

1 Ralph B. Kalfayan (SBN 133464)  
Lynne M. Brennan (SBN 149131)  
2 KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP  
3 550 West C Street, Suite 530  
San Diego, CA 92101  
4 Tel: (619) 232-0331  
Fax: (619) 232-4019

5 Class Counsel for the Willis Class  
6  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY  
11 GROUNDWATER CASES

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

15 *Plaintiffs,*

16 v.

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

25 *Defendants.*  
26  
27  
28

RELATED CASE TO JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4408

**NOTICE AND MOTION TO ENFORCE DUE  
PROCESS RIGHTS OF THE WILLIS CLASS**

Date: June 15, 2015

Time: 10:00 AM

Place: Santa Clara County Superior Court,  
191 N. 1<sup>st</sup> St., San Jose, CA 95113, Dept. 1

Judge: Hon. Judge Komar

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Time: 1:30 P.M.

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191 N. 1<sup>st</sup> St., San Jose, CA 95113, Dept. 1

Judge: Hon. Judge Komar

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TABLE OF CONTENTS

STATEMENT OF FACTS..... 2

ARGUMENT ..... 3

    A.    The Absence of a Pleading Against the Willis Class Violates Due Process ..... 3

    B.    The Absence of Adequate Notice to the Willis Class Violates Due Process ..... 5

    C.    The *Inter Se* Nature of Water Rights Does Not Obviate Due Process ..... 8

    D.    The Willis Class Did Not Consent to an Abrogation of Their Water Rights .... 10

CONCLUSION..... 11

## TABLE OF AUTHORITIES

### CASES:

<i>Britz, Inc. v. Dow Chemical Co.</i> 73 Cal.App.4th 177 (1999)	4
<i>Forman v. Hancock</i> 3 Cal.App.2d 291 (1934)	4
<i>Gibbons v. Peralta</i> 21 Cal.629 (1863)	4
<i>Griffin v. Griffin</i> 327 U.S. 220 (1946)	9, 10
<i>Johnson v. Alma Investment Co.</i> 47 Cal.App.3d 155 (1975)	5
<i>Julen v. Larson</i> 25 Cal.App.3d 325 (1972)	5
<i>Molski v. Gleich</i> 318 F.3d 937 (9th Cir. 2003)	5
<i>Mullane v. Central Hanover Bank</i> 339 U.S. 306 (1950)	8
<i>Nelson v. Adams USA, Inc.</i> 529 U.S. 460 (2000)	4
<i>People ex rel. Dept. of Transportation v. Superior Court</i> 5 Cal.App.4th 1480 (1992)	3
<i>Robinson v. Hanrahan</i> 409 U.S. 38 (1972)	8
<i>Summit Media LLC v. City of Los Angeles</i> 211 Cal.App.4th 921 (2012)	4

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 15, 2015 at 10:00 am or as soon thereafter as the  
3 matter may be heard, before the Honorable Judge Komar, Superior Court of California, Santa Clara  
4 County Superior Court, 191 N. 1<sup>st</sup> St., San Jose, CA 95113, Dept. 1, the undersigned law firm,  
5 Class Counsel for the Willis Class, will and hereby does move for an Order to Enforce Due Process  
6 Rights of the Willis Class.<sup>1</sup>

7  
8 This Motion is based on this Notice, the attached Memorandum of Points and Authorities  
9 with exhibits, the Declaration of Lynne M. Brennan, and such other and further evidence as may  
10 be presented at the hearing.

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**  
12 **ENFORCE DUE PROCESS RIGHTS OF WILLIS CLASS**

13 The Stipulating Parties propose in their Stipulation for Entry of Judgment and Proposed  
14 Physical Solution ("SPPS") the entry of a judgment that allocates to themselves the entire Native  
15 Safe Yield ("NSY") of Antelope Valley groundwater. The SPPS proposes to extinguish all water  
16 rights of the 65,000 landowners of the Willis Class despite the fact that there is not now, nor has  
17 there ever been, any pleading filed against these individuals, much less notice of such a pleading.

18  
19 The Due Process Clause of the Fourteenth Amendment of the United States Constitution,  
20 however, as well as Article I, Section 7 of the California Constitution, precludes the entry of such  
21 a judgment.

22 The Willis Class accordingly moves that the provisions of the SPPS that purport to bind  
23 Non-Stipulating Parties, i.e., Willis Class Members, to this stipulation be stricken, or, in the  
24 alternative, that the Stipulating Parties be required to file an adversary pleading against these Non-  
25

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28 <sup>1</sup> The Willis Class hereby incorporates in their entirety by this reference the concurrently filed Motion for Court Order for Payment of Expert Witness Fees for the Willis Class for Physical Solution Proceedings and Motion to Enforce Willis Settlement Agreement with Defendant Public Water Suppliers as though fully set forth herein.

1 Stipulating Parties, i.e. Willis Class Members, and provide adequate notice thereof prior to the  
2 hearing on the proposed SPPS. Due process requires no less than this.

3  
4 **STATEMENT OF FACTS**

5 Paragraphs 1.1 through 1.3 of the SPPS generally describe the various pleadings filed in the  
6 present matter. See SPPS, attached as Exh. A. It is undisputed, however, that the only pleading  
7 that has ever named the landowners in the Willis Class as a party is *Willis v. Los Angeles County*  
8 *Waterworks Dist. No. 40*, BC364553 (the “Willis Class Action”), filed in 2007. It is further  
9 undisputed that the Willis Class Action was filed solely against the public water suppliers (“PWS”).

10 The public water suppliers defended against the Willis Class Action but never sought to  
11 take away the water rights of the Willis Class vis-à-vis any other landowner. More broadly, no  
12 other Stipulating Party to the SPPS ever sued the landowners in the Willis Class, nor has such a  
13 Party ever named any landowner in the Willis Class (or the class itself) as a defendant in any  
14 pleading.

15  
16 Notwithstanding the complete absence of any operative pleading filed against the 65,000  
17 individuals in the Willis Class, the SPPS proposes to extinguish the water rights of these  
18 landowners. The Willis Class is not allocated any portion of the NSY, which is entirely given to  
19 the Stipulating Parties. SPPS, § 5, Exh. A. The Willis Class must pay for water; the Stipulating  
20 Parties do not. SPPS, § 5. The Stipulating Parties can carry over, and transfer to others, their water;  
21 the Willis Class cannot. SPPS, ¶¶ 5.1.2.1 & 5.1.10, §§ 16, 17, Exh. A. Members of the Wood  
22 Class (a Stipulating Party) who own an acre of currently fallow land but who pumped even a gallon  
23 of water at any time since 1947 are entitled to pump three acre-feet of water for free; by contrast,  
24 members of the Willis Class (a Non-Stipulating Party) who own thousand times as much land can  
25 neither pump nor transfer any water at all. SPPS, ¶¶ 3.5.44, 5.1.3, 5.1.10, Exh. A.

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1 Were there to have been an adversary proceeding filed against the Willis Class that sought  
2 such relief, this may have been a procedurally proper (albeit substantively meritless) result. But  
3 there was not. The Willis Class never had a pleading filed against it in which it was notified that  
4 the Stipulating Parties sought the relief against them that the SPPS now seeks to impose. Nor has  
5 the Willis Class ever received the statutory and constitutional protections to which they were  
6 entitled had they ever been named as a defendant class in a pleading seeking such relief.  
7

8 Given these undisputed facts – particularly, the absence of a pleading against the Willis  
9 Class and notice of such a pleading – the Due Process Clause of the United States Constitution  
10 prohibits entry of a judgment that purports to bind the Willis Class in the manner set forth in the  
11 SPPS.  
12

### 13 ARGUMENT

#### 14 A. The Absence of a Pleading Against the Willis Class Violates Due Process.

15 The cornerstone of both the Due Process Clause of the U.S. Constitution and Article I,  
16 Section 7 of the California Constitution is the requirement of an accusatory pleading against the  
17 defendant before she may be deprived of property. Only when such a pleading exists may the  
18 judiciary enter a judgment that grants the requested relief against such a party. *People ex rel. Dept.*  
19 *of Transportation v. Superior Court*, 5 Cal.App.4th 1480, 1485 (1992).  
20

21 The Stipulating Parties request that this Court enter an SPPS that deprives the Willis Class  
22 of its entitlement to water. But those parties have never filed a complaint against the Willis Class  
23 that names these landowners as defendants and seeks such relief. The only complaint to which the  
24 Willis Class was a party was the Willis Class Action, in which (1) the Willis Class was a plaintiff,  
25 not a defendant; and (2) only the PWS, not the Stipulating Parties, were adverse parties. Because  
26 the Willis Class was not a defendant named in the accusatory pleadings filed by the Stipulating  
27 Parties, the Due Process Clause precludes entry of a judgment (like the SPPS) that purports to bind  
28

1 the Willis Class and deprive these landowners of their water rights. *Britz, Inc. v. Dow Chemical*  
2 *Co.*, 73 Cal.App.4th 177, 181 (1999).

3 It is no answer to this unconstitutional deprivation that although the SPPS purports to  
4 allocate the entire NSY to the Stipulating Parties, it cannot legally bind non stipulating parties such  
5 as the Willis Class. The SPPS is a proposed *judgment*, and the judiciary cannot enter a judgment  
6 that violates due process by purporting to bind a nonparty to such an agreement, especially when  
7 (as here) such a judgment would cloud the titles of the landowners in the Willis Class. *Gibbons v.*  
8 *Peralta*, 21 Cal.629, 631-32 (1863); *Forman v. Hancock*, 3 Cal.App.2d 291, 297-98 (1934). That  
9 this proposed judgment would be void as applied to the Willis Class is ample reason to reject it, not  
10 a reason to enter it. *Summit Media LLC v. City of Los Angeles*, 211 Cal.App.4th 921, 932 (2012)  
11 (stipulated settlement cannot permissibly result in entry of judgment against a non-signator to this  
12 agreement). Entry of a judgment that purports to bind the Willis Class would violate both the Due  
13 Process Clause of the U.S. Constitution as well as the California Constitution.

14 Nor can the Stipulating Parties (or this Court) “deem” the various accusatory pleadings  
15 actually filed against parties other than the Willis Class to now be filed against the Willis Class as  
16 well. The Willis Class was not, in fact, made a defendant. The Willis Class was not, in fact, granted  
17 the panoply of rights to which it would be entitled were it actually made a defendant; *e.g.*, the rights  
18 to individualized service of process; to demur; to answer; to conduct discovery; to move for  
19 summary judgment, etc. The Supreme Court has expressly (and unanimously) held that a party not  
20 actually made a defendant to an accusatory pleading cannot thereafter be deemed a defendant  
21 thereto, no matter how convenient and efficient such a process might be. *Nelson v. Adams USA,*  
22 *Inc.*, 529 U.S. 460, 465 (2000) (“Due process does not countenance such swift passage from  
23 pleading to judgment in the pleader’s favor.”).

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1 Stipulating Parties can, if they wish, file a pleading against the Willis Class that expressly  
2 seeks the relief requested in the SPPS, and if the Stipulating Parties prevail, perhaps the SPPS  
3 would then be (at least procedurally) permissible. But the Settling Parties have not done so. Absent  
4 such an accusatory pleading against the Willis Class – which indisputably does not yet exist – the  
5 Due Process Clause of the U.S. Constitution categorically prohibits entry of the proposed SPPS  
6 judgment.  
7

8 This Court should not, and cannot, enter a judgment that violates the U.S. Constitution and  
9 that purports to allocate the entire NSY to the Stipulating Parties and deprive the Willis Class  
10 landowners of their right to water.

11 **B. The Absence of Adequate Notice to the Willis Class Violates Due Process.**

12 Wholly apart from the absence of an adversary pleading, the proposed entry of the SPPS  
13 would also violate the Due Process Clause and Article I, Section 7 because the Willis Class has not  
14 received the constitutionally required notice of the relief to be awarded in this proposed judgment.  
15

16 It is beyond dispute that due process requires the best practicable notice be given before  
17 depriving any individual of a property right. *Johnson v. Alma Investment Co.*, 47 Cal.App.3d 155,  
18 159-62 (1975). Constitutionally sufficient notice must be both understandable to the average  
19 person and clearly advise the defendant of the requested relief at issue. *Julen v. Larson*, 25  
20 Cal.App.3d 325, 327-28 (1972); *Molski v. Gleich*, 318 F.3d 937, 951-53 (9th Cir. 2003).  
21

22 No such notice was given to the Willis Class in the present case. The landowners in the  
23 Willis Class have been notified only of the pendency of the Willis Class Action itself. *See*, Notice  
24 of Class Action in BC364553 (the “Willis Class Notice”) dated December 17, 2008, attached as  
25 Exhibit B. The Willis Class Notice notified these landowners only that the lawsuit that *they had*  
26 *filed as plaintiffs* was pending and that at issue in this dispute was the allocation of their water rights  
27 vis-à-vis the Public Water Suppliers only. Willis Class Notice at 1 (“Plaintiff Willis . . . claims that  
28

1 she and other landowners have water rights that are superior to the rights of certain public water  
2 suppliers (listed as defendants on page 1) to use that water.”). The Willis Class was further  
3 informed that the sole contrary contention at issue was the “public water suppliers claim that their  
4 historical pumping has given them superior water rights.” *Id.* The Willis Class Notice finally told  
5 the plaintiffs that only if the public water suppliers prevailed on this issue would their water rights  
6 be potentially cut back; and, even then, only vis-à-vis the public water suppliers. *Id.* It was on this  
7 basis that this Court gave notice to the Willis Class and told them that they had a right to opt out if  
8 they did not wish to be a party to the above-described class action. *Id.*

10 The class was never informed of *any* of the provisions of the SPPS that the Stipulating  
11 Parties now wish to impose upon the Willis Class when they were given their opt-out rights in the  
12 Willis Class Notice. The Willis Class was instead told *solely* that there was litigation pending  
13 between the Willis Class and the PWS and that the class action would determine those competing  
14 rights. That notice is sufficient to permit resolution of that litigation, but in no way constitutes  
15 sufficient notice to those landowners that unless they opt out, their water rights might be  
16 subordinated to *other* entities – those not even named as parties in the Willis Class Action, much  
17 less mentioned in the Willis Class Notice – to whom the SPPS grants the entirety of the NSY of the  
18 Antelope Valley. The proposed SPPS accordingly cannot be entered because the Willis Class did  
19 not receive the constitutionally required notice of such relief at the time these landowners were  
20 notified of the pending action and given an opportunity to opt out.

23 Given this constitutional inadequacy, it is irrelevant what the landowners in the Willis Class  
24 might perhaps have learned about related litigation after their right to opt out had already expired.  
25 But the subsequent notice given to the Willis Class nonetheless only reinforces the constitutional  
26 insufficiency in the present case.

27 ///

1 The Notice of Proposed Willis Class Action Settlement sent to the Willis Class in December  
2 of 2010 (the “Willis Settlement Notice”) told the Willis Class that their claims against the PWS had  
3 been resolved, but that no landowner had the right to opt out of this resolution. *See*, Willis  
4 Settlement Notice at 3-4 (“Can I exclude myself from the Class? No.”), attached as Exhibit C. The  
5 Willis Class was informed that their claims against the PWS had been resolved, and that the class  
6 and the PWS both had a right to pump water under the settlement: in particular, that both the Willis  
7 Class and the PWS “have rights to produce groundwater from the Basin’s Native Safe Yield.” *Id.*  
8 at 3. Lest there be any doubt, in bold print, at the end of the Willis Settlement Notice, the Willis  
9 Class was told: “17. **MAY I PUMP WATER ON MY PROPERTY? Yes.**” *Id.* at 6.

11 The Willis Class was told that it could pump water. The Willis Class was told that it was  
12 likely that subsequent monitoring of such pumping was possible, and hence that they should install  
13 a meter on any pumps. *Id.* But the Willis Class was never informed – much less in the type of  
14 clear, unmistakable language required by the Due Process Clause of the U.S. Constitution – that  
15 despite the express notice that they “have rights to produce groundwater from the Basin’s Native  
16 Safe Yield,” *id.* at 3, the landowners of the Willis Class would in the future have these rights to the  
17 NSY be given instead to parties (e.g., the Wood Class or Diamond Farming) that the Willis Class  
18 had never sued and who had never sued the Willis Class.

20 Moreover, the fact that Willis Class Members were informed that they would be bound by  
21 a later Physical Solution entered by the Court in no way provides notice to the Class that their right  
22 to pump water could be taken away at a later date when they could no longer opt out of the class.  
23 Both the Consolidation Order and the Amended Final Judgment mandate that the class action  
24 settlement agreements will be *merged* and *incorporated* into any later Physical Solution:

26 “... the Court may enter a final judgment approving any settlements, including the *Willis*  
27 and *Wood* class settlements, that finally determine all cognizable claims for relief among  
28 the settling parties for purposes of incorporating and merging the settlements into a

1 comprehensive single judgment containing such a declaration of water rights and a  
2 physical solution.

3 *Order Transferring and Consolidating Actions for All Purposes* dated February 19, 2010  
4 at 4:25 to 5:1 (emphasis supplied), attached as Exhibit D.

5 and

6 “In addition, without effecting the finality of this Judgment, the Court retains  
7 jurisdiction over the Parties for purposes of incorporating and merging this  
8 Judgment into a physical solution or other Judgment that may ultimately be entered in  
9 the Consolidated Actions.”

10 *Amended Final Judgment*, ¶ 20 (emphasis supplied), attached as Exhibit E.

11 Thus, the Willis Class was *never* given notice that their right to pump water from the Native Safe  
12 Yield could later be *extinguished* by the Physical Solution ultimately entered by the Court. Rather,  
13 the Willis Class’ right to pump water from the Native Safe Yield was to be merged and incorporated  
14 into the Physical Solution.

15 The Willis Class was not given notice of the provisions of the SPPS that extinguish the  
16 Willis Class’ right to pump water from the Native Safe Yield. The Due Process Clause accordingly  
17 prohibits entry of these provisions against the Willis Class.

18 C. The *Inter Se* Nature of Water Rights Does Not Obviate Due Process.

19 The Stipulating Parties appear to believe that the *inter se* nature of some water adjudications  
20 authorizes the entry of an SPPS that deprives the Willis Class of water rights notwithstanding the  
21 absence of an adversary pleading against, or notice of such pleadings to, these landowners. This is  
22 not the case.

23 The Due Process Clause and Article I, Section 7 trump any contrary statutory or judicial  
24 regime that would purport to obviate the requirement of adequate notice. U.S. Const., Art. VI, cl.  
25 2 (Supremacy Clause). Moreover, the U.S. Supreme Court has expressly and repeatedly held that  
26 the requirements of the Due Process Clause are not modified by the *inter se* and/or *in rem* nature  
27 of the underlying proceedings. *Robinson v. Hanrahan*, 409 U.S. 38, 38 (1972) (notice required by  
28 Due Process Clause does not vary in *in rem* or other *inter se* actions); *Mullane v. Central Hanover*

1 *Bank*, 339 U.S. 306, 312-13 (1950) (requirement of adequate notice persists despite *in rem* or *inter*  
2 *se* nature of proceeding against common trust). It is accordingly sufficient to say that the Willis  
3 Class remains entitled to the due process that they have not yet received here; *e.g.*, the filing of an  
4 express accusatory proceeding against them naming them as parties, notice of said proceeding, and  
5 an adequate opportunity to defend it. Expedience does not, and cannot, justify a violation of the  
6 most critical of constitutional adjudicatory rights.  
7

8 Moreover, provision of such constitutionally required notice is entirely possible. Nothing  
9 stops the Stipulating Parties from filing a pleading against the Willis Class, notifying that class of  
10 its rights, and permitting those landowners to fully defend themselves. This is what the Constitution  
11 both requires and anticipates; as the Supreme Court has held, “[s]uch notice cannot be dispensed  
12 with even in the case of judgments *in rem* with respect to property within the jurisdiction of the  
13 court rendering the judgment.” *Griffin v. Griffin*, 327 U.S. 220, 228 (1946).  
14

15 Similarly, the fact that some notice was previously given to the Willis Class does not obviate  
16 the requirement of additional notice when, as here, a later proposed judgment would affect or  
17 implicate rights under an existing judgment. In *Griffin*, a prior judgment (in 1926) had given the  
18 petitioner notice that additional proceedings in the future might affect that existing judgment, and  
19 the respondent in *Griffin* argued that this prior notice satisfied the constitutional minimum under  
20 by the Due Process Clause. The United States Supreme Court, however, rejected that argument,  
21 holding:  
22

23 While it is undoubtedly true that the 1926 decree, taken with the New York practice  
24 on the subject, gave petitioner notice at the time of its entry that further proceedings  
25 might be taken . . . we find in this no ground for saying that due process does not  
26 require further notice of the time and place of such further proceedings, inasmuch  
as they undertook to substantially affect his rights in ways in which the 1926 decree  
did not.

27 *Griffin v. Griffin*, 327 U.S. 220, 228 (1946).

28 ///

1       What was true in *Griffin* is equally true here. The Willis Class was given individualized  
2 notice in 2010 that a settlement had been reached with the public water suppliers and that, pursuant  
3 to that judgment, the Willis Class was entitled to pump water. Like the petitioner in *Griffin*,  
4 although the Willis Class was notified that they would be subject to a Physical Solution, due process  
5 requires further notice of the time and place of the Physical Solution proceedings because the SPPS  
6 proposes to deprive the Willis Class of its right to pump. The Due Process Clause requires  
7 individualized notice to the landowners of the Willis Class of that proposed judgment, a notice that  
8 includes (as in *Griffin*) a time and date at which these landowners may appear in court and articulate  
9 their individual claims.  
10

11       No such notice has yet been given. Absent such notice, the SPPS cannot be entered into  
12 judgment.  
13

14       **D. The Willis Class Did Not Consent to an Abrogation of Their Water Rights.**

15       The Stipulating Parties also appear to believe that the Willis Class Stipulation of Settlement  
16 contains a provision which would subject the water rights of the Class to subordination or  
17 extinguishment without the necessity of complying with due process. They refer to paragraph V.B.  
18 of the Stipulation of Settlement (attached as Exh. F) which provides:

19       The Settling Parties expect and intend that this Stipulation will become part of a Physical  
20 Solution by the Court to manage the Basin and that the Court will retain jurisdiction in the  
21 Coordinated Actions. The Settling Parties agree to be part of such a Physical Solution to the  
22 extent it is consistent with terms of this Stipulation and to be subject to Court-administered  
23 rules and regulations consistent with California and Federal law and the terms of this  
24 Stipulation.

25       This language however is clear on its face. The Willis Class agreed to be part of a physical solution  
26 with the public water suppliers that is *consistent* with the Settlement, not *any* physical solution  
27 which may later be imposed by the Court. Any other interpretation of the Stipulation of Settlement  
28 would render the entire agreement meaningless to the Willis Class.

///

1 The Stipulating Parties may also argue that at the time of the Willis Class Stipulation of  
2 Settlement the non-pumper class was not pumping any portion of the NSY; therefore, they argue,  
3 their share of the NSY was zero under the judgment. Because the Willis Class share of water rights  
4 is zero, they argue, the SPPS is consistent with the Willis Judgment and therefore due process  
5 considerations have been met. They may cite paragraph V.D. of the Willis Stipulation of Settlement  
6 which provides:  
7

8 The Settling Parties agree that any Settling Party who produces more than its annual share  
9 of the Federally Adjusted Native Safe Yield in any year will be responsible to provide  
10 Replacement Water or pay a Replacement Assessment to the Watermaster so that the  
Watermaster can purchase Imported Water to recharge the Basin.

11 This analysis would again render the Willis Settlement meaningless to the Class. The Class did not  
12 agree to a zero allocation of the NSY. The agreement expressly provides the contrary. (See  
13 paragraph III.D.: "... each overlying Owner is entitled to a fair and just proportion of the water  
14 available to the Overlying Owners; paragraph III.K.: "Pumping of the Settling Parties' share of  
15 Native Safe Yield is not subject to any Replacement Assessment;" and, paragraph IV.D.: "the  
16 Settling Parties agree that the Settling Defendants and the Willis Class Members each have rights  
17 to produce groundwater from the Basin's Federally Adjusted Native Safe Yield.", attached as Exh.  
18 F).  
19

## 20 CONCLUSION

21 The SPPS purports to apply to the landowners in the Willis Class and to take away their  
22 water rights of which they were previously notified. On the present procedural posture, to enter  
23 such a judgment would violate the Due Process Clause of the U.S. Constitution as well as Article  
24 I, Section 7 of the California Constitution.  
25

26 This does not mean that a physical solution can never be imposed. Far from it. Were the  
27 Stipulating Parties to file an adversarial pleading against the Willis Class and provide notice and a  
28 full and fair opportunity to defend such a proceeding, the Due Process Clause would be satisfied.

1 But thus far, the Stipulating Parties have refused to do so. That is their choice. But it is fatal to  
2 their request for the entry of the SPPS as a judgment.

3 Accordingly, this Court must refuse to enter the provisions of the SPPS that purport to bind  
4 the Willis Class, or, in the alternative, require the Stipulating Parties to file an adversary pleading  
5 against the Willis Class and provide adequate notice thereof prior to any hearing on the proposed  
6 SPPS.  
7

8 Dated: May 21, 2015

Respectfully submitted,

9 KRAUSE, KALFAYAN, BENINK &  
10 SLAVENS, LLP

11  
12 /s/ Ralph B. Kalfayan

13  
14 Ralph B. Kalfayan, Esq.  
15 Lynne M. Brennan, Esq.  
16 Class Counsel for the Willis Class  
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