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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
DISTRICT NO. 40; CITY OF LANCASTER;
18 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' REPLY BRIEF IN
SUPPORT OF MOTION TO WITHDRAW
BASED ON CONFLICT OF INTEREST OR,
IN THE ALTERNATIVE, MOTION FOR
CONTINUANCE OF THE PHASE VI
PHYSICAL SOLUTION TRIAL**

Date: August 25, 2015

Time: 10:00 A.M.

Place: Santa Clara County Superior Court
191 N. 1st Street, Dept. 12
San Jose, CA 95113

Judge: Hon. Jack Komar

1 Wood Class Counsel's Opposition fails to address the irreconcilable and actual conflict
2 of interest that has arisen within the Wood Class and within the Willis Class (depending on the
3 Court's interpretation of the Willis Class definition) since March 4, 2015, when the Stipulation and
4 proposed Physical Solution ("SPPS") was filed by the 140 Stipulating Parties, including the Wood
5 Class. In all of the years prior to the negotiation and official filing of the SPPS, the Wood Class
6 and the Willis Class were both aligned against the Public Water Suppliers. Both Classes, whose
7 Members own over 60% of the land in the Antelope Valley Basin, had a joint interest in defeating
8 the Public Water Suppliers' claims of prescription. However, because the legal interests and legal
9 strategies of both Classes were not completely aligned, thereby creating potential conflicts of
10 interest within the Classes, this Court granted motions filed by both the Willis Class and the Public
11 Water Suppliers to amend the definition of the Willis Class to exclude any persons who have
12 pumped groundwater in the past.

13 Undeniably, this potential conflict of interest within the Classes ripened into an
14 irreconcilable and actual conflict of interest when the Wood Class became a signatory to the
15 SPPS and actively began to litigate against the interests and rights of the Nonpumper Willis Class.¹
16 The fundamental problem with Wood Class Counsel's decision to sign the SPPS and actively litigate
17 against the Nonpumper Willis Class is that 2,400 out of his 3,400 Small Pumper clients also own
18 parcels of land on which they have never pumped water. Wood Class Counsel is prohibited by
19 the California Rules of Professional Conduct from breaching his undivided duty of loyalty to his
20 clients, which includes a duty of loyalty to the 2,400 absent Wood Class Members who are
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25 ¹ Paragraph 9.2.2 of the SPPS unequivocally (and illegally) states that the Willis Class' water rights have been
26 "modified" and that the Nonpumper Willis Class has no right to pump groundwater from the Native Safe Yield.
27 Paragraph 18.1.5.13 *et. seq.* of the SPPS illegally requires Willis Class Members to comply with onerous and expensive
28 requirements before the Watermaster, in its discretion, approves a Member's application to pump groundwater. It is
undisputed that adoption of the SPPS "as is" extinguishes the Nonpumpers' right to pump from the native Safe Yield
and would be catastrophic to the property values of the Nonpumping parcels in the Basin. Consequently, advocating
adoption of the SPPS "as is" by Wood Class Counsel is directly adverse to persons who own Nonpumping parcels in
the Basin.

1 Nonpumpers as well as Small Pumpers. Moreover, if the Court adopts Wood Class Counsel's
2 interpretation of the Willis Class definition rather than the interpretation espoused by Willis Class
3 Counsel and the Public Water Suppliers, then Willis Class Counsel also are faced with an
4 irreconcilable conflict of interest that would lead to an untenable breach of their undivided duty of
5 loyalty to absent Willis Class Members who also own parcels of land on which they pump water.
6 Willis Class Counsel are actively litigating against the adoption of the SPPS "as is," which includes
7 litigating against certain stipulated rights of the Wood Class in the SPPS which are either illegal or
8 unfair to the Willis Class.² Either way, Willis Class Counsel was duty-bound to bring this serious
9 and massive ethical dilemma to the Court's attention because the actual conflict of interest created
10 by the SPPS directly impacts the attorney-client relationship between Wood Class Counsel and his
11 absent class members as well as the attorney-client relationship between Willis Class Counsel and
12 their absent class members.
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15 Even in the class action context, courts that have addressed conflicts of interest implicating
16 an attorney's duty of loyalty owed to clients recognize that the clients' interests are paramount:

17 The Court begins with California law's emphasis on the duty of loyalty. The
18 prohibition on concurrent representation is designed to ensure the attorney's duty of
19 undivided loyalty, and the client's legitimate expectation thereof. *Flatt*, 9 Cal.4th at
20 284, 36 Cal.Rptr.2d 537, 885 P.2d 950. "Attorneys who concurrently represent more
21 than one client should not have to choose which client's interests are paramount or
22 make a choice between conflicting duties." *Sharp*, 163 Cal.App.4th at 428, 78
23 Cal.Rptr.3d 37.

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25 *White v. Experian Info. Solutions*, 993 F.Supp.2d 1154, 1167 (C.D. Cal. 2014), *as amended* (May
26 1, 2014).

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28 ² For example, under the SPPS, Wood Class Members can assert Water Code 106 priority to the Native Safe
Yield, while Willis Class Members who seek domestic use are prohibited from doing so. Also, Wood Class Members
are not required to install meters to monitor their groundwater pumping, while Willis Class Members are required to
install meters. Moreover, even though the Court-appointed expert testified that the median groundwater use of Wood
Class Members was only 1.2 AF, the SPPS provides Wood Class Members with a permanent allocation of 3 AF free
of replacement assessment, while Willis Class Members are permanently excluded from the NSY under the SPPS.
**WILLIS CLASS' REPLY BRIEF IN SUPPORT OF MOTION TO WITHDRAW BASED ON CONFLICT
OF INTEREST OR, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE OF THE PHASE VI
PHYSICAL SOLUTION TRIAL**

1 The Court's analysis must focus on the extent and permanence of the actual conflict of
2 interest in the class action case (or cases). Where the conflict of interest is "short-lived, did not pit
3 current clients against one another, and did not substantially affect the terms of the settlement,"
4 then class counsel will not be deemed to have breached their duty of loyalty to absent class
5 members. See *White*, 993 F.Supp.2d at 1167. On the other hand, when class counsel
6 "simultaneously represented two different sets of clients who actively had adverse interests in the
7 class actions, one who wanted settlement and another who did not," then a breach of the duty of
8 loyalty to actual and potential absent class members existed, thereby preventing class counsel from
9 continuing their representation of the putative class in a second class action. See *Andrews Farms*
10 *v. Calcot, LTD.*, No. CV-F-07-0464LJOSKO, 2010 WL 4010146, at *3 (E.D. Cal. Oct. 13, 2010),
11 citing *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL 4287517 (N.D. Cal. Dec. 6, 2007).
12 That is precisely the case here. One set of clients wants the SPPS entered as a judgment; one set of
13 clients does not. That is an actual conflict, and bars continued class representation.

14 Applying California law, the District Court Judge in *Moreno v. Autozone, Inc.*, found an
15 actual conflict of interest and resulting breach of the duty of loyalty to concurrent class action
16 clients because the clients had adverse interests relating to a settlement agreement entered in a
17 separate class action:

18 The Court finds that Moreno and Medrano, as objectors to the *Martinez* settlement,
19 have an actual conflict of interest with, and adverse interest to, declarants McDaniel,
20 Knox and Velox, each of whom is a *Martinez* class member that has not objected to
21 the settlement and has submitted a claim form for payment. Bailey Pinney's
22 representation of Moreno and Medrano from late 2005 to the present has obligated
23 the law firm to advocate that the settlement and judgment in *Martinez* should not be
24 approved—a position that Bailey Pinney has zealously advanced before the state trial
25 and appellate courts. This advocacy is adverse to the interests of McDaniel, Knox
26 and Velox, also clients of Bailey Pinney since at least November 2006, as they are
27 *Martinez* class members who have approved the settlement, submitted claim forms,
28 and await payment. Cf. *Georgine v. Amchem Products, Inc.*, 160 F.R.D. 478, 495 n.
25 (E.D.Pa.1995) (noting that objectors often have adverse interests to class members
approving settlement); *In re Corn Derivative Antitrust Litig.*, 748 F.2d 157, 162 (3d.
Cir.1984) (affirming disqualification of attorney representing objector to class
WILLIS CLASS' REPLY BRIEF IN SUPPORT OF MOTION TO WITHDRAW BASED ON CONFLICT
OF INTEREST OR, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE OF THE PHASE VI
PHYSICAL SOLUTION TRIAL

1 settlement on appeal because his firm had previously represented class members who
2 supported the settlement).

3 *5 Bailey Pinney's assertion that no actual conflict of interest has existed because
4 "[h]ow amantly plaintiffs and declarants do or do not oppose the settlement is
5 unknown" (Opp. at 9:13-14) flies in the face of the positions taken by the declarants
6 and the Plaintiffs in the *Martinez* action. Contrary to Bailey Pinney's representations
7 in its opposition brief and at oral argument, Moreno and Medrano challenged not
8 merely the scope of the release created by the *Martinez* settlement, but the substance
9 of the *Martinez* settlement itself. *See Martinez*, 2007 WL 1395477 at *5; *see also*
Docket No. 16, Exh. 10. Accordingly, the Court rejects Bailey Pinney's assertion that
the interests of Knox, McDaniel, Veloz, Medrano and Moreno have all aligned during
the relevant time periods where there has been concurrent representation. Since at
least November 2006 (when Bailey Pinney began representing Knox, McDaniel and
Veloz in this matter), Bailey Pinney has represented clients with an actual conflict of
interest with respect to the outcome of the *Martinez* settlement.

10 *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL 4287517, at *4-5 (N.D. Cal. Dec. 6,
11 2007)

12 Like class counsel in *Moreno vs Autozone*, Wood Class Counsel now represents thousands
13 of clients with adverse interests relating to the SPPS. Specifically, Wood Class Counsel represents
14 2,400 class action members who oppose the adoption of the SPPS "as is" because of the adverse
15 effect of the SPPS on their rights as Nonpumping landowners, while simultaneously representing
16 Class Representative Richard Wood and the 1,400 absent class members who only own Small
17 Pumper parcels and who want this Court to adopt the SPPS "as is."³ Simply stated, Mr. Wood and
18 the other 1,400 Small Pumper "only" absent Class Members have no legal interest in what happens
19 to the rights of Nonpumper landowners. The actual conflict of interest within the Wood Class
20 created by the SPPS creates an undeniable breach of the duty of loyalty owed by Wood Class
21 Counsel to his clients. If Willis Class Counsel is deemed to represent the 2,400 Small Pumpers or
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24 ³ To be clear, both the Wood Class Action and the Willis Class Action are not your typical, run-of-the-mill,
25 "low value" class action cases where the stakes are \$20 or so in refunds or coupons for an overpriced consumer product,
26 for example. To the contrary, the economic value of both the water rights and property values at stake in these class
27 actions are individually (per class member) in the thousands to tens of thousands and even millions of dollars and in
28 excess of one billion dollars in the aggregate. In other words, unlike more "typical" class actions, these unprecedented
class actions in the context of a groundwater adjudication are of considerable economic value and consequence to each
and every absent class member. The economic value and consequence of the Wood Class Action and the Willis Class
Action underscores the need for and significance of Class Counsel to uphold their fiduciary duties to each and every
absent class member, including the duty of loyalty, and also underscores the need for and significance of the Court's
fiduciary duty owed to each and every absent class member.⁴

1 "Dual Class Members," then Willis Class Counsel will have the same actual conflict of interest,
2 just in reverse (Willis Class opposes adoption of the SPPS "as is," which is adverse to the interests
3 of Small Pumper Class Members).

4 Of course, Willis Class Counsel did not do anything to bring about the actual conflict of
5 interest created by the SPPS. To the contrary, prior to the creation of the SPPS, Willis Class
6 Counsel negotiated a settlement with the Public Water Suppliers that fully respected the correlative
7 rights of the Wood Class. Also, Willis Class Counsel agreed to the Waldo Accord which
8 recognized the correlative rights of both Willis Class and Wood Class Members (the Waldo Accord
9 was rejected only by District 40, leading to many more years of expensive and protracted litigation
10 for the Basin as well as to a subsequent intentional and material breach of the Willis Settlement
11 Agreement by the Public Water Suppliers). Significantly, Willis Class Counsel also repeatedly
12 attempted to be brought into the settlement negotiations that ultimately led to the SPPS which was
13 executed by the 140 Stipulating Parties, including the Wood Class. Every attempt by Willis Class
14 Counsel to be brought into the settlement negotiations leading to the SPPS was rejected by the
15 Stipulating Parties (including illegally rejected by the Public Water Suppliers). Willis Class
16 Counsel's banishment from settlement negotiations leading up to the SPPS resulted in the interests
17 of thousands of Nonpumpers going unrepresented during the settlement negotiations. Not
18 surprisingly then, the interests of the Nonpumpers were obliterated in the SPPS.⁴ The problem for
19 Wood Class Counsel in light of these undisputed facts is that Wood Class Counsel acted adversely
20 to the legal interests of 2,400 of his own clients in negotiating and executing the SPPS. California
21 law prohibits Wood Class Counsel's unethical conduct and this Court must take corrective steps to
22 remedy the ethical violations of Wood Class Counsel.

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27 ⁴ As Willis Class Counsel has previously informed this Court, Willis Class Counsel will present evidence during
28 the Phase VI Physical Solution Trial consisting of a "modified" SPPS that will adequately and fairly incorporate the
groundwater rights into the existing SPPS. If the Court adopts the modified SPPS submitted by Willis Class Counsel,
the actual conflict of interest within the Wood Class and (potentially) the Willis Class would no longer exist.

1 This Court must take action to protect the legal interests of the 2,400 absent Wood Class
2 Members who also are Nonpumpers. Their legal interests as Nonpumpers are adverse to the
3 remaining 1,400 Wood Class Members and to Wood Class Counsel with respect to the SPPS. Their
4 legal rights in this adjudication must be represented, either by creating a separate or sub class or,
5 more adequately, by requiring each of the 2,400 clients to be individually served with a Complaint
6 by the Public Water Suppliers. If the 2,400 Small Pumper Wood Class Members who also own
7 Nonpumping parcels are deemed to be Willis Class Members, then Willis Class Counsel would be
8 breaching their duty of loyalty to these 2,400 clients by opposing the SPPS. This simply cannot
9 happen. As with the actual conflict of interest in the Wood Class created by the SPPS, the legal
10 rights of the 2,400 Dual Class Members in the Willis Class must be represented, either by creating
11 a separate or sub class or, more adequately, by requiring each of the 2,400 clients to be individually
12 served with a Complaint by the Public Water Suppliers.

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15 To the extent anyone believed that this serious ethical dilemma was merely "theoretical,"
16 that belief was shattered when Mr. Olaf Landsgaard, who is but one of the 2,400 Small Pumper
17 Wood Class Members who also own property on which they have never pumped water, made an
18 appearance at the Phase VI (Physical Solution) trial on August 3, 2015. Mr. Landsgaard had filed
19 a declaration with this Court on July 10, 2015 (Doc. No. 10123), stating his support for the SPPS
20 as to the Small Pumper properties in the Basin that he owns, but objecting to the SPPS as to the
21 Nonpumper properties in the Basin that he also owns. As an attorney and Wood Class Member
22 (and possible Willis Class Member), Mr. Landsgaard wanted to pose questions to Mr. Wildermuth,
23 a witness called to testify at trial by Wood Class Counsel. Willis Class Counsel had no objections
24 to Mr. Landsgaard cross-examining Mr. Wildermuth. However, Wood Class Counsel objected to
25 Mr. Landsgaard examining the trial witness on the basis that Mr. Landsgaard was represented by
26 Wood Class Counsel and did not have an independent right to examine the witness. Wood Class
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1 Counsel then asked the Court to allow him to "confer with his client," Mr. Landsgaard. The Court
2 agreed and Wood Class Counsel (Mr. McLachlan) and Mr. Landsgaard had a private conversation
3 at the back of the courtroom. Following the conversation, Wood Class Counsel stated on the record
4 that Mr. Landsgaard had agreed to "withdraw" his questions that he wanted to pose to Mr.
5 Wildermuth.
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7 The sequence of events that occurred at the trial on August 3rd with respect to Mr.
8 Landsgaard highlights a number of serious ethical problems that have arisen since the filing of the
9 SPPS. First, Willis Class Counsel never had the opportunity to speak to Mr. Landsgaard regarding
10 the questions he intended to ask Mr. Wildermuth. Mr. Landsgaard's intended questions and the
11 testimony elicited from those questions might have been helpful to the interests of the Nonpumper
12 Willis Class in particular or to the interests of Nonpumpers in general.⁵ However, Wood Class
13 Counsel asserted the attorney-client privilege as to his private communication with Mr.
14 Landsgaard.⁶ Thus, even if Mr. Landsgaard is deemed a client of Willis Class Counsel as well,
15 Willis Class Counsel was prevented from speaking to their own client based on the assertion of
16 attorney-client privilege by Mr. Landsgaard's "other attorney", i.e. Wood Class Counsel.
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18 Second, Willis Class Counsel's communication with Mr. Landsgaard would be a violation
19 of the California Code of Professional Responsibility Rule 2-100 which prohibits attorneys from
20 communicating with parties represented by counsel. Alternatively, if Mr. Landsgaard is deemed
21 not to be a client of Willis Class Counsel (as Willis Class Counsel and the Public Water Suppliers
22 contend), then Mr. Landsgaard was prevented at trial from representing his own property interests
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26 ⁵ If the Court ruled that Mr. Landsgaard would not be permitted to ask questions of the witness because he is
27 not Counsel of Record for any party, then Willis Class Counsel could have asked Mr. Landsgaard's questions of the
witness during Willis Class Counsel's cross-examination of Mr. Wildermuth.

28 ⁶ Likewise, Mr. McLachlan references "at least 50" discussions with "Dual Class Members" in his Opposition
Declaration that Willis Class Counsel were not privy to, and cannot ethically discuss with those 50 Wood Class
Members who may also be Members of the Willis Class.⁷

1 in his Nonpumping parcels (as an unrepresented party). Plus, Willis Class Counsel was prevented
2 from speaking to a potential third party witness who could benefit the Willis Class' case.

3 Third, by choosing to sign the SPPS and actively litigate against the legal interests of
4 Nonpumpers, Wood Class Counsel created an actual and massive conflict of interest within the
5 Wood Class. By continuing to ignore this actual conflict of interest, Wood Class Counsel has
6 breached the undivided duty of loyalty he owes to Mr. Landsgaard and the other 2400 absent Wood
7 Class Members.⁷ Wood Class Counsel erroneously argues that he can shirk this duty of loyalty by
8 claiming that Willis Class Counsel is duty-bound to protect the rights of Nonpumpers, including
9 Mr. Landsgaard. Willis Class Counsel and the Public Water Suppliers assert that the Willis Class
10 definition excludes persons who have pumped water on their property, including Mr. Landsgaard
11 and the other 2400 Small Pumper Wood Class Members who also own Nonpumping properties.
12 See Declaration of Ralph B. Kalfayan in Support of Reply Brief Re Motion to Withdraw Based on
13 Conflict of Interest or, in the Alternative, Motion for Continuance of the Phase VI Physical Solution
14 Trial, filed concurrently herewith.

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17 Other than Mr. Landsgaard's specific property ownership interests, the other 2,400 Wood
18 Class Members could own myriad "assortments" of properties in the Basin, both Pumping and
19 Nonpumping, that would make them more or less adamant about objecting to or supporting the
20 SPPS. For example, one Wood Class Member could own one Pumping parcel and ten
21 Nonpumping parcels and want to object to the SPPS. Another Wood Class Member could own
22 10 Pumping parcels and only one Nonpumping parcel and not want to object to the SPPS. With
23 respect to acreage, one Wood Class Member may own a Pumping parcel of two acres and also a
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26 ⁷ Wood Class Counsel's zeal in advocating Court approval of the SPPS "as is" despite his knowledge that he
27 represents 2,400 clients whose Nonpumper properties would be rendered worthless by the SPPS is nothing short of jaw
28 dropping. Rather than thanking Willis Class Counsel for putting in 100-plus man hours investigating the extent of the
(potential) overlap between the Willis Class and Wood Class and for bringing this serious ethical dilemma to the
Court's attention, Wood Class Counsel instead has the audacity to frivolously assert that Willis Class Counsel should
be sanctioned for bringing this Motion.

1 Nonpumping parcel of one hundred acres and want to object to the SPPS. Another Wood Class
2 Member with a small number of acres on their Nonpumping parcel may not want to object to the
3 SPPS. The possible additional permutations of property ownership of the 2,400 Wood Class
4 Members and resulting desire to object or not object to the SPPS are too numerous to list. The
5 actual conflict of interest within the Wood Class is nonetheless undeniable.
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7 Even assuming *arguendo* that Wood Class Counsel is correct and that Mr. Landsgaard and
8 the other 2400 Small Pumper Wood Class Members who also own Nonpumping properties are also
9 Nonpumper Willis Class Members (aka "Dual Class Members"), then this would only result in
10 ethical violations by Willis Class Counsel (through no fault of their own) of their undivided duty
11 of loyalty to these clients caused by Willis Class Counsel's required opposition to the SPPS and
12 the stipulated rights of the Small Pumper Wood Class. If the Court agrees with Wood Class
13 Counsel and rules that Mr. Landsgaard and the other 2400 Small Pumper Wood Class Members
14 are also Members of the Willis Class, then Willis Class Counsel cannot continue to violate their
15 duty of loyalty to these clients and they must withdraw from representation of the Willis Class.
16 Alternatively, Willis Class Counsel could potentially continue to represent the "pure" Nonpumpers
17 in the Willis Class (such as David Estrada and the Archdiocese of Los Angeles) if the "Dual Class
18 Members" are placed in a separate or sub class or if the Dual Class Members are individually served
19 with a Complaint by the Public Water Suppliers.⁸
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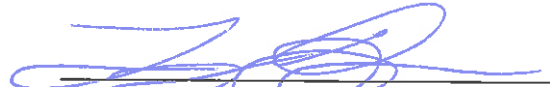
25
26 ⁸ This solution would satisfy the Court's need for a "complete adjudication" of the Basin as required by the McCarren
27 Amendment. In any event, an actual conflict of interest within the Wood Class and (potentially) the Willis Class
28 cannot be ignored simply to satisfy the McCarren Amendment. To put it more bluntly, the legal rights of 2,400
Wood Class Members cannot be sacrificed for the sake of maintaining jurisdiction over the United States. Rather,
this Court must find a solution to rectify the actual conflict of interest and uphold the rights of the 2,400 Wood Class
Members, while simultaneously allowing the Court to maintain jurisdiction over the United States.

1 Whichever way this Court rules, the actual conflict of interest within the Wood Class and
2 (possibly) within the Willis Class is massive and undeniable and cannot be ignored or "swept under
3 the rug" as Wood Class Counsel shockingly and unethically advocates.

4 Dated: August 18, 2015

5 Respectfully submitted,

6 KRAUSE, KALFAYAN, BENINK & SLAVENS,
7 LLP

8 

9 Ralph B. Kalfayan, Esq.

10 Lynne M. Brennan, Esq.

11 Class Counsel for the Willis Class