

1 **RYAN S. BEZERRA, State Bar No. 178048**  
2 **BARTKIEWICZ, KRONICK & SHANAHAN**  
3 **A PROFESSIONAL CORPORATION**  
4 **1011 TWENTY-SECOND STREET**  
5 **SACRAMENTO, CALIFORNIA 95816-4907**  
6 **TELEPHONE: (916) 446-4254**  
7 **TELECOPIER: (916) 446-4018**  
8 **E-MAIL: rsb@bkslawfirm.com**

9 **Attorneys for Cross-Defendant**  
10 **Copa De Oro Land Company**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **ANTELOPE VALLEY GROUNDWATER**  
14 **CASES**

15 **Included Actions:**

16 **Los Angeles County Waterworks District No.**  
17 **40 v. Diamond Farming Co., Superior Court of**  
18 **California, County of Los Angeles, Case No.**  
19 **BC 325201;**

20 **Los Angeles County Waterworks District No.**  
21 **40 v. Diamond Farming Co., Superior Court of**  
22 **California, County of Kern, Case No. S-1500-**  
23 **CV-254-348;**

24 **Wm. Bolthouse Farms, Inc. v. City of**  
25 **Lancaster, Diamond Farming Co. v.**  
26 **Lancaster, Diamond Farming Co. v. Palmdale**  
27 **Water Dist., Superior Court of California,**  
28 **County of Riverside, Case Nos. RIC 353 840,**  
**RIC 344 436, RIC 344 668**

**Judicial Council Coordination No. 4408**

**Santa Clara Case No. 1-05-CV-049053**  
**Assigned to Hon. Jack Komar**

**EX PARTE APPLICATION OF**  
**CROSS-DEFENDANT COPA DE**  
**ORO LAND COMPANY FOR**  
**RELIEF FROM EXPERT-**  
**DISCLOSURE DEADLINE;**  
**DECLARATIONS OF RYAN S.**  
**BEZERRA AND VERA NELSON**

**Date: June 25, 2008**

**Time: 8:15 a.m.**

**Dept. 17C**

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**EX PARTE APPLICATION FOR RELIEF**  
**FROM EXPERT-DISCLOSURE DEADLINE**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on June 25, 2008, at 8:15 a.m., or as soon thereafter as the matter may be heard, in Department 17C of the Superior Court of California, County of Santa Clara, located at 191 North First Street, San Jose, California 95113, before the Honorable Jack Komar, assigned, pursuant to the Court's May 27, 2008 Amended Order After Case Management Conference, cross-defendant Copa de Oro Land Company ("Copa de Oro") will apply, and hereby does apply, for relief from the June 27, 2008 deadline to make expert disclosures for Phase II of this action, specifically for an extension to August 8, 2008. This Application is based on the following good cause, as demonstrated by this Application and its attachments:

- 13 (1) Copa de Oro has retained an expert for this litigation, specifically Vera Nelson  
14 of Erler & Kalinowski, Inc. ("EKI"), who believes that she will require until  
15 August 8, 2008 to develop opinions for this action;
- 16 (2) To date, the public water suppliers have not disclosed during what period they  
17 claim to have acquired prescriptive water rights; and
- 18 (4) To date, Copa de Oro has been unable to obtain access to materials prepared by  
19 the Expert Technical Committee formed for this action and Ms. Nelson believes  
20 that access to those materials would be helpful in developing her opinions.

21 Copa de Oro gave the parties notice of this Application via posting on the Court's Web  
22 site before 10 a.m. on June 24, 2008, as described in the enclosed sworn Proof of Service.

23 Dated: June 24, 2008

Respectfully submitted,

24 BARTKIEWICZ, KRONICK & SHANAHAN  
25 A Professional Corporation

26 By: \_\_\_\_\_

Ryan S. Bezerra

27 Attorneys for Cross-Defendant Copa de Oro  
28 Land Company

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In its May 27, 2008 Amended Order After Case Management Conference, the Court  
3 stated the following:

4  
5 Expert disclosures shall be posted by noon on **June 27, 2008**. Any party unable  
6 to comply may seek ex parte relief upon a showing of good cause in accordance  
with Santa Clara County Complex Litigation Guidelines upon notice.

7 (Emphasis in original.)

8 The Court has good cause to extend this deadline to August 8, 2008 for cross-defendant  
9 Copa de Oro Land Company (“Copa de Oro”) because the groundwater expert that Copa de  
10 Oro has retained has indicated that she will need until August 8, 2008 to conduct the work  
11 necessary to develop her opinions. Good cause also exists because, to date, Copa de Oro has  
12 been unable to access whatever materials have been produced by the Expert Technical  
13 Committee in this action and because the public water suppliers have not disclosed during what  
14 five-year time period they claim to have acquired prescriptive rights. For these reasons, the  
15 Court should grant Copa de Oro an extension of the expert-disclosure deadline to August 8,  
16 2008.

17 **STATEMENT OF FACTS**

18 Following the May 22, 2008 case management conference at which the Court indicated  
19 that it would set October 6, 2008 as the Phase II trial date and a June 27, 2008 expert-disclosure  
20 deadline, Copa de Oro retained Vera Nelson of Erler & Kalinoski, Inc., as its expert.  
21 (Declaration of Ryan S. Bezerra, ¶ 3 (“Bezerra Declaration”).) Ms. Nelson has extensive  
22 experience with the analysis of groundwater hydrology and hydrogeology. (Declaration of  
23 Vera Nelson, ¶ 1 (“Nelson Declaration”).) Based on her experience, and a previously  
24 scheduled family summer vacation, Ms. Nelson believes that she will require until August 8,  
25 2008 to develop her opinions. (Nelson Declaration, ¶ 3.) Ms. Nelson also believes that it  
26 would be helpful in conducting that work if she could obtain access to materials that the Expert  
27 Technical Committee in this case has prepared. (Nelson Declaration, ¶ 4.) To date, Copa de  
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1 Oro’s attorney has been unable to determine how to obtain access to those materials. (Bezerra  
2 Declaration, ¶ 4.)

3 **ARGUMENT**

4 California Rules of Court, rule 3.1202(C), indicate that an *ex parte* applicant must show  
5 “irreparable harm, immediate danger, or any other statutory basis for granting relief *ex parte*.”  
6 Code of Civil Procedure section 404.7 states that, “[n]otwithstanding any other provision of  
7 law,” the Judicial Council may provide for rules of practice and procedure in coordinated  
8 actions such as this one. California Rules of Court, rule 3.504, subdivision (c), authorizes the  
9 assigned coordination judge to “prescribe any suitable manner of proceeding” where the  
10 general coordination statutes and rules do not so. Under Code of Civil Procedure section 404.7,  
11 the Court’s above-referenced May 27 order presents a statutory basis for granting *ex parte*  
12 relief from the June 27, 2008 expert-disclosure deadline. In addition, Copa de Oro would  
13 suffer irreparable harm, as used in Rules of Court, rule 3.1202(C), if Copa de Oro were not  
14 granted relief from that deadline. The inability to meet a deadline has been held to be  
15 irreparable harm. (See *Black Historical Society v. City of San Diego* (2005) 134 Cal.App.4<sup>th</sup>  
16 670, 676.)

17 A key issue in this case is whether certain public water purveyors have acquired  
18 prescriptive groundwater rights in some, or all of, the Antelope Valley groundwater basin  
19 against literally thousands of landowners, including Copa de Oro. (See First Amended Cross-  
20 Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of  
21 Water Rights (“First Amended Cross-Complaint”) , p. 14, ¶¶ 41-45.)<sup>1</sup> In order to prove their  
22 *prima facie* prescription case, the purveyors must prove that their groundwater pumping was:  
23 (1) actual; (2) open and notorious; (3) adverse to the landowners against whom they assert  
24 claims; (4) under a claim of right; and (5) continuous and uninterrupted for the statutory period  
25 of five years. (See *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4<sup>th</sup> 1224, 1241.)  
26 The purveyors must prove each element of prescription by clear and convincing evidence.

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28 <sup>1</sup>On-line: [www.scefiling.org/filingdocs/214/1657/3580\\_ProposedxFirstxAmendedxCrossxComplaint.pdf](http://www.scefiling.org/filingdocs/214/1657/3580_ProposedxFirstxAmendedxCrossxComplaint.pdf).

1 (*Weller v. Chavarria* (1965) 233 Cal.App.2d 234, 242; *Field-Escandon v. DeMann* (1988) 204  
2 Cal.App.3d 228, 235; *Applegate v. Ota* (1983) 146 Cal.App.3d 702, 708.) In its May 27 order,  
3 the Court scheduled an October 6, 2008 trial to consider “the issue of basin/aquifer  
4 characteristics, safe yield and overdraft.” (May 27 Order, p. 3:2-4.) This trial effectively will  
5 consider components of the adversity and notice elements of the purveyors’ prescription case,  
6 including, among other components:

- 7 (1) Against what landowners could each purveyor have pumped groundwater  
8 adversely, given the basin’s, and any subbasins’, hydrogeological  
9 characteristics? and
- 10 (2) Are there any conditions in the basin, such as seismic faults, that could disrupt  
11 any long-term and uniform groundwater-level declines that could be relevant to  
12 the notice element of the purveyors’ prescription claims?

13 The Court will require primarily expert testimony to address these questions.  
14 Accordingly, as directed by the Court at the May 22 case management conference, Copa de  
15 Oro has retained Vera Nelson of Erler & Kalinowski, Inc., to address these questions. (Bezerra  
16 Declaration, ¶ 3; Nelson Declaration, ¶ 3.) Ms. Nelson believes that, as a general matter, she  
17 will need until August 8, 2008 to develop opinions in relation to the Copa de Oro property.  
18 (Nelson Declaration, ¶ 3.) This proposed schedule also accounts for Ms. Nelson’s previously  
19 planned family summer vacation. (Nelson Declaration, ¶ 3.) Without an extension of the June  
20 27 expert-disclosure deadline, Copa de Oro would be unable to produce, by that deadline,  
21 expert testimony to address the issues that the Court has set for a Phase II trial and would  
22 therefore suffer irreparable harm.

23 An extension of the expert-disclosure deadline to August 8, 2008 for Copa de Oro also  
24 is justified by two additional factors.

25 First, to date, Copa de Oro has been unable to access information developed by the  
26 Expert Technical Committee in this action. Copa de Oro’s attorney has attempted to obtain  
27 access to whatever materials that Committee has prepared, but has not yet been able to  
28 determine how to do so. (Bezerra Declaration, ¶ 4.) Copa de Oro’s expert Vera Nelson

1 believes that access to the information developed by the Technical Committee would be helpful  
2 as background information. (Nelson Declaration, ¶ 4.) At least some members of the  
3 Technical Committee apparently have been working since March 27, 2006, when the Court  
4 signed its order concerning the confidentiality of that Committee's workings.<sup>2</sup> Landowners  
5 like Copa de Oro should not be required to respond by June 27 to information developed over  
6 such a much longer period.

7 Second, the purveyors have not disclosed the time period(s) in which they allege that  
8 they acquired prescriptive rights. (See First Amended Cross-Complaint, ¶¶ 31, 41-45.) Until  
9 the purveyors disclose this information, the landowners cannot determine what time period, and  
10 therefore what conditions in the basin, will be crucial in defending against the purveyors'  
11 prescriptive-right claims. On May 29, 2008, discovery requests that will require the purveyors  
12 to disclose the time period(s) during which they claim to have acquired prescriptive rights were  
13 posted to the Court's Web site. (See Plaintiff Rebecca Willis' First Set of Special  
14 Interrogatories Propounded on Each Cross-Complaining Public Water Supplier List on Exhibit  
15 1, pp. 4:14-22 (Special Interrogatory Nos. 9-10), 6:1-7 (Special Interrogatory Nos. 20-21).)<sup>3</sup>  
16 The purveyors' responses therefore are due shortly. The Court should allow the landowners a  
17 reasonable period of time for their experts to work after the purveyors disclose the basis for  
18 their prescriptive-right claims, partly because there is no cognizable legal claim for generalized  
19 judicial basin management. (See *City of Barstow, supra*, 23 Cal.4<sup>th</sup>, at pp. 1249-1250 (a  
20 physical solution cannot disregard water-right priorities).)

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27 <sup>2</sup>On-line: [www.scefiling.org/filingdocs/204/377/494\\_Stipulation.pdf](http://www.scefiling.org/filingdocs/204/377/494_Stipulation.pdf).

28 <sup>3</sup>On-line: [www.scefiling.org/filingdocs/5167/10737/21211\\_SpecialxInterrogatories.pdf](http://www.scefiling.org/filingdocs/5167/10737/21211_SpecialxInterrogatories.pdf).

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**CONCLUSION**

For the foregoing reasons, cross-defendant Copa de Oro Land Company respectfully requests that the Court grant it relief from the Court's current June 27, 2008 expert-disclosure deadline by extending that deadline to August 8, 2008 for Copa de Oro.

Dated: June 24, 2008

Respectfully submitted,  
BARTKIEWICZ, KRONICK & SHANAHAN  
A Professional Corporation

By:   
Ryan S. Bezerra

Attorneys for cross-defendant Copa de Oro Land Company

1 DECLARATION OF RYAN S. BEZERRA

2 I, Ryan S. Bezerra, declare:

3 1. I am an attorney licensed to practice in the courts of the State of California and  
4 am a member of the law firm of Bartkiewicz, Kronick & Shanahan ("BKS"). I am an attorney  
5 of record for Copa de Oro Land Company ("Copa de Oro") in this action.

6 2. I have personal knowledge of the facts stated in this Declaration and, if called as  
7 a witness, would testify to those facts.

8 3. Effective June 9, 2008, BKS retained Erler & Kalinowki, Inc. ("EKI"), as Copa  
9 de Oro's hydrologic expert in this action. Vera Nelson of EKI is Copa de Oro's primary expert  
10 in this action.

11 4. I have made several attempts to determine how to obtain access to whatever  
12 materials the Expert Technical Committee has prepared in this action. These attempts have  
13 included a January 15, 2008 letter to attorneys in the case that I posted on the Court's Web site  
14 ([www.scefilling.org/filingdocs/3864/8261/17243\\_L011508rsb.pdf](http://www.scefilling.org/filingdocs/3864/8261/17243_L011508rsb.pdf)) and a June 11, 2008 e-mail  
15 to attorneys who I understand have experts who are participating in the Expert Technical  
16 Committee, by which I transmitted my signature on the stipulation concerning confidentiality  
17 of that Committee's workings. To date, I have been unable to determine how to obtain access  
18 to whatever materials the Expert Technical Committee has prepared.

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

21 Executed at Sacramento, California on June 24, 2008.

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24 \_\_\_\_\_  
25 Ryan S. Bezerra  
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1 **DECLARATION OF VERA NELSON**

2 I, Vera Nelson, declare:

3 1. I am employed as a Vice President/Principal with Erler & Kalinowki, Inc.  
4 ("EKI"), in Burlingame, California. I am registered as a professional civil engineer in  
5 California and have over 20 years of experience in performing geohydrological studies and  
6 aquifer testing, conducting groundwater resources evaluations and working with computer  
7 groundwater models.

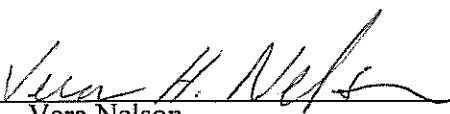
8 2. I have personal knowledge of the facts stated in this Declaration and, if called as  
9 a witness, would testify to those facts.

10 3. As of June 9, 2008, Bartkiewicz, Kronick & Shanahan ("BKS") retained EKI as  
11 experts for Copa de Oro Land Company in this action. In this action, I intend to develop  
12 opinions concerning the hydrogeology of the Antelope Valley groundwater basin in the vicinity  
13 of Copa de Oro Land Company's property located in Kern County and other subjects, as  
14 assigned by BKS. Based on my years of experience in consulting on groundwater issues, I  
15 believe that I may not be able to develop these opinions before August 8, 2008. This belief is  
16 based on my general understanding of the complex hydrogeologic nature of the Antelope  
17 Valley, my preliminary work in this case and the fact that my family previously scheduled its  
18 summer vacation for July 26 through August 2, 2008.

19 4. I understand that a group of experts has operated as an expert technical  
20 committee in this case. To the extent that group of experts has produced reports or other  
21 materials concerning the Antelope Valley groundwater basin, I believe that acquiring access to  
22 those reports or materials as background information would help me perform my work in this  
23 case.

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

26 Executed at Burlingame, California on June 23, 2008

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28 \_\_\_\_\_  
Vera Nelson