

1 Ralph B. Kalfayan (SBN 133464)
2 Lynne M. Brennan (SBN 149131)
3 KRAUSE KALFAYAN BENINK &
4 SLAVENS, LLP
5 550 West C Street, Suite 530
6 San Diego, CA 92101
7 Tel: (619) 232-0331
8 Fax: (619) 232-4019

9 Attorneys for the Willis Class

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**ANTELOPE VALLEY
GROUNDWATER CASES**

13 This Pleading Relates to Included Action:
14 REBECCA LEE WILLIS and DAVID
15 ESTRADA, on behalf of themselves and
16 all others similarly situated,

17 *Plaintiffs,*

18 v.

19 LOS ANGELES COUNTY
20 WATERWORKS DISTRICT NO. 40;
21 CITY OF LANCASTER; CITY OF
22 PALMDALE; PALMDALE WATER
23 DISTRICT; LITTLEROCK CREEK
24 IRRIGATION DISTRICT; PALM
25 RANCH IRRIGATION DISTRICT;
26 QUARTZ HILL WATER DISTRICT;
27 ANTELOPE VALLEY WATER CO.;
28 ROSAMOND COMMUNITY SERVICE
DISTRICT; PHELAN PINON HILL
COMMUNITY SERVICE DISTRICT; and
DOES 1 through 1,000;

Defendants.

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

The Honorable Jack Komar
Coordination Trial Judge

**DECLARATION OF RALPH B. KALFAYAN
IN SUPPORT OF WILLIS CLASS'
OPPOSITION TO WOOD CLASS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: March 26, 2015

Time: 10:00 a.m.

Place: Superior Court of California,
County of Los Angeles
111 North Hill Street, Room 222
Los Angeles, Ca 90012

1 I, Ralph B. Kalfayan, declare:

2
3 1. I have personal knowledge of the facts below, and if called upon to do so, I could
4 and would testify competently thereto in a court of law. I am an attorney licensed to practice law
5 in the State of California. I am a named partner at the law firm of Krause, Kalfayan, Benink &
6 Slavens, LLP, Class Counsel and attorneys of record for the Willis Class.

7
8 2. On July 13, 2010, all Defendant Public Water Suppliers entered into a Stipulation
9 of Settlement with the Willis Class. A true and correct copy of the Stipulation of Settlement is
10 attached to the Willis Class' Opposition to Wood Class' Motion for Preliminary Approval of Class
11 Settlement (hereinafter "Willis Opposition") as Exhibit C. On May 22, 2011, the Court entered a
12 Judgment based on the Willis Class Stipulation of Settlement. A true and correct copy of the
13 Judgment is attached to the Willis Opposition as Exhibit D. At the request of the Public Water
14 Suppliers, the Court modified the Judgment on September 22, 2011, to incorporate the terms of the
15 Willis Class Attorneys' Fees Order. A true and correct copy of the Amended Final Judgment is
16 attached to the Willis Opposition as Exhibit E. The Amended Final Judgment was appealed by
17 some of the Public Water Suppliers. After mediation, the parties settled the appeal and the court
18 of appeal issued a remittitur. For all purposes in this action, the Willis Amended Final Judgment
19 has now become a final, non-appealable judgment with res judicata effect as to the Settling
20 Defendants.
21

22
23 **Bad Faith Negotiations**

24
25 3. As detailed in my declaration filed January 5, 2015, Willis Class Counsel was not
26 privy to the negotiations that led up to the Stipulation and Proposed Physical Solution ("SPPS")
27 submitted to the Court on March 4, 2015. My repeated attempts to work with District 40's counsel
28

1 to incorporate the Willis Class' correlative rights into a proposed physical solution for submission
2 to the Court were rebuffed or ignored. For example, in July 2014, I submitted a proposal to District
3 40's counsel that included a permanent allocation of groundwater for the Willis Class to incorporate
4 into the proposed physical solution to be submitted to the Court. That specific proposal was
5 ignored. Even my requests to see a copy of the updated draft of the SPPS after July 2014 were
6 ignored. I did not receive an updated copy of the SPPS until December 24, 2014, in exchange for
7 my promise to keep its contents confidential from the Court. As it turns out, the SPPS I received
8 on December 24, 2014 was completely finalized and had already been signed by at least seven
9 Stipulating Parties, including Palmdale Water District on December 10, 2014 and the City of
10 Lancaster on December 11, 2014. The remaining Stipulating Parties signed the SPPS after Willis
11 Class Counsel received its copy on December 24, 2014, but no revisions were made to the finalized
12 SPPS after that date.
13
14

15
16 **Unreasonable Standards for New Pumping under the SPPS**

17
18 4. I personally contacted a representative at Los Angeles County Department of Health
19 Services by phone on or about March 2, 2015, and learned that in order to install a well and pump
20 groundwater, an applicant must complete an application and pay certain fees. A true and correct
21 copy of the L.A. County form application is attached to the Alternative Proposed Physical Solutions
22 ("APPS") as Exhibit M. The SPPS includes requirements for new pumping that far exceed those
23 required by the County. (*See* Paragraph 18.5.13 *et. seq.* of the SPPS). These proposed requirements
24 appear very unreasonable and unduly burdensome for Willis Class Members. However, I am
25 unable to more precisely evaluate the cost and feasibility of the standards without a Court-appointed
26 expert.
27
28

1 **Unused Federal Government NSY allocation**

2 5. The SPPS allocates unused Federal Reserve water rights to the PWS. *See* Paragraph
3 5.1.4.1 of the SPPS. Any unused native supply should be allocated to overlying landowners
4 including the Willis Class. An allocation of unused Federal Reserve water rights to the PWS would
5 exceed the 15% water rights allocation to the PWS under the Willis Class Stipulation of Settlement
6 and would be inconsistent with the Willis Class Judgment. In addition, the water rights to the PWS
7 under the SPPS are overstated by 1,100 AFY. The Willis Class Judgment set the PWS water rights
8 at 15% of Federally Adjusted NSY. The SPPS confers to the PWS 15% of the gross NSY.

9 **Future Water Supply**

10 6. Attached to the APPS, as Exhibit L, is a true and correct copy of a news bulletin
11 from Department of Water and Resources website dated February 10, 2015, which discusses recent
12 developments in the State that have reduced the prospect for securing imported water in the future.
13 This uncertainty is evidenced in the SPPS (*See* paragraphs 5.1.5.3 and 8.4.1 of the SPPS). The
14 timing and availability of water supplies in California is a significant unknown. The Willis Class
15 would be relegated to rely on this supply for their water needs in the future under the SPPS. This
16 would be contrary to California law, patently unfair, and entirely inconsistent with the Willis Class
17 Judgment.

18
19 **Alternative Proposed Solutions**

20 7. The SPPS does not allocate a free production allowance from the Native Safe Yield
21 ("NSY") to the Willis Class. The SPPS allocates the NSY (82,300 AFY) to the Public Water
22 Suppliers ("PWS") and all other overlying landowners except the Willis Class. This allocation
23 would confer a significant economic advantage for real property owners who have a free production
24 allowance in comparison to the Willis Class. The owners of land with water rights would have a
25 valuable asset (i.e. water rights) and improved real property rights; alternatively, owners of land
26 who may not be allowed to pump groundwater, and even if allowed, will have to pay a replacement
27
28

1 assessment, will have their property values diminished if the SPPS is approved. Therefore, the
2 SPPS would have a dramatic negative consequence to the real property values of Willis Class
3 Members. Further, the SPPS proposes that Willis Class Members must comply with a dozen
4 onerous and very expensive requirements to even apply for permission to pump groundwater. Even
5 if the extensive and costly application is submitted, their application may be denied by the
6 Watermaster in which case the Willis Class Member's land would be basically worthless. The
7 SPPS proposals are not consistent with the Willis Class Stipulation of Settlement and resulting
8 Amended Final Judgment. Accordingly, pursuant to the *City of Lodi* California Supreme Court
9 case, Willis Class Counsel has submitted Alternative Proposed Physical Solutions ("APPS") that
10 incorporate the groundwater rights established in the Willis Settlement and Judgment as well as the
11 rights of other parties. See APPS filed concurrently herewith.

12
13
14 8. The APPS includes a discussion of several exhibits. Attached to the APPS as Exhibit
15 G, is a true and correct copy of the Declaration of Eric Garner in Support of Motion For Preliminary
16 Approval of The Wood Class Settlement dated May 2, 2011. Attached to the APPS as Exhibit H
17 is a true and correct copy of Chino Basin Judgment. Attached to the APPS as Exhibit I is a true
18 and correct copy of The Antelope Valley Accord dated July 12, 2010. It is my understanding that
19 all overlying landowners including Public Water Suppliers, except District 40, approved the
20 Antelope Valley Accord. Attached to the APPS as Exhibit J is a true and correct copy of a chart
21 depicting the acreage, number of class members, and number of parcels for Willis Class members
22 and other parties. This chart was prepared and provided to me by District 40.

23 **Economic Value of Antelope Valley Water Rights**

24
25 9. Although it will be imperative to submit an expert opinion to the Court regarding
26 the valuation of groundwater in the Basin, I am able to provide the following preliminary
27 information regarding that valuation based on publicly available information. The Mojave Basin
28

1 Area adjacent to the Antelope Valley Basin is an adjudicated basin experiencing overdraft
2 conditions. According to the Twentieth Annual Report of the Mojave Basin Area Watermaster for
3 Water Year 2012-2013 ("Report"), most recent year available, the Replacement Water Assessment
4 Rate for 2013-2014 will not exceed \$448 per acre-foot. A true and correct copy of relevant portions
5 of the Report, including page 11, is attached to the APPS as Exhibit K. The SPPS sets the next
6 "review" of permanent allocations in 17 years. Accordingly, a highly conservative estimate of the
7 value of one acre-foot of groundwater on a fixed and permanent basis over the next 17 years in the
8 Antelope Valley Basin is \$7,616. This amount is significantly understated, however, considering
9 that water in the Antelope Valley is likely more expensive than Mojave. Based on available
10 information, the value is around \$7,500 per acre-foot, at a minimum. Therefore, under the SPPS,
11 all Stipulating Parties, including the PWS, receive a permanent, non-reducible, overlying
12 production right collectively worth over \$600,000,000. This amount does not account for inflation
13 and discount rate to present value, nor does it account for upward pressure on prices likely to be
14 caused by future growth in the Antelope Valley. An expert opinion would be needed to provide a
15 more precise analysis.

18 **Need for a Court-appointed Expert**

19 10. The terms of the SPPS filed with the Court and the need to incorporate the rights of
20 the Willis Class into the Physical Solution ultimately adopted by this Court make it clear that expert
21 testimony is absolutely necessary in a number of areas. First, an impartial expert, i.e. an expert not
22 retained by any of the Stipulating Parties, must weigh the reasonable use of the proposed permanent
23 allocation of groundwater for each Stipulating Party. Second, an impartial expert must determine
24 the reliability of replacement water sources, particularly in light of the language contained in
25 Paragraphs 5.1.5.3 and 8.4.1 of the SPPS regarding Drought Provisions and provisions to the State
26 of California that call into question the availability/supply and reliability of replacement water from
27
28

1 AVEK. Third, an impartial expert is needed to analyze the feasibility and cost of the twelve steps
2 required for any Willis Class Member to apply for the right to potentially pump groundwater in the
3 future (there is no guarantee of the right to pump). Fourth, an impartial expert will be necessary if
4 the Court imposes a physical solution that permanently allocates water rights to the parties. David
5 Sunding, Ph.D., a distinguished Professor of Agricultural & Resource Economics at the University
6 of California at Berkeley, has agreed to provide his expert services and quantify the likely future
7 groundwater use of the Willis Class should the Court impose a physical solution that demands
8 permanent quantification of all water rights. A true and correct copy of a letter dated February 13,
9 2015, from Dr. Sunding is attached to the APPS as Exhibit N. Finally, as Willis Class Counsel, we
10 reserve the right to request assistance in additional areas if necessary based upon the evidence
11 presented at trial by the Stipulating Parties or as requested by the Court. For example, if the Court
12 considers any of the APPS presented by the Willis Class as we believe it should, the Court may
13 request expert analysis of the timing, amount, and purpose for prospective uses of water by Willis
14 Class Members to assist in the future administration of the Physical Solution ultimately adopted by
15 the Court.

16
17
18 11. Attached as Exhibit A to the Willis Opposition is a true and correct copy of relevant
19 portions of Hearing Transcript dated June 16, 2011.

20
21 12. Attached as Exhibit B to the Willis Opposition is a true and correct copy of Wood
22 Class Motion to Decertify dated June 13, 2012.

13. Attached as Exhibit F to the Willis Opposition is a true and correct copy of relevant portions of Reporter's Transcripts of Proceedings (RT) 33:1-12, Nov. 4, 2014; *see also* RT. 44:6-14, Jan. 16, 2013; RT 25:24-28, Nov. 9, 2012; RT 14: 13-16, Aug. 30, 2011; RT 3:1-7:5, 9:20-26, 11:8-12:15, 13:3-7, June 16, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 13, 2015 at San Diego, California.

By:

Ralph B. Kalfayan