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9 Class Counsel for the Willis Class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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  
15 all others similarly situated,

16 *Plaintiffs,*

17 v.

18 LOS ANGELES COUNTY  
19 WATERWORKS DISTRICT NO. 40;  
20 CITY OF LANCASTER; CITY OF  
21 PALMDALE; PALMDALE WATER  
22 DISTRICT; LITTLEROCK CREEK  
23 IRRIGATION DISTRICT; PALM  
24 RANCH IRRIGATION DISTRICT;  
25 QUARTZ HILL WATER DISTRICT;  
26 ANTELOPE VALLEY WATER CO.;  
27 ROSAMOND COMMUNITY SERVICE  
28 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' CASE MANAGEMENT  
STATEMENT**

Date: July 10, 2015

Time: 10:00 a.m.

Place: Telephonic Appearance Only

1 The Willis Class respectfully submits the following Case Management Conference  
2 Statement in advance of the July 10, 2015, Status Conference.

3 The Willis Class continues to oppose the Stipulated Proposed Physical Solution (“SPPS”)  
4 submitted by the Stipulating Parties, which solution *extinguishes* the rights of Willis Class Members  
5 to pump groundwater. The Willis Class further opposes and objects to prove-up proceedings which  
6 deny Willis Class Members their due process rights, unreasonably burdens Class Counsel by  
7 requiring them to challenge the water rights of over 140 Stipulating Parties, and unfairly imposes  
8 obligations on Class Counsel to submit a proof of claim for the entire Willis Class without the  
9 potential of recovering expert witness fees. These circumstances unjustly prejudice the rights of  
10 the Willis Class and raise adequacy of representation issues that are unprecedented. The Court and  
11 Class Counsel owe the absent Class Members a fiduciary duty to ensure the 2011 Willis Judgment  
12 is enforced and to ensure that any physical solution is both fair and reasonable. The Court’s duty  
13 to consider alternative physical solutions and to arrive at one that adequately protects the interests  
14 of those possessing the paramount overlying right to use the Basin’s groundwater has been made  
15 clear by our California Supreme Court. *See Peabody v City of Vallejo*, 2 Cal.3d 351 (1935); *City of*  
16 *Lodi v. East Bay Municipal Utility District*, 7 Cal.2d 316 (1936). Here, the SPPS fails in all  
17 respects. The Court must refuse to approve it and instead impose its own physical solution, one that  
18 is fair and reasonable and adequately meets the reasonable needs of the entire Class.  
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22 The Willis Class does not agree that there is any “confusion” regarding “Briefing re Federal  
23 Reserve Right” as U.S. Borax and Bolthouse Farms contend. *See Notice Re Clarification of*  
24 *Briefing Re Federal Reserve Right*, Docket Nos. 10067 & 10068. As set forth in the Willis Class’  
25 Response to the Post-Trial Statement of United States filed June 22, 2015:

26 Immediately following the telephonic Case Management Conference on May 15,  
27 2015, the Willis Class formally withdrew its objections to the Case Management Statement  
28 of the United States filed on May 13, 2015. *See, Willis Class’ Withdrawal of Objections*  
filed May 15, 2015. The Willis Class’ Withdrawal was based on the Court’s ruling during

1 the May 15, 2015, telephonic CMC that the Willis Class' objections were overruled because  
2 the Court was enforcing Paragraph C of the Willis Settlement Agreement wherein the Willis  
3 Class and the Public Water Suppliers agreed to be bound by the Court's determination of  
4 the Federal Reserved Right of the United States. Thus, the Willis Class agrees that the  
5 United States need not reintroduce evidence at the Phase VI trial relating to the amount of  
6 its Federal Reserved Right as established by this Court and set forth in Paragraph 5.1.4 of  
7 the stipulated judgment and proposed physical solution ("SPPS").

8 Despite the Willis Class' Withdrawal of Objections, the United States still insisted  
9 to the Court that this matter be briefed. On June 12, 2015, the United States filed a  
10 seventeen-page "Post-Trial Statement" that contains irrelevant factual information and  
11 erroneous interpretations of California water rights law.

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

16 There is no "confusion" whatsoever regarding "Briefing re Federal Reserve Right."  
17 Notwithstanding this fact, Borax and Bolthouse Farms decided to file duplicative requests for  
18 "Clarification" with the Court that are nothing more than improper attempts to "remind" this Court  
19 that if the proposed physical solution ("SPPS") is not approved "as is," then the Federal Reserve  
20 Right will potentially have to be litigated. As this Court properly informed all Parties during the  
21 June 15, 2015, Hearing, the Court is not required to accept the SPPS "as is." Indeed, the Court  
22 cannot accept the SPPS "as is" without violating California law and established equitable principles  
23 applicable to physical solutions. Even though the Court has not yet ruled on the propriety of the  
24 specific provisions of the SPPS, the Court has properly raised concerns regarding provisions in the  
25 SPPS, including provisions that would allow Borax, Tejon Ranch, and St. Andrew's Abbey to  
26 export water from the Basin. *See, e.g.,* Paragraph 6.4 of SPPS. If the Court does not remove these  
27 provisions from the SPPS *sua sponte*, the Willis Class will present evidence and arguments at trial  
28 that these provisions must be struck from the SPPS because they are illegal and inequitable.

1 At a minimum, then, the language in Paragraph 6.4 of the SPPS that provides an exemption  
2 to Borax, Tejon Ranch, and St. Andrew's Abbey from the injunction preventing Parties from  
3 exporting water from the Basin will be struck from the SPPS, thereby triggering the entirely  
4 improper "dynamite" provision of the SPPS whereby any modification by the trial court **and even**  
5 **the appellate court** to the SPPS renders the SPPS *void ab initio*:  
6

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

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

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

20 The Stipulating Parties must deal with the reality that the SPPS **will be modified** and they  
21 must plan for trial accordingly. Indeed, the Willis Class will submit modifications to the SPPS  
22 during the Phase VI Trial that will bring the SPPS into compliance with the California Supreme  
23 Court's unequivocal holding that **"the trial court [cannot] define or otherwise limit an overlying**  
24 **owner's future unexercised groundwater rights, in contrast to this court's limitation of**  
25 **unexercised riparian rights."** *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224, 1248-  
26 49 (2000) (fn. omitted)(emphasis supplied). As the California Supreme Court further held, **"no**  
27 **appellate court has endorsed an equitable apportionment solution that disregards overlying**  
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1 owners' existing rights [including an overlying owner's future unexercised groundwater  
2 rights].” *Id.* (emphasis supplied). The Willis Settlement Agreement and Willis Judgment uphold  
3 the overlying owners’, *i.e.* Willis Class Members’, future unexercised groundwater rights and must  
4 be merged and incorporated in the Physical Solution ultimately adopted by this Court in compliance  
5 with California law as well as this Court’s prior Orders. *See, e.g.*, Order Consolidating Cases  
6 (Willis Class Judgment must be merged and incorporated into physical solution). Further, in  
7 awarding attorneys’ fees to Willis Class Counsel under C.C.P. Section 1021.5, this Court properly  
8 found that the Willis Settlement Agreement and Willis Judgment guaranteed the “significant  
9 benefits” for the Willis Class of “the right to pump groundwater and to maintain property values.”  
10 Because the SPPS fails to merge and incorporate the Willis Judgment and also fails to uphold the  
11 Willis Class’ right to pump groundwater and maintain property values (by having a guaranteed  
12 right to pump groundwater), the SPPS must be modified by the trial court or appellate court, if  
13 necessary. Either way, the “dynamite” provision recklessly included in the SPPS will be triggered  
14 and the SPPS will be rendered *void ab initio*. This will occur through no fault of the Willis Class  
15 or the trial or appellate courts.

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18 In short, the Stipulating Parties cannot continue to exert their formidable political power in  
19 an attempt to coerce this Court into accepting the SPPS “as is.” Their continued attempts to do so  
20 must stop immediately. The 61-page SPPS (plus exhibits) **can and will** be modified by this Court  
21 or the appellate court so that it complies with California and Federal law, this Court’s Orders, the  
22 Willis Settlement Agreement and Willis Judgment, as well as established principles of equity  
23 relating to physical solutions. The Stipulating Parties must plan their trial strategies accordingly  
24 and cease from seeking “clarification” from this Court anytime a provision of the SPPS is  
25 challenged by the Willis Class.  
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1 As stated in the Willis Class' Withdrawal of Objections, the Willis Class reserves the right  
2 to object to other provisions of the SPPS relating to the Unused Federal Reserve Right. For  
3 example, the Willis Class will object at trial to Paragraph 5.1.4.1 of the SPPS which provides:

4 In the event the United States does not Produce its entire 7,600 acre-feet in any given  
5 Year, **the unused amount in any Year will be allocated to the Non-Overlying**  
6 **Production Rights holders**, except for Boron Community Services District and West  
7 Valley County Water District, in the following Year, in proportion to Production Rights  
8 set forth in Exhibit 3. **This Production of unused Federal Reserved Water Right**  
**Production does not increase any Non-Overlying Production Right holder's decreed**  
**Non-Overlying Production Right amount or percentage . . .** (emphasis supplied).

9 There is absolutely no basis in law or equity to allocate the entire Unused Federal Reserve Right,  
10 estimated at over 6,000 AF per year, to the appropriators/Public Water Suppliers. This is especially  
11 true because the SPPS allocates zero of the Native Safe Yield to the Willis Class (which constitutes  
12 an unequivocal breach of the Willis Settlement Agreement by the Public Water Suppliers). Further,  
13 Paragraph 5.1.4.1 results in yet another breach of the Willis Settlement Agreement because, despite  
14 its self-serving statement to the contrary, the production by the Public Water Suppliers does  
15 increase the percentage of the Native Safe Yield above and beyond the 15% production limit agreed  
16 to by the PWS in both the Willis Class Settlement Agreement and the Wood Class Settlement  
17 Agreement. The Willis Class will submit evidence at trial that the SPPS' allocation of the Unused  
18 Federal Reserve Right to the PWS is both illegal and inequitable. Paragraph C of the Willis  
19 Settlement Agreement in no way limits the Willis Class' ability to present this evidence at trial.  
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22 Willis Class Counsel again informs the Court that it will be impossible for Class Counsel  
23 to effectively oppose a prove-up of the SPPS. The Stipulating parties identified hundreds of  
24 percipient witnesses and retained many expert witnesses. Moreover, in reliance on the settlement  
25 we reached over 4 years ago, Class Counsel has not participated in discovery regarding the matters  
26 at issue. Class Counsel will not be able to adequately oppose any of the evidence during the  
27 physical solution or Phase VI trial. As the Court is aware, Willis Class Counsel has not conducted  
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1 any discovery with respect to any of these witnesses or documents because these parties were never  
2 adverse to the Willis Class (with the exception of the Public Water Suppliers with whom the Willis  
3 Class settled all claims in the Willis Final Judgment). In addition, Willis Class Counsel was denied  
4 Court-appointed experts to determine the reasonable and beneficial use of all parties to the  
5 adjudication, determine alternative proposed physical solutions, and evaluate the cost and burden  
6 of the SPPS on the Willis Class. Lastly, the Willis Class has not been served with any proper notice  
7 or pleading that their water rights may be modified by the Court by and through the  
8 SPPS. Mounting an effective opposition to a prove-up proceeding related to a stipulation and  
9 proposed physical solution among 140 parties under these circumstances and over a two-month  
10 period will be an impossible task for Willis Class Counsel. The prove-up hearing or trial proceeding  
11 is fundamentally unfair and prejudicial to the Willis Class. The evidence that will be presented by  
12 the stipulating parties cannot effectively be opposed by any of the non-stipulating parties. The  
13 reasonable and beneficial uses of the Basin' water by thousands of persons, at a macro level and  
14 micro level, are in issue in these proceedings and the Class has no expert and was not afforded  
15 ample time to effectively oppose the presentation of evidence by all the parties. The net result is a  
16 denial of substantive and procedural due process for the Willis Class.

17 Dated: July 7, 2015

18 Respectfully submitted,

19 KRAUSE KALFAYAN BENINK & SLAVENS, LLP

20 By: 

21 Ralph B. Kalfayan, Esq.

22 Lynne M. Brennan, Esq.

23 Class Counsel for the Willis Class

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ESTRADA, on behalf of themselves and  
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LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40;  
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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

**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 July 7, 2015, I caused the following document(s):

5 **WILLIS CLASS' CASE MANAGEMENT STATEMENT**

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

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

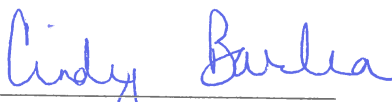
10 ( ) (BY U.S. Mail) I am readily familiar with the firm's practice of collection and processing  
11 of documents for mailing. Under that practice, the above-referenced documents(s) were placed in  
12 sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and  
deposited such envelope(s) with the United States Postal Service on the same date at San Diego,  
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  
ordinary course of business.

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

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

23   
24 Cindy Barba  
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