., San Jose, CA 95113, Dept. 1
Judge: Hon. Judge Komar

The Willis Class respectfully submits the following opposition brief to the Wood Class' Motion for Informal Discovery Conference filed on January 20, 2015.

Willis Class Counsel was frankly shocked to see this filing by counsel for the Wood Class. The meet and confer process regarding the Wood Class' request to take the deposition of the newly named Willis Class representative Deacon or Mr. David Estrada is still ongoing. Rather than engage in continued, substantive discussion with opposing counsel as required by California law, Wood Class Counsel instead chose to file its premature motion with the Court.

Willis Class Counsel has offered Mr. Estrada for deposition, provided Counsel for the Wood Class communicates the basis for the deposition request, serves a proper subpoena on counsel, and pays the appropriate witness fee. A subpoena is necessary as Mr. Estrada is not a party to the Wood Class action. Mr. Estrada has retained Class Counsel to enforce the terms of the Amended Final Judgment and related Willis Class Stipulation of Settlement (the "Willis Judgment"). Mr. Estrada's water rights were defined and determined in the Willis Judgment.

For reasons unknown, Mr. McLachlan neglected to file a key meet and confer email exchanged on this topic. In that email (attached to this opposition as Exhibit A), Willis Class Counsel sets forth their detailed reasons for objecting to Mr. McLachlan's informal request to take the deposition of Mr. Estrada. Mr. Kalfayan then stated that he looked forward to receiving Mr. McLachlan's meet and confer letter stating the basis for his request to take the deposition of Mr. Estrada. That meet and confer letter stating the basis to take the deposition never arrived. Instead, Wood Class Counsel's purported meet and confer letter amounted to a "Because I Can" response. The letter stated no basis whatsoever for any relevant information the Wood Class is seeking to obtain from Mr. Estrada in connection with the upcoming physical solution proceedings.

As explained in refreshingly accessible language by the *Townsend* court, California law requires meet and confer discussions to include the substantive basis for the discovery being sought:

> In *Nevada Power Co. v. Monsanto Co., supra,* 151 F.R.D. 118, 120, the court offered the following guidelines for the conduct of an informal negotiation conference: **"[T]he parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions**. Only after all the cards have been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses of its position in light of all available information, can there be a 'sincere effort' to resolve the matter." **These sensible guidelines apply, with equal force, to California's Discovery Act.** (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 371, 15 Cal.Rptr. 90, 364 P.2d 266.). Each of the statutes governing discovery contains a provision that requires that the parties, **prior to invoking the assistance of the court**, attempt to informally resolve their discovery disputes.

Townsend v. Superior Court, 61 Cal. App. 4th 1431, 1435-36 (1998) (emphasis supplied).

Willis Class Counsel remained open to working with Wood Class Counsel to try to resolve this dispute informally. Now Willis Class Counsel must respond to a Court filing by the Wood Class that still fails to provide the basis for the Wood Class' request to take the deposition of Mr. Estrada. It is not enough to argue that because the Willis Class will ensure that the significant benefits obtained in the Willis Stipulation of Settlement and Amended Judgment are appropriately incorporated into the Physical Solution ultimately adopted by this Court, therefore it is open season on the newly-appointed class representative.

Based on the Supreme Court decision in *City of Barstow v Mojave*, 23 Cal.4th 1224, Mr. Estrada has overlying rights by virtue of his ownership of land within the area of adjudication. The Supreme Court articulated the overlying rights as follows: "An overlying right is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto. One with overlying rights has rights superior to that of other persons who lack legal priority, but is nonetheless restricted to a reasonable beneficial use. Thus, after first considering this priority, courts may limit it to present and prospective reasonable beneficial uses, consonant with article X, section 2 of the California

Constitution." *Id.* at 1240. Therefore, other than a copy of his deed, there is no other information that may be helpful to the Wood Class regarding Mr. Estrada.

As Willis Class Counsel reminded Wood Class Counsel, the Public Water Suppliers did not object to Mr. Estrada being named as a class representative for the Willis Class. Even more significantly, the Public Water Suppliers have not informed Willis Class Counsel that they seek to take Mr. Estrada's deposition, nor would they have any reason to depose him. Simply stated, Mr. Estrada is not an expert on any matters related to the upcoming physical solution proceedings and he does not have any percipient information that is relevant to those proceedings either.

Contrary to Wood Class Counsel's assertions, the mere fact that different lawsuits are consolidated into one proceeding does not transform all of the affected parties into adversaries. The Court's Consolidation Order makes that plain:

> Upon appropriate motion and the opportunity for all parties in interest to be heard, the **Court may enter a final judgment approving any settlements**, including the Willis and Wood class settlements**, that finally determine all cognizable claims for relief among the settling parties for purposes of incorporating and merging the settlements into a comprehensive judgment containing such a declaration of water rights and a physical solution**. Any such settlement can only affect the parties and cannot have any affect on the rights and duties of any party who is not a party to any such settlement. Complete consolidation shall not preclude or impair any class' right to seek the entry of a final judgment after settlement.

Thus, while the cases were consolidated, the Willis class action remained as a separate action and a Final Judgment was entered among the parties to the Willis dispute. A more than 100-year-old case makes this precise point in the context of evidentiary admissions in a coordinated proceeding:

> **The consolidation for the purpose of trial, of all the cases, did not change the issues in the respective cases**, nor render the admissions of the pleadings ineffectual when applied to the particular cases in which they were made.

Los Angeles Pressed Brick Co. v. Higgins, 8 Cal. App. 514, 527 (1908) (emphasis supplied).

All cognizable claims for relief among the settling parties, i.e. the Willis Class and the Public Water Suppliers, have been determined. The only task remaining is for the Willis Settlement to be incorporated into a comprehensive judgment containing the Willis Class' water rights and a physical solution. Mr. Estrada has no information relating to the only remaining task.

In addition, the Consolidation Order further provides that "Costs and fees could only be assessed for or against parties who were involved in particular actions." Accordingly, Willis class is unable to recover attorneys' fees from the Wood Class. Nonetheless, Wood Class Counsel completely ignores the Court's "no fees from parties not involved in particular actions" Order and insists that they can pursue whatever discovery they wish from the Willis Class. The Wood Class' position is untenable and contrary to law.

Dated: January 21, 2015

Respectfully submitted,

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