

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

5 Class Counsel for the Willis Class  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 ANTELOPE VALLEY  
12 GROUNDWATER CASES

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

16 *Plaintiffs,*

17 v.

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

26 *Defendants.*  
27  
28

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 STIPULATION AND  
PROPOSED PHYSICAL SOLUTION  
("SPPS"); WILLIS CLASS' MOTION TO  
ADMIT EVIDENCE OF ALTERNATIVE  
PROPOSED PHYSICAL SOLUTIONS  
("APPS")**

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

7 2. On July 13, 2010, all Defendant Public Water Suppliers entered into a Stipulation  
8 of Settlement with the Willis Class. On May 22, 2011, the Court entered a Judgment based on the  
9 Willis Class Stipulation of Settlement. At the request of the Public Water Suppliers, the Court  
10 modified the Judgment on September 22, 2011, to incorporate the terms of the Willis Class  
11 Attorneys' Fees Order. The Amended Final Judgment was appealed by some of the Public Water  
12 Suppliers. After mediation, the parties settled the appeal and the court of appeal issued a  
13 remittitur. For all purposes in this action, the Willis Amended Final Judgment has now become a  
14 final, non-appealable judgment with res judicata effect as to the Settling Defendants.  
15

16  
17 **Bad Faith Negotiations**

18 3. As detailed in my declaration filed January 5, 2015, Willis Class Counsel was not  
19 privy to the negotiations that led up to the Stipulation and Proposed Physical Solution ("SPPS")  
20 submitted to the Court on March 4, 2015. My repeated attempts to work with District 40's  
21 counsel to incorporate the Willis Class' correlative rights into a proposed physical solution for  
22 submission to the Court were rebuffed or ignored. For example, in July 2014, I submitted a  
23 proposal to District 40's counsel that included a permanent allocation of groundwater for the  
24 Willis Class to incorporate into the proposed physical solution to be submitted to the Court. That  
25 specific proposal was ignored. Even my requests to see a copy of the updated draft of the SPPS  
26 after July 2014 were ignored. I did not receive an updated copy of the SPPS until December 24,  
27  
28

1 2014, in exchange for my promise to keep its contents confidential from the Court. As it turns  
2 out, the SPPS I received on December 24, 2014 was completely finalized and had already been  
3 signed by at least seven Stipulating Parties, including Palmdale Water District on December 10,  
4 2014 and the City of Lancaster on December 11, 2014. The remaining Stipulating Parties signed  
5 the SPPS after Willis Class Counsel received its copy on December 24, 2014, but no revisions  
6 were made to the finalized SPPS after that date.  
7

8 **Unreasonable Standards for New Pumping under the SPPS**  
9

10 4. I personally contacted a representative at Los Angeles County Department of  
11 Health Services by phone on or about March 2, 2015, and learned that in order to install a well  
12 and pump groundwater, an applicant must complete an application and pay certain fees. The  
13 SPPS includes requirements for new pumping that far exceed those required by the County. (*See*  
14 Paragraph 18.5.13 *et. seq.* of the SPPS). These proposed requirements appear very unreasonable  
15 and unduly burdensome for Willis Class Members. However, I am unable to more precisely  
16 evaluate the cost and feasibility of the standards without a Court-appointed expert.  
17  
18

19 **Unused Federal Government NSY allocation**

20 5. The SPPS allocates unused Federal Reserve water rights to the PWS. *See*  
21 Paragraph 5.1.4.1 of the SPPS. Any unused native supply should be allocated to overlying  
22 landowners including the Willis Class. An allocation of unused Federal Reserve water rights to  
23 the PWS would exceed the 15% water rights allocation to the PWS under the Willis Class  
24 Stipulation of Settlement and would be inconsistent with the Willis Class Judgment. In addition,  
25 the water rights to the PWS under the SPPS are overstated by 1,100 AFY. The Willis Class  
26 Judgment set the PWS water rights at 15% of Federally Adjusted NSY. The SPPS confers to the  
27 PWS 15% of the gross NSY.  
28

1 **Future Water Supply**

2 6. A news bulletin from Department of Water and Resources website dated February  
3 10, 2015 discusses recent developments in the State that have reduced the prospect for securing  
4 imported water in the future. This uncertainty is evidenced in the SPPS (See paragraphs 5.1.5.3  
5 and 8.4.1 of the SPPS). The timing and availability of water supplies in California is a significant  
6 unknown. The Willis Class would be relegated to rely on this supply for their water needs in the  
7 future under the SPPS. This would be contrary to California law, patently unfair, and entirely  
8 inconsistent with the Willis Class Judgment.

9  
10 **Alternative Proposed Solutions**

11 7. The SPPS does not allocate a free production allowance from the Native Safe  
12 Yield ("NSY") to the Willis Class. The SPPS allocates the NSY (82,300 AFY) to the Public  
13 Water Suppliers ("PWS") and all other overlying landowners except the Willis Class. This  
14 allocation would confer a significant economic advantage for real property owners who have a  
15 free production allowance in comparison to the Willis Class. The owners of land with water  
16 rights would have a valuable asset (i.e. water rights) and improved real property rights;  
17 alternatively, owners of land who may not be allowed to pump groundwater, and if allowed, will  
18 have to pay a replacement assessment will have their property values diminished if the SPPS is  
19 approved. The SPPS would have a dramatic negative consequence to the real property values of  
20 Willis Class Members and would constitute an unlawful taking of property rights. Further, the  
21 SPPS proposes that Willis Class Members must comply with a dozen onerous and very expensive  
22 requirements to even apply for permission to pump groundwater. Even if the extensive and costly  
23 application is submitted, their application may be denied by the Watermaster in which case the  
24 Willis Class Member's land would be basically worthless. The SPPS proposals are not consistent  
25 with the Willis Class Stipulation of Settlement and resulting Amended Final Judgment.

1 Accordingly, pursuant to the *City of Lodi* California Supreme Court case, Willis Class Counsel  
2 has moved to admit Alternative Proposed Physical Solutions (“APPS”) into evidence that  
3 incorporate the groundwater rights established in the Willis Settlement and Judgment as well as  
4 the rights of other parties. See Motion to Admit APPS (“APPS Motion”) filed concurrently  
5 herewith.  
6

7 8. The APPS Motion includes a discussion of several exhibits, including the  
8 Declaration of Eric Garner in Support of Motion For Preliminary Approval of The Wood Class  
9 Settlement dated May 2, 2011, the Chino Basin Judgment, and the Antelope Valley Accord dated  
10 July 12, 2010. It is my understanding that all overlying landowners including Public Water  
11 Suppliers, except District 40, approved the Antelope Valley Accord. A chart depicting the  
12 acreage, number of class members, and number of parcels for Willis Class members and other  
13 parties is also discussed in the APPS Motion. This chart was prepared and provided to me by  
14 District 40. All of these exhibits are attached to the APPS Motion.  
15

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

17 9. Although it will be imperative to submit an expert opinion to the Court regarding  
18 the valuation of groundwater in the Basin, I am able to provide the following preliminary  
19 information regarding that valuation based on publicly available information. The Mojave Basin  
20 Area adjacent to the Antelope Valley Basin is an adjudicated basin experiencing overdraft  
21 conditions. According to the Twentieth Annual Report of the Mojave Basin Area Watermaster  
22 for Water Year 2012-2013 (“Report”), most recent year available, the Replacement Water  
23 Assessment Rate for 2013-2014 will not exceed \$448 per acre-foot. The SPPS sets the next  
24 “review” of permanent allocations in 17 years. Accordingly, a highly conservative estimate of  
25 one acre-foot of groundwater on a fixed and permanent basis over the next 17 years in the  
26 Antelope Valley Basin is \$7,616. This amount is significantly understated, however, considering  
27  
28

1 that water in the Antelope Valley is likely more expensive than Mojave. Based on available  
2 information, the value is around \$7,500 per acre-foot at a minimum. Therefore, under the SPPS,  
3 all Stipulating Parties, including the PWS, receive a permanent, non-reducible, overlying  
4 production right collectively worth over \$600,000,000. This amount does not account for  
5 inflation and discount rate to present value, nor does it account for upward pressure on prices  
6 likely to be caused by future growth in the Antelope Valley. An expert opinion would be needed  
7 to provide more precise analysis.

9 **Need for a Court-appointed Expert to Adequately Evaluate the APPS**

10 10. The terms of the SPPS filed with the Court and the need to incorporate the rights  
11 of the Willis Class into the Physical Solution ultimately adopted by this Court make it clear that  
12 expert testimony is absolutely necessary in a number of areas. First and foremost, an impartial  
13 expert is necessary to determine the timing, amount, and purpose of prospective groundwater  
14 pumping by the 65,000 Willis Class Members and in assessing whether the uses allocated under a  
15 physical solution are reasonable and beneficial. Second, an impartial expert must determine the  
16 reliability of replacement water sources, particularly in light of the language contained in  
17 Paragraphs 5.1.5.3 and 8.4.1 of the SPPS regarding Drought Provisions and provisions to the  
18 State of California that call into question the availability/supply and reliability of replacement  
19 water from AVEK. Third, an impartial expert is needed to analyze the feasibility and cost of the  
20 twelve steps required for any Willis Class Member to apply for the right to potentially pump  
21 groundwater in the future (there is no guarantee of the right to pump). Fourth, an impartial expert  
22 will be necessary whether the Court imposes a physical solution that permanently allocates water  
23 rights to the parties or if any portion of the APPS are adopted by the Court. David Sunding,  
24 Ph.D., a distinguished Professor of Agricultural & Resource Economics at the University of  
25 California at Berkeley, has agreed to provide his expert services to identify and quantify the likely  
26  
27  
28

1 future groundwater use of the Willis Class to assist the Court in adequately evaluating all of the  
2 proposed physical solutions and in assessing whether the uses allocated under a physical solution  
3 are reasonable and beneficial.

4 11. Attached as Exhibit A to the Willis Class' Opposition to the Stipulation and  
5 Proposed Physical Solution (hereinafter "Willis Opposition") is a true and correct copy of the  
6 Willis Stipulation of Settlement dated July 13, 2010.

7 12. Attached as Exhibit B to the Willis Opposition is a true and correct copy of  
8 relevant portions of Hearing Transcript dated June 16, 2011.

9 13. Attached as Exhibit C to the Willis Opposition is a true and correct copy of Wood  
10 Class Motion to Decertify dated June 13, 2012.

11 14. Attached as Exhibit D to the Willis Opposition is a true and correct copy of the  
12 Willis Final Judgment dated May 12, 2011.

13 15. Attached as Exhibit E to the Willis Opposition is a true and correct copy of the  
14 Willis Amended Final Judgment dated September 22, 2011.

15 16. Attached as Exhibit F to the Willis Opposition is a true and correct copy of  
16 relevant portions of Reporter's Transcripts of Proceedings dated June 16, 2011; August 30, 2011;  
17 November 9, 2012; January 16, 2013; and November 4, 2014.

18 17. Attached as Exhibit G to the Motion to Admit Evidence of Alternative Proposed  
19 Physical Solutions ("APPS") and Related Motion for Court-Appointed Expert (hereinafter "APPS  
20 Motion") is a true and correct copy of the Declaration of Eric Garner In Support of Motion for  
21 Preliminary Approval of The Wood Class Settlement dated May 2, 2011.

22 18. Attached as Exhibit H to the APPS Motion is a true and correct copy of the Chino  
23 Basin Judgment.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19. Attached as Exhibit I to the APPS Motion is a true and correct copy of the Antelope Valley Accord dated July 12, 2010.

20. Attached as Exhibit J to the APPS Motion is a true and correct copy of a chart depicting the acreage, number of class members, and number of parcels for Willis Class Members and other parties.

21. Attached as Exhibit K to the APPS Motion is a true and correct copy of excerpts from the Twentieth Annual Report of the Mojave Basin Area Watermaster for Water Year 2012-2013.

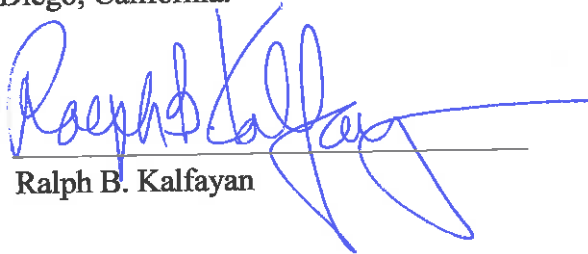
22. Attached as Exhibit L to the APPS Motion is a true and correct copy of a news bulletin from Department of Water and Resources website dated February 10, 2015.

23. Attached as Exhibit M to the APPS Motion is a true and correct copy of the L.A. County form application to pump groundwater.

24. Attached as Exhibit N to the APPS Motion is a true and correct copy of a letter dated February 13, 2015, from Dr. Sunding.

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

Executed on April 6, 2015 at San Diego, California.

By:   
Ralph B. Kalfayan