

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
7

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

25 *Defendants.*
26
27
28

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' RESPONSE TO BORAX
INC.'S AND BOLTHOUSE FARM'S NOTICE
RE CLARIFICATION OF BRIEFING RE
FEDERAL RESERVE RIGHT**

Judge: Hon. Jack Komar

1 The Willis Class does not agree that there is any “confusion” regarding “Briefing re
2 Federal Reserve Right” as U.S. Borax and Bolthouse Farms contend. *See* Notice Re Clarification
3 of Briefing Re Federal Reserve Right, Docket Nos. 10067 & 10068. As set forth in the Willis
4 Class’ Response to the Post-Trial Statement of United States filed June 22, 2015:

5
6 Immediately following the telephonic Case Management Conference on May 15,
7 2015, the Willis Class formally withdrew its objections to the Case Management Statement
8 of the United States filed on May 13, 2015. *See*, Willis Class’ Withdrawal of Objections
9 filed May 15, 2015. The Willis Class’ Withdrawal was based on the Court’s ruling during
10 the May 15, 2015, telephonic CMC that the Willis Class’ objections were overruled because
11 the Court was enforcing Paragraph C of the Willis Settlement Agreement wherein the Willis
12 Class and the Public Water Suppliers agreed to be bound by the Court’s determination of
13 the Federal Reserved Right of the United States. Thus, the Willis Class agrees that the
14 United States need not reintroduce evidence at the Phase VI trial relating to the amount of
15 its Federal Reserved Right as established by this Court and set forth in Paragraph 5.1.4 of
16 the stipulated judgment and proposed physical solution (“SPPS”).

17 Despite the Willis Class’ Withdrawal of Objections, the United States still insisted
18 to the Court that this matter be briefed. On June 12, 2015, the United States filed a
19 seventeen-page “Post-Trial Statement” that contains irrelevant factual information and
20 erroneous interpretations of California water rights law.

21 The Willis Class was the only Party to file objections to the United States’ Case Management
22 Statement filed on May 13, 2015. It is neither surprising nor confusing that the Willis Class is the
23 only Party that substantively responded on June 22, 2015, to the United States’ Post-Trial Statement
24 filed on June 12, 2015.

25 There is no “confusion” whatsoever regarding “Briefing re Federal Reserve Right.”
26 Notwithstanding this fact, Borax and Bolthouse Farms decided to file duplicative requests for
27 “Clarification” with the Court that are nothing more than improper attempts to “remind” this Court
28 that if the proposed physical solution (“SPPS”) is not approved “as is,” then the Federal Reserve
Right will potentially have to be litigated. As this Court properly informed all Parties during the
June 15, 2015, Hearing, the Court is not required to accept the SPPS “as is.” Indeed, the Court
cannot accept the SPPS “as is” without violating California law and established equitable principles
applicable to physical solutions. Even though the Court has not yet ruled on the propriety of the

1 specific provisions of the SPPS, the Court has properly raised concerns regarding provisions in the
2 SPPS, including provisions that would allow Borax, Tejon Ranch, and St. Andrew's Abbey to
3 export water from the Basin. *See, e.g.*, Paragraph 6.4 of SPPS. If the Court does not remove these
4 provisions from the SPPS *sua sponte*, the Willis Class will present evidence and arguments at trial
5 that these provisions must be struck from the SPPS because they are illegal and inequitable.
6

7 At a minimum, then, the language in Paragraph 6.4 of the SPPS that provides an exemption
8 to Borax, Tejon Ranch, and St. Andrew's Abbey from the injunction preventing Parties from
9 exporting water from the Basin will be struck from the SPPS, thereby triggering the entirely
10 improper "dynamite" provision of the SPPS whereby any modification by the trial court **and even**
11 **the appellate court** to the SPPS renders the SPPS *void ab initio*:
12

13 The provisions of the Judgment are related, dependent and not severable. Each and every
14 term of the Judgment is material to the Stipulating Parties' agreement. **If the Court does**
15 **not approve the Judgment as presented, or if an appellate court overturns or remands**
16 **the Judgment entered by the trial court, then this Stipulation is void ab initio** with the
17 exception of Paragraph 6, which shall survive." (emphasis supplied).

18 Stipulation for Judgment and Entry of Physical Solution at ¶ 4, filed March 4, 2015.

19 Including this "dynamite" provision in the SPPS was a reckless and highly cynical act by
20 the drafter(s) of the SPPS and is contrary to law. The Stipulating Parties have the hubris and
21 overwhelming sense of political power to incorporate a provision in the SPPS that, if adhered to,
22 will prevent the trial court **and even the appellate court** from ordering any changes or
23 modifications to the 61-page SPPS. The Stipulating Parties cannot succeed in tying the hands of
24 the trial and appellate courts with respect to the complex and high-stakes physical solution for the
25 Antelope Valley Basin.

26 The Stipulating Parties must deal with the reality that the SPPS **will be modified** and they
27 must plan for trial accordingly. Indeed, the Willis Class will submit modifications to the SPPS
28 during the Phase VI Trial that will bring the SPPS into compliance with the California Supreme

1 Court's unequivocal holding that "the trial court [cannot] define or otherwise limit an overlying
2 owner's future unexercised groundwater rights, in contrast to this court's limitation of
3 unexercised riparian rights." *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224, 1248-
4 49 (2000) (fn. omitted)(emphasis supplied). As the California Supreme Court further held, "no
5 appellate court has endorsed an equitable apportionment solution that disregards overlying
6 owners' existing rights [including an overlying owner's future unexercised groundwater
7 rights]." *Id.* The Willis Settlement Agreement and Willis Judgment uphold the overlying owners',
8 i.e. Willis Class Members', future unexercised groundwater rights and must be merged and
9 incorporated in the Physical Solution ultimately adopted by this Court in compliance with
10 California law as well as this Court's prior Orders. *See, e.g.*, Order Consolidating Cases (Willis
11 Class Judgment must be merged and incorporated into physical solution). Further, in awarding
12 attorneys' fees to Willis Class Counsel under C.C.P. Section 1021.5, this Court properly found that
13 the Willis Settlement Agreement and Willis Judgment guaranteed the "significant benefits" for the
14 Willis Class of "the right to pump groundwater and to maintain property values." Because the
15 SPPS fails to merge and incorporate the Willis Judgment and also fails to uphold the Willis Class'
16 right to pump groundwater and maintain property values (by having a guaranteed right to pump
17 groundwater), the SPPS must be modified by the trial court or appellate court, if necessary. Either
18 way, the "dynamite" provision recklessly included in the SPPS will be triggered and the SPPS will
19 be rendered *void ab initio*. This will occur through no fault of the Willis Class or the trial or
20 appellate courts.

21
22
23
24 In short, the Stipulating Parties cannot continue to exert their formidable political power in
25 an attempt to coerce this Court into accepting the SPPS "as is." Their continued attempts to do so
26 must stop immediately. The 61-page SPPS (plus exhibits) **can and will** be modified by this Court
27 or the appellate court so that it complies with California and Federal law, this Court's Orders, the

1 Willis Settlement Agreement and Willis Judgment, as well as established principles of equity
2 relating to physical solutions. The Stipulating Parties must plan their trial strategies accordingly
3 and cease from seeking "clarification" from this Court anytime a provision of the SPPS is
4 challenged by the Willis Class.
5

6 Dated: June 24, 2015

Respectfully submitted,

7 KRAUSE KALFAYAN BENINK &
8 SLAVENS, LLP

9
10 By: 

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

1 Ralph B. Kalfayan (SBN 133464)
2 Lynne M. Brennan (SBN 149131)
3 KRAUSE KALFAYAN BENINK &
4 SLAVENS, LLP
5 550 West C Street, Suite 530
6 San Diego, CA 92101
7 Tel: (619) 232-0331
8 Fax: (619) 232-4019

9 Class Counsel for the Willis Class

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

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

18 *Plaintiffs,*

19 v.

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

Defendants.

PROOF OF SERVICE

1 I, Cindy Barba, declare:

2 I am a citizen of the United States and employed in San Diego County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address is
4 Krause Kalfayan Benink & Slavens, LLP 550 West C Street, Suite 530, San Diego, California,
92101. On June 24, 2015, I caused the following document(s):

5 **WILLIS CLASS' RESPONSE TO BORAX INC.'S AND BOLTHOUSE FARM'S NOTICE**
6 **RE CLARIFICATION OF BRIEFING RE FEDERAL RESERVE RIGHT**

7 to be served on the parties in this action, as follows:

8 (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara
9 County Superior Court website: www.scefiling.org regarding the Antelope Valley Groundwater
matter.


10 () (BY U.S. Mail) I am readily familiar with the firm's practice of collection and processing
11 of documents for mailing. Under that practice, the above-referenced documents(s) were placed in
12 sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and
California, addressed to:

13 () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other
14 overnight delivery service, for the delivery on the next business day. Each copy was enclosed in
15 an envelope or package designed by the express service carrier; deposited in a facility regularly
16 maintained by the express service carrier or delivered to a courier or driver authorized to receive
documents on its behalf; with delivery fees paid or provided for; addressed as shown on the
accompanying service list.

17 () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of
18 facsimile transmission of documents. It is transmitted to the recipient on the same day in the
19 ordinary course of business.

20 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
21 the above is true and correct.

22 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct.

24 
25 Cindy Barba