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12 **Copa De Oro Land Company**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**

15 **Coordination Proceeding Special Title**  
16 **(Rule 1550(b))**

17 **ANTELOPE VALLEY GROUNDWATER**  
18 **CASES**

19 **Included Actions:**

20 **Los Angeles County Waterworks District**  
21 **No. 40 v. Diamond Farming Co., Superior**  
22 **Court of California, County of Los Angeles,**  
23 **Case No. BC 325 201;**

24 **Los Angeles County Waterworks District**  
25 **No. 40 v. Diamond Farming Co., Superior**  
26 **Court of California, County of Kern, Case**  
27 **No. S-1500-CV-254-348;**

28 **Wm. Bolthouse Farms, Inc. v. City of**  
**Lancaster, Diamond Farming Co. v.**  
**Lancaster, Diamond Farming Co. v.**  
**Palmdale Water Dist., Superior Court of**  
**California, County of Riverside, Case No.**  
**RIC 353 840, RIC 344 436, RIC 344 668**

**JUDICIAL COUNCIL COORDINATION**  
**PROCEEDING NO. 4408**

**Case No. BC 391869**  
**Assigned to Hon. Jack Komar**

**(Santa Clara Case No. 01-05-CV-049053)**

**CROSS-DEFENDANT COPA DE ORO**  
**LAND COMPANY'S RESPONSE TO**  
**MOTION FOR FINAL APPROVAL OF**  
**PARTIAL CLASS SETTLEMENT**

**BY FAX FILING**

**Date: December 11, 2013**

**Time: 9:00 a.m.**

**Dept.: Santa Clara Sup. Ct., Dept. 1**

**Judge: Hon. Jack Komar**

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**CROSS-DEFENDANT COPA DE ORO LAND COMPANY'S RESPONSE TO MOTION FOR FINAL**  
**APPROVAL OF PARTIAL CLASS SETTLEMENT**

1 Cross-defendant Copa de Oro Land Company (“Copa de Oro”) responds to the Motion  
2 for Final Approval of Partial Class Settlement by the Wood Class and several public water  
3 suppliers. Copa de Oro previously filed a response to the motion for preliminary approval of  
4 the settlement that raised the issues described below. Because the motion for final approval  
5 filed by the Wood Class does not address Copa de Oro’s previous comments, Copa de Oro  
6 requests the Court consider the following matters.

7 **A. LIMITATION ON SCOPE OF SETTLEMENT**

8 Copa de Oro appreciates that the settlement is limited to an agreement among the  
9 signatories not to contest certain claims among themselves and does not extend to proposed  
10 allotments of water relative to other parties. (Settlement, pp. 8:16-18, 9:23-25, 10:25-26.) The  
11 Court should confirm this limitation in any order approving the settlement. Copa de Oro also  
12 requests clarification of several terms of the settlement, as described below.

13 **B. DEFINITION OF UNCONTESTED WATER-RIGHT CLAIM**

14 The settlement states that the settling defendants would not contest each class member's  
15 claim to pump up to 3 acre-feet per year. (Settlement, p. 9:23-25.) It appears that this term  
16 means that each class member's claim would only be uncontested as to 3 acre-feet per year, no  
17 matter how many properties that class member owns. The Court should clarify that this is the  
18 intent of the settling parties.

19 **C. EFFECT OF COURT DECISIONS**

20 The settlement provides that the Wood Class agrees not to contest each Settling  
21 Defendant’s right to pump specified amounts of water from the basin, “but only if competent  
22 evidence is presented and incorporated by the Court in the Final Judgment[.]” (Settlement, p.  
23 8:17-21.) Similarly, the settlement provides that if the Court enters findings of fact that vary  
24 from the estimated amounts in the settlement, the Court’s findings will control. (Settlement,  
25 pp. 18:25-19:2.) It is ambiguous how these terms would affect the settling parties' rights and  
26 obligations, and therefore the conduct of the rest of these coordinated cases, if the Court's  
27 findings and orders were to be contrary to the settlement terms. For example, it is unclear

1 whether the use of the term "competent evidence" means only that the settling parties need to  
2 introduce evidence that the Court admits at trial or whether the Court must accept that evidence  
3 as persuasive. Similarly, the use of the phrase "findings of fact" suggests that contrary legal  
4 conclusions by the Court might not affect the settling parties' rights and obligations. Any order  
5 by the Court approving the settlement should clarify these terms.

6 **D. DEFINITION OF INTENDED BENEFICIARIES**

7 The settlement's Intended Beneficiaries section provides that it shall bind "each and  
8 every subsequent property owner who acquires property in the Basin from a Wood Class  
9 Member as well as persons who subsequently acquire such properties." (Settlement, p. 22:20-  
10 24.) This provision is unclear in important ways. By apparently covering all properties owned  
11 by all class members, it appears to conflict with the settlement's explanatory text, which states,  
12 "In particular, the Settling Parties recognize that many persons own more than one parcel of  
13 land within the Basin. The foregoing Release only binds Wood Class Members and only with  
14 respect to those properties within the Basin on which they have pumped or are pumping within  
15 the terms of the class definition." (Settlement, p. 16:19-22.) In addition, the settlement's  
16 Intended Beneficiaries section appears to indicate that a subsequent landowner that buys  
17 properties from a class member could be bound to the settlement as to all of that landowner's  
18 properties, even though that landowner may have been a separately-named party. That would  
19 be an inappropriate result. The Court should clarify the settlement's Intended Beneficiaries  
20 section before approving the settlement.

21 **E. DEFINITION OF NATIVE SAFE YIELD**

22 The settlement defines "Native Safe Yield" as "the amount of pumping, which under a  
23 given set of land use and other prevailing cultural conditions, generates Return Flows that,  
24 when combined with naturally occurring groundwater recharge to the Basin, result in no long-  
25 term depletion of Basin groundwater storage." (Settlement, p. 5:17-20.) By including  
26 consideration of the generation of return flows in the calculation of the native safe yield, this  
27

1 definition may confuse further consideration of safe yield-related issues in the remainder of the  
2 coordinated cases.

3 **F. CLARIFICATION OF SCOPE OF SETTLEMENT**

4 The notice of settlement sent to class members stated that the class does not include  
5 entities that "are already a party to this litigation." The settlement itself, however, is not as  
6 clear on this point. (Settlement, p. 7:3-12.) The exclusion in the notice should be included in  
7 the settlement itself.

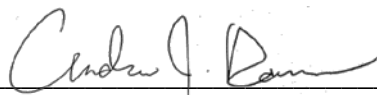
8 **G. WATER CODE SECTION 106**

9 The settlement characterizes Water Code section 106 as establishing a "priority" right to  
10 water. (Settlement, p. 10:21-22.) Both the California Constitution and the Water Code contain  
11 declarations of state policy concerning water resources. (See, e.g., Cal. Const., Art. X, § 2  
12 (reasonable use); Wat. Code §§ 104-105, 1005.4, subd. (a), 1011.5, subd. (a).) The Court  
13 should not declare that any given statute creates a water-right priority without full briefing of  
14 the matter. The Court therefore should reference Water Code section 106 as involving "the  
15 claimed priority established by Water Code section 106."  
16

17 Dated: November 27, 2013

Respectfully submitted,

18  
19 BARTKIEWICZ, KRONICK & SHANAHAN  
A Professional Corporation

20  
21 By:   
22 Andrew J. Ramos

23 Attorneys for Cross-Defendant  
24 Copa de Oro Land Company

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**PROOF OF SERVICE**

I, Andrew J. Ramos, declare:

I am a citizen of the United States and a resident of Sacramento County. I am over the age of 18, not a party to this action and am employed at Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. On November 27, 2013, I served, in the manner described below, the following document:

**CROSS-DEFENDANT COPA DE ORO LAND COMPANY’S RESPONSE TO MOTION FOR FINAL APPROVAL OF PARTIAL CLASS SETTLEMENT**

I posted this document to the Court’s World Wide Website at [www.scefilings.org](http://www.scefilings.org).

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

Executed at Sacramento, California on November 27, 2013.

\_\_\_\_\_  
Andrew J. Ramos