

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
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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
14 others similarly situated,

15 *Plaintiffs,*

16 v.

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

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

**WILLIS CLASS' NOTICE OF MOTION
AND MOTION IN LIMINE NO. 2
RE: OPINION TESTIMONY ON
REASONABLE AND BENEFICIAL USE
OF GROUNDWATER BY THE SMALL
PUMPER CLASS**

Date: August 3, 2015

Time: 10:00 A.M.

Place: Los Angeles Superior Court
111 North Hill Street, Room 222
Los Angeles, CA 90012

Judge: Hon. Jack Komar

1 TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that on August 3, 2015, at 10:00 a.m., in Room 222 of the Los
3 Angeles Superior Court (or such other department that the Court shall designate), located at 111
4 North Hill Street, Los Angeles, California, a hearing will be held on Willis Class' Motion in Limine
5 Number Two for an order excluding expert opinion testimony on the reasonable and beneficial use
6 of groundwater by the Small Pumper Class.
7

8 The motion is based on this Notice, the attached Memorandum of Points and Authorities,
9 and such other and further evidence as the Court adduces at the hearing.

10 **MOTION IN LIMINE NO. 2**

11 On July 9, 2015, Class Counsel for the Wood Class, Mr. McLachlan, posted the expert
12 witness report of the Court-appointed expert witness, Mr. Timothy Thompson (the "Report"). The
13 Report includes opinion testimony on reasonable and beneficial use of groundwater by the surveyed
14 class members. Specifically, on page 2, it states: "In the evaluations conducted as part of this study,
15 groundwater use by the PCMs surveyed appeared consistent with the concepts of reasonable and
16 beneficial use."
17

18 On July 27, 2015, after notice and agreement of counsel, Mr. Thompson was deposed by
19 Class Counsel for the Willis Class. In deposition, Mr. Thompson testified that he will not be giving
20 any opinions on reasonable and beneficial uses; only the fact of use and nature of use by the selected
21 class members. Specifically, Mr. Thompson testified in deposition:
22

23 Q: Okay. Did you do any analysis regarding
reasonable uses?

24 A: During the course of the interviews with each
25 class member, I asked them what they used their water
for.

26 Q: Did you make any determination as to whether
or not it was reasonable?

27 MR. McLACHLAN: I'm going to object. That's
clearly a legal conclusion.

28 MR. KALFAYAN: Oh, okay.

1 Q Are you going to offer any opinion regarding
2 reasonable beneficial use by the Small Pumper Class?

3 MR. McLACHLAN: I'm not sure I understand the
4 question, but I'm going to ask him questions about how
5 these people use their water. Then I will certainly be
6 asking the Court for a finding along those lines.

7 MR. KALFAYAN: But he's not --

8 Q: Are you going to give any opinions on
9 reasonable beneficial use of water, "yes" or "no"?

10 A: In the course of my work I requested
11 information on what the individuals use their water
12 for. That is typically domestic uses, livestock,
13 irrigation, small landscape uses.

14 Q: But that's all you're going to testify to, as
15 to what their water use was for, correct?

16 A: Yes.

17 Q: You're not going to be testifying whether
18 that's reasonable or not reasonable under the law?

19 A: It seems like a legal question I'm probably
20 not qualified for.

21 Q: Thank you.

22 Pages 62:11-25 to 63:1-16

23 THE WITNESS (Mr. Thompson): No, I'm not asked to opine on
24 whether the water use of the people that are my clients
25 are using it for beneficial purposes.
26 Pages 77:24-25 to 78:1.

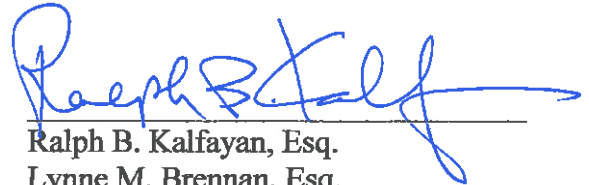
27 The Court should exclude any opinions from Mr. Thompson on whether the water use of
28 small pumpers was reasonable and beneficial. The Court may exclude the testimony if it goes
beyond the opinions expressed during the witness' deposition *and* the witness affirmatively stated
during the deposition that those were the *only* opinions he or she intended to offer at trial. *See*
Jones v. Moore, 80 Cal.App.4th 557, 564-565 (2000); *see also, Easterby v. Clark*, 171 Cal. App.
4th 772, 780 (2009) ("expert may not offer testimony at trial that exceeds the scope of his deposition
testimony *if* the opposing party has no notice or expectation that the expert will offer the new
testimony, or *if* notice of the new testimony comes at a time when deposing the expert is
unreasonably difficult") (emphasis in original). Here, Mr. Thompson expressly testified that he
will not be offering any opinions at trial regarding reasonable and beneficial use. Thus, the Court

1 should exclude any opinions from the expert, and the opinion contained in the expert report, on
2 whether or not the use of water by class members was reasonable.

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4 Dated: July 31, 2015

Respectfully submitted,

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6 KRAUSE, KALFAYAN, BENINK &
SLAVENS, LLP

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