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7 Copa De Oro Land Company

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10 ANTELOPE VALLEY GROUNDWATER
11 CASES

12 **Included Actions:**

13 Los Angeles County Waterworks District No.
14 40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
BC 325201;

15 Los Angeles County Waterworks District No.
16 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
CV-254-348;

17 Wm. Bolthouse Farms, Inc. v. City of
18 Lancaster, Diamond Farming Co. v.
19 Lancaster, Diamond Farming Co. v. Palmdale
20 Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

21 PHELAN PIÑON HILLS COMMUNITY
22 SERVICES DISTRICT,

23 Cross-Complainant,

24 vs.

25 CALIFORNIA WATER SERVICE
26 COMPANY, et al.

27 Cross-Defendants.
28

Judicial Council Coordination No. 4408

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

ANSWER OF CROSS-DEFENDANT
COPA DE ORO LAND COMPANY
TO PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT'S CROSS-COMPLAINT
FOR DECLARATORY INJUNCTIVE
AND OTHER EQUITABLE RELIEF
INCLUDING A PHYSICAL
SOLUTION AGAINST ALL PARTIES

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SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands)

6. The Cross-Complaint, and each cause of action contained therein, is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)

7. The Cross-Complaint seeks relief that, if awarded, would constitute unjust enrichment.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Join Indispensable Parties)

8. The Cross-Complaint, and each cause of action contained therein, is barred on the grounds that the Cross-Complainant has failed to name and join indispensable parties.

NINTH AFFIRMATIVE DEFENSE
(Justification)

9. Any conduct of Copa de Oro in relation to the matters alleged in the Cross-Complaint, if they occurred, was justified and the Cross-Complainant, therefore, is barred from any recovery on the Cross-Complaint.

TENTH AFFIRMATIVE DEFENSE
(Uncertainty)

10. The Cross-Complaint, and each cause of action contained therein, is uncertain, and, therefore, Copa de Oro reserves its right to amend its affirmative defense as appropriate.

ELEVENTH AFFIRMATIVE DEFENSE
(Defective Claim of Prescriptive Rights)

11. The Cross-Complaint is defective and uncertain in that it asserts prescriptive water rights, but fails to allege: (a) when the alleged prescriptive period commenced and ended; (b) the specific amount of water that the Cross-Complainant pumped continuously during the alleged prescriptive period; (c) the manner in which Cross-Complainant pumped water under a claim of right; and (d) how Cross-Complainant gave, and cross-defendants received actual, or

1 constructive notice of Cross-Complainant's allegedly wrongful pumping during the alleged
2 prescriptive period.

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4 **TWELFTH AFFIRMATIVE DEFENSE**
(California Constitution, Article X, Section 2)

5 12. Cross-Complainant's methods of water use are unreasonable and wasteful given
6 the conditions of the Antelope Valley and thereby violate Article X, section 2 of the California
7 Constitution.

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9 **THIRTEENTH AFFIRMATIVE DEFENSE**
(Representation of Condition of Aquifer)

10 13. Cross-Complainant, directly through the issuance of will-serve letters or other
11 documents or indirectly through approvals of land uses, represented that the relevant
12 groundwater aquifers were adequate for new groundwater pumping and thus may not now seek
13 prescriptive rights during periods when Cross-Complainant was making such direct or indirect
14 representations.

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16 **FOURTEENTH AFFIRMATIVE DEFENSE**
(Superior Water Right)

17 14. Copa de Oro's water rights are superior and senior to those asserted in the
18 Cross-Complaint.

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20 **FIFTEENTH AFFIRMATIVE DEFENSE**
(Different Aquifers)

21 15. The Cross-Complaint seeks to establish water rights, and water management
22 measures, in aquifers other than those used by Copa de Oro.

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24 **SIXTEENTH AFFIRMATIVE DEFENSE**
(Takings)

25 16. In violation of Amendment V to the United States Constitution and Article I,
26 section 19, of the California Constitution, the Cross-Complaint seeks a declaration that Cross-
27 Complainant has prescribed portions of Copa de Oro's water rights without the payment of just
28 compensation to Copa de Oro.

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**SEVENTEENTH AFFIRMATIVE DEFENSE
(No Basis for Return Flows)**

17. Cross-Complainant is not physically pumping return flows from its use of imported water.

**EIGHTEENTH AFFIRMATIVE DEFENSE
(No Net Augmentation)**

18. Cross-Complainant's activities have not augmented the safe yield of the relevant groundwater aquifer sufficient to support any water right claimed by Cross-Complainant.

**NINETEENTH AFFIRMATIVE DEFENSE
(Self-Help)**

19. Copa de Oro's water rights have been preserved by the doctrine of self-help.

**TWENTIETH AFFIRMATIVE DEFENSE
(Civil Code § 1009)**

20. Each and every cause of action contained in the Cross-Complaint is barred in whole or in part by Civil Code section 1009.

**TWENTY-FIRST AFFIRMATIVE DEFENSE
(Civil Code § 811)**

21. Each and every cause of action contained in the Cross-Complaint is barred in whole or in part by Civil Code section 811.

**TWENTY-SECOND AFFIRMATIVE DEFENSE
(No Legally Cognizable Damage)**

22. The Cross-Complainant has not suffered any actual or legally cognizable injuries or damages caused by Copa de Oro.

**TWENTY-THIRD AFFIRMATIVE DEFENSE
(Bona Fide Purchaser)**

23. Copa de Oro was a *bona fide* purchaser of its property.

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PROOF OF SERVICE

I, Terry M. Olson, declare as follows:

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 January 26, 2009, I served, in the manner described below, the following documents:

- 1. Answer of Cross-Defendant Copa De Oro Land Company to Phelan Piñon Hills Community Services District's Cross-Complaint for Declaratory Injunctive and Other Equitable Relief Including a Physical Solution Against All Parties.**

I posted these documents to the Court's World Wide Website located at www.scefiling.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 January 26, 2009.

Terry M. Olson