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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

15 *Plaintiffs,*

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.*
25
26
27
28

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' REPLY IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT
AGREEMENT WITH DEFENDANT
PUBLIC WATER SUPPLIERS**

Date: June 15, 2015

Time: 1:30 PM

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

Judge: Hon. Judge Komar

1 The Willis Class' Motion to Enforce Settlement Agreement is substantively unopposed by
2 the Public Water Suppliers and on that basis alone, this Court must grant the relief sought in the
3 Motion. The Willis Class has alleged and proven that the Public Water Suppliers have breached
4 the Willis Settlement Agreement. The consequences of the PWS' breach are already catastrophic
5 for the Willis Class. The PWS have illegally directed County officials to deny Willis Class
6 Members the right to pump groundwater, in direct contravention to the Willis Settlement
7 Agreement and the Willis Notice of Settlement. The property values for land owned by Willis
8 Class Members have plummeted to zero because they already are being prevented from obtaining
9 permits to build wells to pump groundwater from their properties. Willis Class Members were
10 told that they would need to install meters on their wells and that the amount of water to be
11 pumped in the future might be limited by the Court. But they were never told that they would not
12 have the right to build a well to pump groundwater because that would have directly contravened
13 the Willis Settlement Agreement and the Willis Judgment.

14 The PWS are brazenly and illegally acting as Judge, Jury, and Executioner by instructing
15 Executive Branch officials to deny the rights of tax-paying landowners in the Willis Class from
16 their right to obtain a well permit to pump groundwater in the Antelope Valley. The Judicial
17 Branch, via this Court, has not yet entered a Physical Solution, however the Public Water
18 Suppliers are already enforcing their proposed physical solution ("SPPS") on Willis Class
19 Members. These actions constitute an intentional and illegal breach of the Willis Settlement
20 Agreement and must be enjoined by this Court.

21 As set forth in detail in the Reply Declaration of Lloyd E. Lewis filed concurrently
22 herewith, as far back as August 2014, County officials began informing Willis Class Members
23 (and their assignees/lessees) that they had no right to install a well to pump groundwater below
24 their property. See Lewis Reply Declaration, ¶¶ 6-7. Mr. Lewis wanted to buy 10 acres of land
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1 from the Banilla Family in 2014 to start a small farming operation to help disadvantaged youth in
2 the community. See Lewis Reply Declaration, ¶ 4. Because he has been informed by County
3 officials that he will not be able to build a well to pump groundwater for the property, Mr. Lewis
4 did not purchase the property from the Banilla family. As a direct result of the breach by the
5 PWS of the Willis Settlement Agreement, Mr. Lewis did not start his small farming operation to
6 help disadvantaged youth as a way to "give back" for the life-changing help in learning basic
7 farming skills that he had received as a foster child. See Lewis Reply Declaration, ¶¶ 4, 9. Thus,
8 the breach of the Willis Settlement Agreement by the PWS has already caused serious and
9 cognizable damage to Willis Class Members.
10

11 The Public Water Suppliers' attempt to avoid substantive review of this Motion to Enforce
12 the Willis Settlement Agreement must fail. The PWS are estopped from now arguing (as they did
13 in their Opposition to this Motion) that the Willis Class must wait until the "prove up trial" to
14 enforce the Willis Settlement Agreement. As the PWS admitted in their Opposition to Willis
15 Class' Motion for Court-Appointed Expert:
16

17 "The question whether the two documents [Willis Settlement Agreement and SPPS] are
18 consistent with each other and with California law is itself a question of law. As such, expert
19 testimony is not necessary for its determination."

20 PWS Opposition to Willis Class' Motion for Court-Appointed Expert dated March 13, 2015, at
21 2:26-3:2. (emphasis supplied).

22 Indeed, as the Willis Class' Moving Papers make clear, the terms of the Willis Settlement
23 Agreement that have been breached by the PWS can be directly compared to the terms of the
24 SPPS. Based on this admission by the PWS, the PWS are estopped from now arguing that a
25 ruling on the Willis Class' Motion to Enforce the Willis Settlement Agreement is premature and
26 must now await trial:

27 "Paragraph 5.1.2 of the Proposed Solution provides: 'This Judgment is consistent with the Non-
28 Pumper Class [Willis Class] Stipulation of Settlement and Judgment.' For the Court to make that
finding, the Settling Parties will have to establish during the prove-up trial that contrary to the
Willis Class contention, the Public Water Suppliers did not breach the Willis Settlement."

1 PWS' Opposition to Motion to Enforce Settlement Agreement at 1:17-22.

2 In effect, the PWS are saying that they have the legal right to prevent the Willis Class from
3 enforcing their Settlement Agreement against them right now merely because they added
4 language in a later document that pronounces that the later document is "consistent" with the
5 prior Settlement Agreement. This is an absurd contention. If this were a legally viable strategy,
6 then all parties to settlement agreements could legally enter into a subsequent settlement
7 agreement with different parties and simply "declare" that the subsequent settlement agreement is
8 "consistent" with a prior settlement agreement to avoid liability for breaching the prior settlement
9 agreement. That is not the law. This Court cannot allow the PWS' delay tactic to succeed.
10

11 The PWS have failed to refute that the following provisions of the Willis Settlement
12 Agreement and Judgment have been breached by the Public Water Suppliers:

13 **TERMS OF THE WILLIS SETTLEMENT AGREEMENT BREACHED BY**
14 **DEFENDANT PUBLIC WATER SUPPLIERS:**

15 Pumping of the Settling Parties' share of Native Safe Yield is not subject to any Replacement
16 Assessment.

17 **Willis Settlement Agreement, ¶ III.K.**

18 The Settling Parties agree that the Settling Defendants and the Willis Class Members each have
19 rights to produce groundwater from the Basin's Federally Adjusted Native Safe Yield.

20 **Willis Settlement Agreement, ¶ IV.D.**

21 The Settling Parties agree that the Willis Class Members have an Overlying Right to a correlative
22 share to produce up to 85% of the Basin's Federally Adjusted Native Safe Yield free of
23 Replacement Assessment. The Settling Defendants will not take any positions or enter into any
24 agreements that are inconsistent with the exercise of the Willis Class Members' right to produce
25 and use their correlative share of 85% of the Basin's Federally Adjusted Native Safe Yield.

26 **Willis Settlement Agreement, ¶ IV.D.2.**

27 The Settling Parties acknowledge and agree that they all have the right to recapture Return Flows
28 from Imported Water that they put to reasonable and beneficial use in the Basin, consistent with
California law. The Settling Parties will not be subject to any Replacement Assessment for their
production of an amount equal to the Return Flows from Imported Water that they put to
reasonable and beneficial use in the Basin.

Willis Settlement Agreement, ¶ IV.D.4.a.

The Settling Parties recognize that not all parties to the Coordinated Actions have entered into this Stipulation and that a trial may be necessary as against non-settling parties. The Settling Parties agree to cooperate and coordinate their efforts in any such trial or hearing so as to obtain entry of judgment consistent with the terms of this Stipulation; . . .

Willis Settlement Agreement, ¶ VIII.B.

The Settling Defendants are permanently barred and enjoined from . . . prosecuting, or continuing to prosecute, either directly or indirectly, any Released Claim against any of the Class Members. . .

Amended Final Judgment, ¶ 19.

TERMS OF THE SPPS THAT CONSTITUTE A BREACH OF THE WILLIS SETTLEMENT AGREEMENT BY DEFENDANT PUBLIC WATER SUPPLIERS:

SPPS Term:

1. Production Rights Claimed by Non-Stipulating Parties. Any claim to a right to Produce Groundwater from the Basin by a Non-Stipulating Party shall be subject to procedural or legal objection by any Stipulating Party [includes Defendant Public Water Suppliers].

SPPS, ¶ 5.1.10

SPPS Term:

2. The Non-Pumper Class Stipulation of Settlement, executed by its signatories and approved by the Court in the Non-Pumper Class Judgment, specifically provides for imposition of a Replacement Water Assessment on Non-Pumper Class members. . . .

SPPS, ¶ 9.2.1

SPPS Term:

3. Evidence presented to the Court demonstrates that Production by one or more Public Water Suppliers satisfies the elements of prescription and that Production by overlying landowners during portion(s) of the prescriptive period exceeded the Native Safe Yield. At the time of this Judgment the entire Native Safe Yield is being applied to reasonable and beneficial uses in the Basin. **Members of the Non-Pumper Class do not and have never Produced Groundwater for reasonable beneficial use as of the date of this Judgment. Pursuant to Pasadena v. Alhambra (1949) 33 Cal 2d 908, 931-32 and other applicable law, the failure of the Non-Pumper Class members to Produce any Groundwater under the facts here modifies their rights to Produce Groundwater except as provided in this Judgment.** Because this is a comprehensive adjudication pursuant to the McCarran Amendment, consistent with the California Supreme Court decisions, including In Re Waters of Long Valley Creek Stream System (1979) 25 Cal. 3d 339, this Court makes the following findings: (1) certainty fosters reasonable and

1 beneficial use of water and is called for by the mandate of Article X, section 2; (2) because of this
2 mandate for certainty and in furtherance of the Physical Solution, any New Production, including
3 that by a member of the Non-Pumper Class must comply with the New Production Application
4 Procedure specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-Pumper
5 Class has established a Production Right to the reasonable and beneficial use of Groundwater
6 based on their unexercised claim of right to Produce Groundwater; (4) if in the future a member
7 of the Non-Pumper Class proposes to Produce Groundwater for reasonable and beneficial use, the
8 Watermaster as part of the New Production Application Procedure, has the authority to determine
9 whether such a member has established that the proposed New Production is a reasonable and
10 beneficial use in the context of other existing uses of Groundwater and then-current Basin
11 conditions; and (5) the Watermaster's determinations as to the approval, scope, nature and priority
12 of any New Production is reasonably necessary to the promotion of the State's interest in fostering
13 the most reasonable and beneficial use of its scarce water resources. All provisions of this
14 Judgment regarding the administration, use and enforcement of the Replacement Water
15 Assessment shall apply to each Non-Pumper Class member that Produces Groundwater. . . . The
16 Court finds that this Judgment is consistent with the Non-Pumper Stipulation of Settlement and
17 Judgment.

18 **SPPS, ¶ 9.2.2** (emphasis supplied).

19 **SPPS Term:**

20 **4. New Production Procedure [Applicable to all Willis Class Members]**

21the Watermaster Engineer has authority to recommend that the application for New
22 Production be denied, or approved on condition of payment of a Replacement Water Assessment.

23 **SPPS, ¶ 18.5.13**

24 **THE NET EFFECT OF THE TERMS OF THE SPPS IS TO PERMANENTLY EXCLUDE**
25 **THE WILLIS CLASS FROM THE RIGHT TO PUMP GROUNDWATER FROM THE**
26 **NATIVE SAFE YIELD WHICH IS AN UNEQUIVOCAL BREACH OF THE WILLIS**
27 **SETTLEMENT AGREEMENT BY THE DEFENDANT PUBLIC WATER SUPPLIERS**

28 Non-Overlying Production Rights. The Parties listed in Exhibit 3 have Production Rights in the
amounts listed in Exhibit 3. Exhibit 3 is attached hereto, and incorporated herein by reference.

SPPS, ¶ 5.1.6

Overlying Production Rights. The Parties listed in Exhibit 4, attached hereto and incorporated
herein by reference, have Overlying Production Rights.

SPPS, ¶ 5.1.1

The Stipulating Parties listed in Exhibits 3 and 4 to the SPPS have been permanently
allocated the entire Native Safe Yield of 82,300 AF.2 There are no terms contained in the SPPS

1 whereby a Willis Class Member ever gains the right to pump groundwater from the Native Safe
2 Yield. The Public Water Suppliers unequivocally agreed in the Willis Settlement Agreement that
3 the Willis Class had the right to pump groundwater from the Native Safe Yield and further agreed
4 not to enter into any agreements that were inconsistent with this right. Thus, the Public Water
5 Suppliers breached the Willis Settlement Agreement when they signed the SPPS.
6

7 **DEFENDANT PUBLIC WATER SUPPLIERS' BREACH OF THE WILLIS**
8 **SETTLEMENT AGREEMENT BY ENTERING INTO THE SPPS IS NOT**
9 **EXCUSED BY THE COURT'S SUBSEQUENT INCORPORATION AND**
10 **MERGER OF THE WILLIS SETTLEMENT AGREEMENT INTO A**
11 **PHYSICAL SOLUTION**

12 The fact that the Willis Class agreed to be bound by a later Physical Solution entered by
13 the Court in no way provides a legally cognizable excuse for the Public Water Suppliers' breach
14 of the Willis Settlement Agreement. Both the Consolidation Order and the Amended Final
15 Judgment entered by this Court mandate that the class action settlement agreements will be
16 merged and incorporated into any later Physical Solution.

17 Further, the Public Water Suppliers explicitly agreed to be part of a Physical Solution to
18 the extent it is consistent with the terms of the Willis Settlement Agreement:

19 The Stipulating Parties expect and intend that this Stipulation will become part of a Physical
20 Solution entered 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 a Physical Solution to the extent it is
22 consistent with the terms of this Stipulation and to be subject to Court-administered rules and
23 regulations consistent with California and Federal law and the terms of this Stipulation.

24 **Willis Settlement Agreement, ¶ V.B. (emphasis supplied).**

25 Thus, the Public Water Suppliers had absolutely no legal basis to ignore and then intentionally
26 breach the Willis Settlement Agreement by entering into the SPPS. The terms agreed upon by the
27 Public Water Suppliers, including the Willis Class' right to pump water from the Native Safe
28 Yield, were to be merged and incorporated into the Physical Solution. Instead, the Public Water

1 Suppliers knowingly and intentionally breached the terms of the Willis Settlement Agreement by
2 entering into the SPPS which strips away the rights of the Willis Class to pump groundwater from
3 the Native Safe Yield free of replacement assessment or otherwise.

4 Any argument from the Public Water Suppliers that the Willis Class Members' share of
5 the Native Safe Yield can be zero under the Willis Settlement Agreement is utterly without merit
6 and, indeed, sanctionable. In awarding attorneys' fees to Willis Class Counsel as the "prevailing
7 party" pursuant to C.C.P. Section 1021.5, this Court ruled correctly and obviously that the Willis
8 Settlement Agreement had conferred "substantial benefits" on the Willis Class:
9

10 By eliminating the Public Water Suppliers' prescription claims and maintaining correlative rights
11 to portions of the Basin's native yield, the Willis Class members achieved a large part of their
12 ultimate goal - to protect their right to use groundwater in the future and to maintain the value of
13 their properties. Under these circumstances, they must be considered "successful parties" for
14 purposes of Code of Civil Procedure § 1021.5.

15 Order Awarding Attorneys' Fees at 5:1-5 (Exh. E to Motion).

16 The Willis Settlement Agreement, the Willis Judgment, and the Court's Order Awarding
17 Attorneys' Fees would all be rendered absolutely meaningless if the Willis Class' "share" of the
18 Native Safe Yield could be zero under the Physical Solution adopted by the Court. Such an
19 absurd interpretation by the Public Water Suppliers of these legally-enforceable documents makes
20 a mockery of the judicial system and the Willis Class Members' substantive and procedural rights
21 under the laws of California and the U.S. Constitution.

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23 ///

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CONCLUSION

For all the foregoing reasons, it is clear that the Public Water Suppliers have breached the Willis Settlement Agreement by entering into the SPPS. To rectify this breach, this Court has the power and the jurisdiction to enter an Order stating that the SPPS is null and void as to the Public Water Suppliers based on their breach of the Willis Settlement Agreement.

Dated: June 8, 2015

Respectfully submitted,

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