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

ANTELOPE VALLEY
GROUNDWATER CASES

This Pleading Relates to Included Action:
REBECCA LEE WILLIS, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; CITY OF LANCASTER;
CITY OF LOS ANGELES; CITY OF
PALMDALE; PALMDALE WATER
DISTRICT; LITTLEROCK CREEK
IRRIGATION DISTRICT; PALM RANCH
IRRIGATION DISTRICT; QUARTZ HILL
WATER DISTRICT; ANTELOPE VALLEY
WATER CO.; ROSAMOND COMMUNITY
SERVICE DISTRICT; MOJAVE PUBLIC
UTILITY DISTRICT; and DOES 1 through
1,000;

Defendants.

) RELATED CASE TO JUDICIAL
) COUNCIL COORDINATION
) PROCEEDING NO. 4408

) The Honorable Jack Komar
) Coordination Trial Judge

) THE WILLIS CLASS' MOTION AND
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) COURT APPOINTMENT OF
) INDEPENDENT EXPERT WITNESS;
) DECLARATION OF PROFESSOR
) THOMAS HARTER.

) DATE: JULY 15, 2010
) TIME: 9:00 a.m.
) PLACE: Dept. 1

) JUDGE: Hon. Jack Komar

INTRODUCTION

The Willis Class respectfully moves the Court, pursuant to Section 730 of the Evidence
Code to appoint an expert hydrogeologist to assist the Court in connection with the upcoming

1 Phase III trial. The costs of that expert, which Class counsel believe can reasonably be capped at
2 \$50,000.00, should be allocated among the various parties who introduce expert testimony at the
3 Phase III trial in proportion to the expert costs incurred by those parties. The Court's
4 appointment of its own expert is appropriate for the following reasons:

5 (1) The yield determination is a critical aspect of this trial, which will affect the rights of
6 the Willis Class and the public at large for years to come, including many parties and
7 unrepresented persons who cannot meaningfully obtain expert advice.

8 (2) The yield determination is highly technical and involves a massive amount of
9 scientific evidence. The Court should use its authority to get appropriate expert
10 assistance in making this critical determination as accurately as possible.

11 (3) The primary experts who are expected to testify as to the Basin's yield are highly
12 qualified persons, but they have reached dramatically varying opinions. The fact is
13 that the limited data presently available allows a *wide range of judgment* as to the
14 Basin's Safe Yield. This shows the need for an impartial Court expert.

15 (4) The Court has a fiduciary duty to protect the interests of the classes as well as a duty
16 to the public to protect the Basin. Further, the appointment of an independent expert
17 will increase public perception that the yield decision has been fairly and carefully
18 reached.

19 (5) The incremental costs to the parties would be modest, less than 5% of the amount
20 they will spend on their own experts.

21 We suggest that the Court appoint Professor Thomas Harter as its expert.¹ He is a very
22 well regarded expert, he has indicated an interest in serving in this capacity, and has formed no
23 opinions regarding the matters at issue. Further, he has advised us of his willingness to cap his
24 fees at a reasonable amount.

25
26 ¹ Professor Harter's declaration and c.v. are attached hereto as Exhibit A. Although Professor
27 Harter had tentatively agreed to act as an expert for the Willis Class, the Class' inability to recover
28 the costs of an expert (coupled with the significant costs that the Class has already incurred) makes
it infeasible for us to engage him. He has not formed or expressed any opinions on the matters at
issue.

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1 Cal. App. 2d 206, 210.

2 Of course, the Court must ultimately decide this highly technical issue based on the
3 evidence presented to it. But given the critical nature of this issue and the complexity and
4 voluminous nature of the evidence, the Court should have the guidance of a truly independent
5 expert, not be forced to rely on judgments colored by the interests of the various parties.

6 **3. The primary experts who are expected to testify as to the Basin's yield are all**
7 **highly qualified persons, but they have reached dramatically varying opinions,**
8 **which shows the need for an impartial expert.**

9 It is noteworthy that the parties' primary experts – who are all well qualified – have
10 come to widely differing opinions. Those experts have studied the Basin at great detail, but they
11 have come to widely varying conclusions about its yield. The widely disparate nature of their
12 opinions is another reason why the Court should take advantage of its authority to obtain
13 independent expert assistance.

14 In large part, the widely varying estimates reflect the fact that *the data regarding the*
15 *Basin's yield are inadequate to develop a clear conclusion. Rather, any opinions will*
16 *necessarily be greatly affected by various assumptions and judgments made by the experts.*
17 Without impugning any expert's integrity, the reality is that such assumptions tend to be made
18 favorably to the party for whom the expert is employed – not simply in this matter, but in
19 litigation generally. Given the vital public importance of the yield finding in this case, the Court
20 should enlist the aid of an appropriate expert to assist it in coming to as accurate a conclusion as
21 possible.

22 The yield finding will have a major impact on the future course of these proceedings as
23 well as the economic and other interests of the parties and Class members. Based on historical
24 rates of pumping, if the Suppliers' experts' estimates are correct, the Court will likely find that
25 the Basin is and has been in a state of overdraft. By contrast, if certain other estimates are
26 correct, the Court will likely not find overdraft. Equally important, their varying analyses are
27 based on a number of technical factors, each of which they have studied extensively. Because of
28 the importance of this decision, the highly technical nature of the evidence, and the widely
disparate views of well regarded experts, the Court should avail itself of the guidance of an

1 independent expert.

- 2
- 3 **4. The Court has a fiduciary duty to protect the interests of the classes as well as a**
4 **duty to the public to protect the Basin. Further, the appointment of an**
5 **independent expert will increase public perception that the yield decision has**
6 **been fairly and carefully reached.**

7 As the Court is aware, it has a fiduciary duty to protect the interests of the Willis and
8 Wood Classes. Moreover, the Court has a duty to the public to protect the integrity and viability
9 of the Basin. Given the vital importance of the yield determination and the fact that the Class
10 has no practical means to obtain expert assistance, the Court should appoint its own independent
11 expert to review and guide its findings.

12 *Notably, the Willis Class has no interest in maximizing or minimizing the Basin's yield.*
13 Rather, the Class' interest is in protecting the viability of the Basin without inappropriately
14 encroaching on the parties' ability to use the Basin's groundwater. Thus, the Class' interests are
15 coextensive with the Court's interest in making a just and appropriate finding. By appointing an
16 independent expert, the Court will enhance its ability to reach an appropriate result on this
17 critical issue and fulfill its fiduciary obligation to protect the Class and the interests of the public
18 at large. Finally, the appointment of an independent expert will increase public perception that
19 the critical yield decision has been made in a careful, just, and fair manner. That alone justifies
20 such an expert.

21 The Court may appoint such an expert to assist it in making its determinations pursuant to
22 Evidence Code 730, which provides:

23 When it appears to the court, at any time before or during the trial of an action,
24 that expert evidence is or may be required by the court or by any party to the
25 action, the court on its own motion or on motion of any party may appoint one or
26 more experts to investigate, to render a report as may be ordered by the court, and
27 to testify as an expert at the trial of the action relative to the fact or matter as to
28 which the expert evidence is or may be required. The court may fix the
compensation for these services, if any, rendered by any person appointed under
this section, in addition to any service as a witness, at the amount as seems
reasonable to the court.

1 **5. Professor Harter Is an Appropriate Independent Expert.**

2 It cannot be disputed that Professor Harter is a qualified expert to assist the Court, and we
3 suggest that the Court appoint him to assist it in its determination of the basin's yield. Professor
4 Harter has a PhD in Hydrology and holds the Robert M. Hagan Endowed Chair in Water
5 Management and Policy at the University of California, Davis. As his c.v. shows, he has
6 extensive experience analyzing large groundwater basins.

7 Although Willis Class counsel has had some preliminary conversations with Professor
8 Harter, we have not had any substantive communications with him regarding his proposed work;
9 nor has he expressed any opinions on the Basin's yield. He is an unbiased and well-qualified
10 academic who can ably assist the Court in reaching a fair and just determination of this vital
11 issue.

12 **6. The Incremental Costs to the Parties Would Be Modest.**

13 It is appropriate for the Court to require all parties who are producing expert testimony at
14 the Phase III trial to share the costs of the Court's expert in proportion to the amounts that they
15 have paid their experts. The incremental cost to the parties would be modest.

16 Professor Harter earlier estimated that he can analyze the existing experts' reports and
17 opinions, including reviewing relevant underlying data, and provide his opinions with respect
18 thereto for some \$85,000. We believe, based on more recent discussions with him, that he would
19 be willing to cap his fees at \$50,000 (in addition to his time spent testifying at deposition, if
20 necessary). While not insignificant, that amount is less than 5% of the amount that the parties
21 will collectively incur for their experts – a modest addition that they can fairly be required to pay
22 to assist the Court in making findings that are as accurate as possible. Under these circumstances,
23 it is appropriate to impose the costs of an independent expert, such as Professor Harter, on the
24 parties producing experts at the Phase III trial.

25 The argument that there are already sufficient experts in this case misses the mark.
26 Given the vital interests at stake and the greatly disparate expert opinions, which have substantial
27 judgment elements, the parties and the Court need the services of a truly impartial expert to
28 ensure that justice is done in this critical matter.

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CONCLUSION

For the reasons stated above, the Court should exercise its authority under Section 730 of the Evidence Code and appoint an independent expert to assist it in determining the Basin's yield.

Dated: June 15, 2010

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/ Ralph B. Kalfayan
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