Ralph B. Kalfayan, SBN133464
David B. Zlotnick, SBN 195607
KRAUSE, KALFAYAN, BENINK
& SLAVENS LLP
625 Broadway, Suite 635
San Diego, CA 92101
Tel: (619) 232-0331
Fax: (619) 232-4019

Attorneys for Plaintiff and the Class

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; and DOES 1 through 1,000; Defendants.	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408 CASE NO. BC 364553 **PLAINTIFF WILLIS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVING NOTICE TO THE CLASS** Date: October 7, 2010 Time: 9:00 a.m. Dept: 1 Judge: Hon. Jack Komar Coordination Trial Judge

.

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS

I. INTRODUCTION

Class Plaintiff Rebecca Lee Willis ("Willis") respectfully submits this reply memorandum in support of her Motion for Preliminary Approval of the Stipulation of Settlement (the "Settlement") between her and Defendants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company, Rosamond Community Service District, Phelan Pinon Hills Community Services District, Desert Lake Community Services District, and North Edwards Water District (collectively, the "Settling Defendants"). The various objections raised to the Motion are all without merit and should be overruled, and the Court should enter the proposed Order Granting Preliminary Approval of Class Action Settlement and Directing Notice to the Class.

II. ARGUMENT

A. The Standard For Preliminary Approval

For the reasons explained below, the objections raised to the proposed settlement are all without merit. Moreover, the Objectors ignore the limited review appropriate on a *preliminary* approval motion and the fact that the merits of the settlement will be considered *de novo* at the final approval hearing. **"**The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of possible approval, and thus whether

notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is worthwhile." E. Cabraser, *California Class Actions and Coordinated Proceedings* § 14.02 (2d ed. 2009) (citations omitted). *See Munoz v. BCI Coca-Cola Bottling Co.* (2d Dist. 2010) 186 Cal. App. 4th 399, 407-10. It is clear that the Court should overrule the objections, preliminarily approve the proposed Settlement and consider the merits of the proposed settlement at a final fairness hearing following notice to the Class.

Notably, none of the Objections challenge the fairness of the settlement to the Class. Rather, they largely raise issues regarding the affect that the Settlement may have on other participants in this consolidated action. Those arguments are without merit and, in any event, do not warrant denial of preliminary approval.

B. The Proposed Settlement Is Consistent With This Court's Consolidation Order and Does Not Interfere With the Rights of the Non-Settling Parties.

Copa de Oro Land Company ("Copa de Oro") is not a party to the Willis action and "does not oppose" the Preliminary Approval Motion; mem at p. 2; but seeks assurance that the Settlement is consistent with this Court's February 19, 2010 Consolidation Order. The Stipulation of Settlement was carefully drafted to be consistent with that Order. In that regard, the Stipulation and proposed Final Judgment expressly provide that the Court retains jurisdiction over the parties for purposes of entering a later "judgment resolving all claims to the rights to withdraw groundwater from the Antelope Valley Basin as well as the creation of a physical solution." Consol. Order at p. 4. See Stipulation at V.B., VII.E. & VII.H; Final

Judgment at page 6.

Similarly, the Settlement was carefully crafted to not impinge on the rights of the non-settling parties, expressly providing in the proposed Final Judgment as follows: "As provided in the Consolidation Order, this Final Judgment shall not be construed to prejudice the rights of any of the Non-Settling Parties in the Consolidated Actions nor shall it prejudice the claims and defenses that the Settling Parties may assert with respect to such Non-Settling Parties." ¶ 11. We believe that statement is clear and unequivocal and fully consistent with this Court's prior rulings and applicable principles of law.[1]

That provision is dispositive of many of the Objections that various parties have asserted. For example, Bolthouse argues without merit that the Settlement should not be approved because the "issue of subordination of the dormant landowners pumping rights" "remains undefined." First, there is no such issue pending in the litigation. Despite years of threats, no party has filed a pleading seeking to subordinate the Willis Class' rights. Second, nothing in the proposed Settlement precludes Bolthouse or others from asserting such a claim. To the extent they have the right to assert such theoretical claims, the Settlement does not foreclose them from doing so.

[1] Consistent with this general principle, the Settlement does not preclude other parties from contesting matters such as the Basin's yield, but rather expressly provides that the Settling Parties will be governed by any findings the Court may render in that regard.

The Antelope Valley Groundwater Agreement Association ("AGWA") similarly argues without merit that the "proposed settlement does not resolve the primary issues associated with the dormant landowners." Like Bolthouse, AGWA claims that one of the "central legal issues" is whether the Willis Class Members' rights "have been subordinated." As noted above, however, neither AGWA nor any other party has sought to subordinate the Willis Class. It is not a viable objection to the proposed settlement to say that it does not resolve claims that have not been asserted. That is especially true given the fact that the Settling Parties have no interest in asserting any such claims (unlike the Objectors, who apparently have such an interest, but for tactical or other reasons have failed to raise them).[2] As with Bolthouse, to the extent AGWA has viable subordination claims, nothing in the Settlement precludes it from asserting those claims.

AGWA also argues without merit that the "Willis Settlement does not resolve the question of prescription against the Class." That is simply wrong. The Settlement unambiguously compromises the purveyors' prescription claims against the Class. While the Settling Defendants retain their rights to prove "prescriptive rights against all groundwater pumping in the Basin" (and elsewhere as to "non-

[2] AGWA asserts that it is "unclear" under the Consolidation Order "how the rights of the Willis Class will be adjudicated vis-à-vis the other landowner parties." The Consolidation Order is clear that it should not be construed to create adversity between parties who have not asserted claims against one another. Hence, we think it abundantly clear that, to the extent AGWA desires to subordinate the rights of the Willis Class, it must file a pleading or comparable document to raise the issue, not simply object to a Settlement between other parties because that Settlement does not address that non-issue. To the contrary, if the Settlement sought to resolve the "subordination" question, AGWA would have a legitimate argument that its rights were being improperly compromised, in violation of the Consolidation Order.

settling parties"), those reservations do not govern the purveyors' claims against the Willis Class, which, by definition, has not engaged in groundwater pumping. The Settlement fairly and finally compromises all prescription claims that have been asserted against the Willis Class.

C. The Fact that this Case Has Been Consolidated With Other Related Actions Does Not Bar Approval of the Proposed Settlement and Entry of a Final Judgment.

Diamond Farming Company and its affiliates ("Diamond") do not object to the Settlement terms but argue that the Proposed Final Judgment is not truly final in that issues remain to be resolved in the litigation. That argument is (1) premature in the context of preliminary approval, (2) contrary to the express terms of this Court's Consolidation Order, and (3) misstates the relevant law.

Diamond's argument is at best premature and can and should be dealt with at the Final Approval Hearing. Further, this Court's Consolidation Order expressly provided that consolidation would not preclude the entry of "a final judgment approving any settlements" as long as any such settlement "expressly provides for the Court to retain jurisdiction over the settling parties" for purposes of entering a physical solution. The present Settlement was carefully crafted to accord with the provisions of the Consolidation Order. The Diamond parties should not be allowed to reargue the merits of the Consolidation Order at this late date. Moreover, as noted above, any such issues are properly resolved at the Final Hearing, not in the context of the pending preliminary approval motion.

Further, Diamond misstates the law. The fact that there may be one or more

"future phases of trial" between and among other parties does not negate the fact that the Settlement finally resolves and releases the claims between and among the Willis Class and the Settling Defendants. For that reason, Diamond's reliance on *Harrington-Wisely v. State of California* (2007 2d Dist.) 156 Cal. App. 4th 1488, is misplaced. In *Harrington-Wisely,* the trial court entered a stipulated judgment as to certain damages claims, but a variety of other claims remained open as between the very same parties. The Settlement here resolves all claims between the Willis Class and the Settling Defendants. "In California, a judgment resolving all issues between any one set of adverse parties is [final and] immediately appealable." Elliott L. Bien & E. Elizabeth Summers, *California Civil Appellate Practice* 167-169 (Robert Warna 3rd ed., C.E.B. 1997-2010) (1985).*See Daon Corp. v. Place Homeowners' Ass'n* (1989) 207 Cal. App. 3d 1449. For that reason among others, the proposed Final Judgment is appropriate.

D. Lancaster's Request to Be Dismissed Is Without Basis.

The City of Lancaster has not opposed preliminary approval, but complains that it too should be dismissed. The Willis Class is happy to discuss this issue with Lancaster and will deal appropriately with Lancaster's status in due course. For present purposes, it is sufficient to note that Lancaster has not released its claims against the Willis Class and its dismissal of its claims against the Class was expressly "without prejudice." Lancaster has not shown that it is entitled to relief simply because Willis has now settled with other parties. In any event, the issues Lancaster raises are not relevant to the pending preliminary approval motion.

/ / / /

III. CONCLUSION

For the foregoing reasons, as well as those set forth in Plaintiff's moving papers, we respectively request that the Court: (1) preliminarily approve the proposed Settlement; (2) approve the Notice and authorize its dissemination; (3) schedule a Fairness Hearing on the proposed Settlement; and (4) set forth procedures and deadlines for Settlement Class members to file objections to the proposed Settlement, all as set forth in the Proposed Order submitted herewith.

Dated: September 30, 2010

KRAUSE KALFAYAN BENINK & SLAVENS LLP

/s/Ralph B. Kalfayan

Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class