

Attorneys for Plaintiff and the Class

ANTELOPE VALLEY GROUNDWATER CASES

vs.

Defendants.

7 JUDGE: Hon. Jack Komar

WILLIS MEM RE CONSOLIDATION

1 the reasons stated below, that Motion should be denied and any Order of Consolidation should be
2 expressly limited to the upcoming trial of yield and overdraft issues.

3 PROCEDURAL STATUS

4 Willis will not attempt to unravel the complex procedural status of the various cases in
5 this coordinated Proceeding. For present purposes, the critical fact is that Willis has only
6 asserted causes of action to interrupt and counter the claims of prescription asserted by 10 of the
7 Suppliers. Those claims are at issue and ready to proceed to trial. Conversely, with the exception
8 of one small PWS, no PWS or landowner has asserted any claims against the Willis class.
9 Further, while Phelan did name Willis in its complaint, that Complaint has not been served on
10 her and is devoid of any class allegations. In short, no one has perfected claims against the
11 Willis class, and the Class' claims only involve issues of prescription.
12

13 ARGUMENT

14 In an effort to solve a variety of problems, in particular, to achieve a comprehensive
15 adjudication that satisfies the McCarran Act, the Public Water Suppliers have moved to
16 consolidate these coordinated cases for all purposes. Consolidation however, can not solve the
17 problems that the Suppliers need to address; moreover, consolidation for all purposes would
18 impose significant and unwarranted burdens on the Willis Class. The Willis Class does not
19 oppose consolidation for purposes of the upcoming trial on safe yield and overdraft, issues that
20 are common to all pending cases. But it does oppose consolidation for all purposes.
21

22 A. These Cases Should Not Be Completely Consolidated

23 Consolidation is a procedural device for uniting *separate* lawsuits for trial, where they
24 involve *common questions of law or fact* and are pending in the same court. See CCP § 1048.
25 The purpose is to enhance trial court efficiency (i.e., to avoid unnecessary duplication of
26 evidence and procedures); and to avoid the substantial danger of inconsistent adjudications (i.e.,
27 different results because tried before different juries, or a judge and jury, etc.). Todd-Stenberg v.
28 Dalkon Shield Claimants Trust (1996) 48 CA4th 976, 978–979, 56 CR2d 16, 17–18]

1 Courts have made clear that there are two types of consolidation: Complete consolidation
2 is appropriate where the parties are identical and the causes of action could have been joined.
3 The pleadings are regarded as merged, one set of findings is made, and one judgment is
4 rendered. Hamilton v. Asbestos Corp., Ltd. (2000) 22 C4th 1127, 1147–1148, 95 CR2d 701,
5 714]. Alternatively, cases may be consolidated for trial, where the pleadings, verdicts, findings
6 and judgments are kept separate; the actions are simply tried together for the sake of convenience
7 and judicial economy. Because there is no merger of the separate actions, a party's appearance in
8 one is *not* an appearance in the other. [Sanchez v. Sup.Ct. (Martinez) (1988) 203 CA3d 1391,
9 1395–1399, 250 CR 787, 789–791]
10

11 Here, the parties and claims vary across all the complaints. For this reason alone,
12 complete consolidation would be inappropriate. Consolidation does not create new claims for or
13 against a party where none are alleged in the underlying pleadings. For example, if A sued B for
14 claims 1, 2 and 3; and, C sued B for claims 3, 4, and 5; consolidation would not give A the
15 benefit of claims 4 and 5 against B. It may merge common claim 3 to both A and C but cannot
16 constitutionally impute claims to either A or C. In this case, the class has no adverse claims
17 against the landowners or the United States. Moreover, the classes do not seek to allocate the
18 native yield among the landowners by way of a physical solution. Those claims are a part of the
19 PWS first amended complaint but not the classes.
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21 Similarly, consolidation would not join parties that were not originally part of plaintiff's
22 case. For example, if A sued P, W, and S; and, D sued X, Y, and Z; consolidation would not
23 cause A to have sued X, Y, and Z. Nor would it cause D to have sued P, W, and S. Here, the
24 defendants are different across the cases. The Willis class sued only the ten PWS that alleged
25 prescription while the PWS sued the United States and all landowners except the two classes. If
26 the cases were consolidated, the Willis class would still not have any claims against the United
27
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1 States or any landowner and the PWS would still not have any claims for a physical solution
2 again the classes.

3 Complete consolidation is merely a procedural device designed to create efficiency and
4 judicial management for resolution of cases. The obvious virtue of consolidation is that it
5 increases the productivity of the judicial system by arranging for simultaneous resolution of
6 issues or entire actions. It is not however a substantive rule of law. Claims that do not exist
7 against a party will not instantly appear once the cases are consolidated. To do so would be a
8 fundamental denial of due process. Furthermore, complete consolidation would not make a party
9 adverse to another party if they were not so named in their lawsuit. Once again, to do so would
10 deprive a party of fundamental due process. Although there will be one judgment and a merger
11 of claims after consolidation, the claims and parties are not aggregated and ascribed to all in
12 derogation of due process rights.
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14 **B. The Motion to Consolidate is Vague**

15 A motion to consolidate must: (1) list all named parties in each case, the names of those
16 who have appeared, and the names of their respective attorneys of record;(2) contain the *captions*
17 *of all the cases* sought to be consolidated, with the lowest numbered case listed first; and (3) be
18 served on all attorneys of record and all nonrepresented parties in all of the cases sought to be
19 consolidated, and a proof of service must be filed as part of the motion. [CRC 3.350(a); see In re
20 Sutter Health Uninsured Pricing Cases (2009) 171 CA4th 495, 514, 89 CR3d 615, 631.
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22 Here, there are numerous complaints and cross-complaints that have been filed in these
23 coordinated proceedings. The motion seeks to consolidate without specifically identifying each
24 pleading. Without specificity it is difficult to discern what is being consolidated. The court
25 should deny the motion for its lack of specificity.
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27 If the United States or the PWS believe that the McCarran Amendment would not be
28 satisfied “unless all the parties owning or in the process of acquiring water rights” in the Basin

1 are joined as parties defendant and that “any subsequent decree would be of little value.” they
2 have remedies. The United States or the PWS could file one master pleading raising all the
3 relevant claims and naming all the necessary parties. Alternatively, the United States should
4 waive its sovereign immunity or the PWS should dismiss the United States from the action.
5 But the Court should not consolidate these actions in an effort to achieve ends that consolidation
6 cannot properly serve.
7

8 CONCLUSION

9 For the reasons stated above, the Court should deny the pending motion to consolidate,
10 except with respect to the upcoming trial of overdraft and yield issues.
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14
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