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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY GROUNDWATER
11 CASES

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

14 *Plaintiffs,*
15

16 v.

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

24 *Defendants.*
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RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' NOTICE AND MOTION
FOR COURT ORDER FOR PAYMENT OF
EXPERT WITNESS FEES FOR THE
WILLIS CLASS FOR PHYSICAL
SOLUTION PROCEEDINGS**

Date: June 15, 2015

Time: 10:00 AM

Place: Santa Clara County Superior Court,
191 N. 1st St., San Jose, CA 95113, Dept. 1
Judge: Hon. Judge Komar

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. 1st 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 for Payment of Expert
6 Witness Fees for the Willis Class for the Physical Solution Proceedings.¹ The experts are needed
7 to oppose the SPPS and to assist the Willis Class in preparing a physical solution consistent with
8 the Willis Class Judgment.
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10 This Motion is based on this Notice, the attached Memorandum of Points and Authorities,
11 the Declaration of Lynne M. Brennan, and such other and further evidence as may be presented at
12 the hearing.
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14 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
15 **COURT ORDER OF PAYMENT OF EXPERT WITNESS FEES FOR WILLIS CLASS**
FOR PHYSICAL SOLUTION PROCEEDINGS

16 **I. SUMMARY OF ARGUMENT**

17 The Willis Class hereby moves for an Order for payment of expert witness costs that will
18 be incurred by the Willis Class prior to and during the upcoming Physical Solution proceedings
19 beginning August 3, 2015. This Motion is based on the unique circumstances that Willis Class
20 Counsel have been placed in by the Public Water Suppliers in (1) entering into a physical solution
21 that is not consistent with the Willis Class Judgment, (2) submitting to the Court a Case
22 Management Order which obligates the Willis Class to oppose a prove-up of a physical solution
23 and prove a claim of right to produce groundwater in the future, and (3) failing to negotiate and
24 cooperate with Willis Class counsel in order to arrive at a fair and equitable Physical Solution.
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28 ¹ The Willis Class hereby incorporates in their entirety by this reference the concurrently filed Motion to Enforce Due
Process Rights of Willis Class and Motion to Enforce Willis Settlement Agreement with Defendant Public Water
Suppliers as though fully set forth herein.

1 Given these circumstances, Willis Class Counsel has no choice but to retain experts in order
2 to fulfill its obligations to the Class and enforce the Willis Class Judgment. The following experts
3 have been retained for the Class: (1) Mr. Rod Smith, a water economist, who will testify regarding
4 valuation, inconsistencies, and alternative physical solutions; (2) Dr. David Sunding, a water
5 economist, who will testify regarding quantification of production rights for the Willis Class and
6 the new production application procedures; (3) Mr. Brian Gray, who will testify regarding the
7 SPPS; and (4) Mr. Steve Roach, a real estate appraiser, who will testify regarding diminution in
8 real property values in the Antelope Valley for Willis Class Members as a result of the SPPS.
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10 Of the tens of thousands of class actions that have been adjudicated in the United States
11 since the creation of the class action mechanism, not one of these class action lawsuits has involved
12 the post-Judgment imposition of a Physical Solution. In a typical class action case, class counsel
13 is paid their attorneys' fees out of a common fund (typically with a multiplier to reward class
14 counsel for taking on the high risk involved in class action lawsuits). Likewise, in a typical class
15 action case, class counsel initially takes on the risk of fronting expert witness fees which are then
16 reimbursed from the common fund if class counsel prevails in the lawsuit.
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18 In this precedent-setting groundwater adjudication, the class action mechanism was used
19 for the first time ever to bring in an extremely large group of landowners (the nonpumpers) as well
20 as a much smaller group of landowners (the small pumpers) into the adjudication. Payment of
21 attorneys' fees, if any, for class counsel in this adjudication will be paid from an award made by
22 the Court pursuant to C.C.P. Section 1021.5. Similarly, expert witness fees are only recoverable in
23 this class action if the Court either appoints an expert to address issues relating to the class (as the
24 Court did for the Wood Class) or if the Court otherwise issues an Order providing that the expert
25 witness fees expended by the class will be recoverable under C.C.P. Section 1033.5(a)(8). Absent
26 an order from the Court providing for the payment of expert witness fees, these costs will not be
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1 recoverable. *See, Olson v. Automobile Club of Southern California*, 42 Cal.4th 1142, 1150-51
2 (2008)(citing C.C.P. Section 1033.5(b)(1) and holding that expert witness fees may not be awarded
3 under Section 1021.5, unless expressly ordered by the court).

4 II. STATEMENT OF FACTS

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6 The 65,000-Member Willis Class was formed to litigate its claims against the Public Water
7 Suppliers for the right to pump groundwater in the future in the face of claims by the Public Water
8 Suppliers that their prescriptive rights extinguished the Willis Class' right to pump groundwater.
9 After many years of hard-fought litigation, the Willis Class and the Public Water Suppliers reached
10 a Stipulation of Settlement in July 2010 that was ultimately approved by this Court in the Amended
11 Final Judgment on September 22, 2011. The Public Water Suppliers released all claims of
12 prescription against the Willis Class. The Public Water Suppliers also contractually agreed to
13 support and defend the Willis Class' correlative rights to 85% of the Native Safe Yield free of
14 replacement assessment and agreed to only participate in a Physical Solution as long as those rights
15 (and the rights of the Public Water Suppliers) were upheld. The Willis Class contractually agreed
16 to support and defend the Public Water Suppliers' right to 15% of the Native Safe Yield free of
17 replacement assessment and agreed to participate in a Physical Solution as long as those rights and
18 the Willis Class' rights were upheld. Notice went out to the 65,000 Members of the Willis Class
19 notifying them that their correlative right to share in the Native Safe Yield with other landowners
20 in the Basin had been preserved.

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23 Willis Class Counsel was awarded attorneys' fees pursuant to C.C.P. Section 1021.5 for
24 conferring "significant benefits" on the Willis Class as set forth in the Stipulation of Settlement and
25 the Amended Final Judgment. However, unlike a typical class action where there may be a
26 multiplier used to increase attorneys' fees for the inherent risk involved in bringing a class action
27 lawsuit, Willis Class Counsel in fact had their attorneys' fees reduced by the Court. Expert witness
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1 fees were not expended by the Willis Class because Class Counsel was able to negotiate the
2 Stipulation of Settlement before trial, thereby negating the need for expert witnesses to be appointed
3 or ordered by the Court.

4 III. ARGUMENT

5 The Public Water Suppliers and the Willis Class entered into a Stipulation of Settlement
6 which released the Suppliers' claims of prescription and recognized the correlative rights of the
7 Willis Class to share in 85% of the Federally Adjusted Native Safe Yield (the "Stipulation of
8 Settlement"). The Court determined the Stipulation of Settlement was fair, adequate, and
9 reasonable and entered judgment incorporating its terms. The Stipulation of Settlement provides
10 that settling parties shall be part of a Physical Solution but only to the extent it is consistent with
11 the terms contained in the settlement (See paragraph V.B. of the Stipulation of Settlement). On
12 March 4, 2015, the Public Water Suppliers entered into and filed a proposed Physical Solution
13 with the Court that is not consistent with the Stipulation of Settlement. Thus, even though Willis
14 Class Counsel already litigated the underlying class action lawsuit to a successful resolution,
15 Counsel is now forced to contest an entirely separate proceeding in which they have an ongoing
16 duty to the Willis Class to ensure that the "significant benefits" achieved in the Amended Final
17 Judgment are incorporated into the Physical Solution ultimately adopted by this Court. Had the
18 Public Water Suppliers not reneged on their agreement in the Stipulation of Settlement to support
19 the Willis Class' correlative right to share in the Native Safe Yield up to 85% free of replacement
20 assessment, then the Willis Class would not need expert witnesses to oppose the SPPS and to
21 support its right to pump groundwater in the future as part of an amended SPPS or as part of an
22 alternative proposed physical solution. Alternatively, the Wood Class required an expert to
23 address the groundwater needs of the 3700-Member Wood Class in the context of the Physical
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1 Solution proceedings and therefore an expert was appointed by the Court. The Court thus far has
2 denied the Willis Class' repeated requests for a Court-appointed expert.


3 In order to adequately represent the Willis Class in the upcoming Court-mandated
4 Physical Solution proceedings, Willis Class Counsel must employ expert witnesses. Plain and
5 simple. Every other party to this adjudication will employ expert witnesses to prove up or oppose
6 the SPPS. This fact is not the least bit surprising given the highly complex technical and
7 scientific issues involved in a Physical Solution proceeding. The 65,000-Member Willis Class
8 cannot be treated as second class citizens. Because the Court did not appoint an expert and
9 because there will likely be no common fund from which to reimburse Willis Class Counsel for
10 fronting expert witness fees, the Court must issue an Order providing that the expert witness fees
11 expended by the Willis Class must be paid. In so doing, the expert witness fees will become
12 recoverable by Willis Class Counsel pursuant to C.C.P. Section 1033.5(a)(8). This motion is
13 necessary as expert witness fees are not recoverable under CCP section 1021.5. *See Olson, supra.*

14 Willis Class Counsel recognizes that they should not be afforded "carte blanche" to expend
15 expert witness fees under the Court's Order. Accordingly, Willis Class Counsel has attached as
16 Exhibit A a very conservative budget for expert witness fee expenditures for the upcoming Physical
17 Solution proceeding. Willis Class Counsel is willing to "cap" these fees at the budgeted amount of
18 \$140,000.

19 Dated: May 21, 2015

20 Respectfully submitted,

21 KRAUSE KALFAYAN BENINK &
22 SLAVENS, LLP

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24 Ralph B. Kalfayan, Esq.
25 Lynne M. Brennan, Esq.
26 Class Counsel for the Willis Class
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