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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 PALMDALE; PALMDALE)
WATER DISTRICT; LITTLEROCK CREEK)
IRRIGATION DISTRICT; PALM RANCH)
IRRIGATION DISTRICT; QUARTZ HILL)
WATER DISTRICT; ANTELOPE VALLEY)
WATER CO.; ROSAMOND COMMUNITY)
SERVICE DISTRICT; PHELAN PINON)
HILL COMMUNITY SERVICE DISTRICT;)
and DOES 1 through 1,000;

Defendants.

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
)

) CASE NO. BC 364553
)
)

) **PLAINTIFF'S REPLY MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATION OF RALPH B.
KALFAYAN IN SUPPORT THEREOF**

Date: February 24, 2010

Time: 10:00 a.m.

Dept: 1

Judge: Hon. Jack Komar

Coordination Trial Judge

1 **I. INTRODUCTION**

2 Class Plaintiff Rebecca Lee Willis (“Plaintiff” or “Willis”) has entered into a Stipulation
3 of Settlement (the “Stipulation”) with Defendants Los Angeles County Waterworks District No.
4 40, City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch
5 Irrigation District, Quartz Hill Water District, California Water Service Company, Rosamond
6 Community Service District, Phelan Pinon Hills Community Services District, Desert Lake
7 Community Services District, and North Edwards Water District (collectively, the “Settling
8 Defendants”), subject to Court approval and other conditions set forth in the Stipulation. The
9 Settling Defendants have mailed the Court approved Notice to the over 60,000 class members
10 and have published a summary notice in three local newspapers. In response, only two of the
11 over 60,000 Class members have expressed what can reasonably be characterized as objections
12 to the settlement. Those two objections are without merit. The Class’ overwhelming support of
13 the Settlement provides further reason for this Court to approve it.
14

15 Certain other parties to these consolidated cases – specifically, the Antelope Valley
16 Groundwater Agreement Association (“AGWA”) and Bolthouse Farms (“Bolthouse”) – have
17 also objected to the Settlement. *The simple fact is that these entities object because of their own*
18 *unique interests, not because the Settlement is unfair to the Class.* Because the Settlement was
19 carefully crafted not to compromise the legal interests of those entities, which are not parties to
20 the Willis action, they lack standing to object to the Settlement and, even assuming that they
21 have standing, their objections lack merit and provide no reason for the Court to withhold
22 approval of the Settlement. The Settlement before the Court is fair and reasonable and should be
23 approved.
24

25 **II. ARGUMENT**

26 **A. The Limited Objections Submitted By Two Class Members**
27 **Are Without Merit.**

1 Out of the over 60,000 Class members sent notice of the Settlement, many hundreds of
2 whom have contacted Class Counsel during the course of this matter, only two Class members
3 have served us with what can reasonably be characterized as objections to the settlement. See
4 Declaration of Ralph B. Kalfayan at ¶ 4-5 and Exhibits A & B. As discussed below, neither of
5 those objections has merit.
6

7 1. The Objection of Mr. James Babb Is Without Merit.

8 The substance of Mr. Babb's objection is that he believes that the Basin's Native Safe
9 Yield should "be calculated by a licensed engineer," who is a neutral, competent party. As the
10 Court is aware, Plaintiff sought the Court's appointment of an independent expert to assist the
11 Court in determining the Basin's yield, but the Court determined that such an expert was not
12 necessary. The parties have retained a number of experts on this issue. Given the disputes
13 between the parties' experts as to the Basin's yield, the yield must be determined by the Court
14 after hearing the relevant evidence. Mr. Babb's objection, which really does not address the
15 fairness of the settlement terms, is therefore without merit.
16

17 2. The Objection of Mr. Vernon T. Doria Is Without Merit.

18 Mr. Vernon T. Doria objects on the grounds (1) that he was not given an opportunity to
19 "opt out" of the class and (2) that the public water suppliers should not be allowed to obtain any
20 "rights to the water that was purchased with the property [that he owns]." As to the first point,
21 although we believe that Mr. Doria was sent the original notice, it would not be surprising if a
22 few of those notices were lost in the mail. In any event, we are unable to prove that Mr. Doria
23 received the first notice and Plaintiff does not object to the Court giving this one person the
24 opportunity to opt out at this time.
25

26 As to the merits of his position, as the Court is well aware there is a highly contested
27

1 issue as to whether the public water suppliers have prescriptive rights to the Basin's native water
2 and, if so, the extent of those rights. Plaintiff Willis believes that the present compromise, which
3 gives the suppliers up to 15% of the native water, is a reasonable and fair compromise of the
4 parties' competing positions. If Mr. Doria's position were followed, there could be no settlement
5 of this litigation and the parties would be forced to proceed through additional years of litigation.
6 That is not in the public interest or the interests of the Class. The compromise we struck, after
7 years of litigation and months of bargaining, is a reasonable one. The vast majority of Class
8 members are amenable to the settlement. The Court should approve it as fair and reasonable.
9

10 **B. AGWA and Bolthouse Lack Standing to Object to the Settlement,**
11 **And Their Objections Are Without Merit.**

12 1. Non-Parties Such as AGWA and Bolthouse Lack Standing to Object
13 Where, As Here, Their Legal Rights Are Not Affected By the Settlement.

14 AGWA and Bolthouse are not parties to the Willis action and their legal rights are not
15 prejudiced by the settlement between Willis and the Suppliers. Hence, they lack standing to
16 object to the settlement.

17 The Stipulation of Settlement and proposed Final Judgment make crystal clear that the
18 settlement does not prejudice in any manner the legal rights of other landowners such as AGWA
19 and Bolthouse. In that regard, the Stipulation states that the Settlement shall not "be construed
20 to prejudice the rights, claims, or defenses of any persons who are not Settling Parties" Stip
21 at p. 5, ¶ II(I). Similarly, the proposed Final Judgment expressly provides as follows: "As
22 provided in the Consolidation Order, this Final Judgment shall not be construed to prejudice the
23 rights of any of the Non-Settling Parties in the Consolidated Actions" ¶ 11. These
24 provisions are clear and unequivocal and are consistent with this Court's prior rulings and
25 applicable principles of law.
26

1 The law is clear that these non-parties lack standing to contest the proposed settlement
2 where, as here, their legal rights are not prejudiced by it. *See Rebney v. Wells Fargo Bank, N.A.*
3 (1990) 220 Cal.App.3d 1117, 1128-1132 (only aggrieved parties may contest and appeal
4 approval of class settlement); 2 *Newberg on Class Actions* (2d ed. 1985) §11.54. *See also*
5 *Chernett v. Jacques* (1988) 202 Cal. App. 3d 69, 71 (alleged tortfeasor cannot appeal settlement
6 between plaintiff and another defendant).

7
8 a. AGWA's Members Are Not Members of the Willis Class.

9 Apparently recognizing that its members lack standing to object, AGWA argues that
10 some of its members are also members of the Willis Class. That is simply wrong.

11 AGWA expressly limits its opposition as being on behalf of the “members of the
12 Antelope Valley Groundwater Agreement Association (‘AGWA’) who are also members of the
13 Willis Class by virtue of their ownership of parcels of land on which there has never been any
14 pumping nor water use (‘AGWA Objecting Class Members’).” But AGWA members were and
15 are expressly excluded from membership in the Willis Class; there are simply no “AGWA
16 Objecting Class Members.”

17
18 This Court has consistently made clear that this litigation is proceeding on an in
19 personam, not on an “in rem” basis. In accord with that guidance, the Willis Class was
20 expressly defined to exclude AGWA members and other parties to the litigation who may also
21 own “dormant” parcels. This Court’s June 3, 2008 Order Modifying Class Definition and
22 Allowing Parties to Opt in to the Plaintiff Class expressly provides as follows: “The Class shall
23 exclude all persons who are already participating in this litigation (other than Plaintiff Willis),
24 but any such persons may ‘opt in’ to the Class to the extent they otherwise fall within the Class
25 definition.” June 3, 2008 Order at p. 3, ¶ 1(A). Subsequently, the Court provided in its
26 September 2, 2008 Second Order Modifying Definition of Plaintiff Class that the Willis Class
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1 “shall exclude *all persons* to the extent they own properties within the Basin on which they have
2 pumped water at any time.” *Id.* at p. 3, ¶ 1 (emphasis added).

3 Then, on June 23, 2009, the Court entered a Stipulation and Order Defining Procedure for
4 Parties to Participate as Members of the Willis Class. That Order provided in pertinent part as
5 follows:

6 Any person re entity who is an existing party to the litigation who falls within
7 The definition of the Willis Class and wishes to participate in the litigation as
8 Class Members may do so by submitting a Notice of Election to Participate as
9 Member of the Willis Class (the ‘Notice of Election’) in the form attached hereto
10 as Exhibit B on or before August 30, 2009. *Thereafter, those persons may not
11 participate as named parties, but shall be members of the Class.*

12 June 23, 2009 Stipulation and Order at p. 3 (emphasis added). We are unaware of any AGWA
13 members who timely sought to “opt in” to the Willis Class following that Order. Moreover,
14 under the express terms of the Order, any such persons would no longer be participating as
15 AGWA parties. Hence, AGWA’s objection is without merit insofar as it purports to be on behalf
16 of persons who are both members of AGWA and Class Members. There are no such persons
17 and, as explained above, AGWA lacks standing to object to the settlement.

18 2. AGWA’s Objections Are Without Merit.

19 In any event, AGWA’s objections to the proposed settlement are entirely without merit.
20 First, AGWA *incorrectly* argues that the “proposed settlement does not include the dismissal of
21 the Defendants’ prescription claim.” AGWA Mem at 2. In fact, however, the Settling
22 Defendants

23 “completely release, acquit and forever discharge Settling Plaintiffs
24 and the Willis Class Members from any and all claims, demands, actions,
25 causes of action whether class, individual, or otherwise in nature that
26 Settling Defendants, or any of them, ever had, now has, or hereafter can,
27 shall, or may have arising from or relating in any way to the matters at issue
28 in the Willis Action (“Released Claims”).

Stipulation at p. 15, ¶ VII.B. The Settling Defendants’ prescription claims are the core matter

1 raised in the Willis Action. The above release unequivocally compromises and dismisses those
2 claims. See also Proposed Final Judgment at ¶¶ 16, 18.

3 In support of its argument, AGWA points to the fact that Section IV.C.2.(a) of the
4 Stipulation provides that “the Settling Defendants may at trial prove prescriptive rights against
5 all groundwater pumping in the Basin during a prior prescriptive period.” AGWA contends that
6 the “clear implication of this paragraph is that . . . [it] includes proving prescription against the
7 Willis Class Members.” AGWA mem at p. 2. But the language of the Section IV.C.2.(a) was
8 carefully limited to preserve the Defendants’ rights to assert prescriptive rights against prior
9 pumping in the Basin. Because the Willis Class, by definition, has not engaged in pumping that
10 provision does not apply to the Class Members. Rather, it simply preserves the Settling
11 Defendants’ rights to pursue their claims against the Non-Settling Parties.
12

13 Second, AGWA complains that the Settlement does not resolve potential subordination
14 claims that AGWA or other landowners *could* assert in the future against members of the Willis
15 Class. But, of course, consistent with the general principle that the Settlement does not prejudice
16 the rights of non-parties, the Stipulation could not properly preclude AGWA from bringing such
17 claims. This Settlement properly compromises only the claims and defenses asserted by the
18 Settling Parties vis-a-vis each other. AGWA’s hypothetical prescription claims will of necessity
19 have to be dealt with when AGWA or others assert them. The fact that the Settlement does not
20 resolve these hypothetical issues between the Class and other landowners does not in any way
21 undermine the validity and efficacy of the Settlement. Moreover, the Settlement expressly
22 provides that the Court retains jurisdiction over the Class for purposes of a future Physical
23 Solution, which, presumably, will address these issues. AGWA’s contention that it will bring
24 individual suits against the 60,000 class members is impractical.
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Bolthouse further complains that “individual class members” need to participate as parties or the Court will lack indispensable parties, but the Court has previously rejected that argument. In any event, it makes little sense. Bolthouse can challenge Ms. Willis’ correlative rights or those of the Class at large, as it sees fit, whenever it wishes to do so. But it should not be heard to harp about the fact that this Settlement does not finally resolve issues that it has concerns with but has chosen not to raise. Bolthouse cannot expect others to fight its battles.

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wrong in the Settlement addressing these issues even though they were not expressly raised in the Complaint. Contrary to Bolthouse's position, the public interest favors the resolution of disputes, especially complex ones such as this, not the compounding of issues that will merely drag out this litigation.

Finally, Bolthouse asserts that it is not in the best interests of the Class for its attorneys to withdraw from representation of the Class before safe yield and correlative rights are confirmed by the Court. Nothing in the settlement provides that Class counsel will withdraw at this time. To the contrary, the Settlement and proposed Final Judgment expressly provide for the Court's continuing jurisdiction over the Class for future proceedings. Bolthouse may raise the issues that concern it by an appropriate pleading directed to the Class, rather than merely complain about our efforts to resolve this matter.

C. The Settlement Is Reasonable and Should Be Approved.

A class settlement is presumed fair where: "(1) the settlement is reached through arm's length bargaining; (2) investigation and discovery have been sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-45 (2001). As we explained in our opening papers, all of those factors are handily satisfied here. For present purposes, the key additional factor is the overwhelming support that the Class has shown for the settlement. This is a very large Class consisting of approximately 60,000 persons. But only two Class members have submitted (limited) objections to the Settlement. That is truly remarkable and a testament to the fact that this settlement is fair and reasonable for the Class.

It is elemental that a settlement is a compromise and inevitably will not provide 100 percent of what a party sought. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the

1 settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th at 250
2 (citation omitted). Given the many risks that Plaintiff and the Class face, this settlement
3 represents a reasonable resolution of a complex and contested case. It is well within the range of
4 reasonableness under all of the relevant circumstances. Further, this litigation (if not settled)
5 would be very protracted and expensive. The present settlement serves the public interest, as
6 well as that of the Class, in reaching a resolution of the issues facing the Basin, so this vital
7 resource can be appropriately protected. This is clearly a case in which “a bird in hand is worth
8 two in the bush.”
9

10 **III. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant final
12 approval to the proposed settlement and enter the Proposed Final Judgment negotiated by the
13 parties to effectuate the settlement.

14 Dated: February 17, 2011

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17 /s/Ralph B. Kalfayan
18 Ralph B. Kalfayan, Esq.
19 David B. Zlotnick, Esq.
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