

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

13 Coordination Proceeding Special Title
14 (Rule 1550(b))

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

17 This Pleading Relates To Consolidated
18 Action:

19 RICHARD A. WOOD, an individual, on
20 behalf of herself and all others similarly
21 situated,

22 Plaintiff,

23 vs.

24 LOS ANGELES COUNTY
25 WATERWORKS DISTRICT NO. 40; et al.

26 Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Case No. BC 391869
Assigned to Hon. Jack Komar

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

COPA DE ORO LAND COMPANY'S
OPPOSITION TO MOTION FOR
PRELIMINARY APPROVAL OF
WOOD CLASS SETTLEMENT

BY FAX

Date: May 24, 2011
Time: 9 a.m.
Dept: 316
Judge: Hon. Jack Komar

1 OPPOSITION TO MOTION FOR PRELIMINARY APPROVAL
2 OF WOOD CLASS SETTLEMENT

3 Copa de Oro Land Company (“Copa de Oro”) is not a party to the Wood class action,
4 but objects to the motion for preliminary approval of the settlement of that action because that
5 proposed settlement purports to establish priority overlying rights in the class’s members. The
6 proposed settlement ignores the Court’s explicit order that settlement of specific cases in this
7 consolidated matter would not affect parties outside of those cases. The proposed settlement
8 also would quantify those purported priority rights at three acre-feet a year for each member of
9 the thousands in the class, resulting in the Wood class consuming a large percentage of the
10 basin’s safe yield. The asserted basis for the proposed settlement’s establishment of class
11 members as holding a priority over other landowners – Water Code section 106 – cannot be
12 applied wholesale as the proposed settlement attempts. In addition, the proposed settlement
13 seeks to allow the United States – which is not even a party to the Wood class action – to
14 establish a priority right in the basin’s safe yield, even though it is at best unclear whether any
15 such right could have any priority over the senior overlying rights in this basin. Copa de Oro
16 accordingly joins in the other landowners’ oppositions to the motion for preliminary approval
17 of the Wood class settlement.

18 The Court should deny that motion for at least the following reasons:

- 19 ● Violation of the consolidation order: The proposed settlement purports to
20 obligate the other landowners to reduce their pumping in order to allow each
21 member of the Wood class to pump three acre-feet per year without assessment.
22 (Wood Class Stipulation of Settlement, p. 12:14-15.) In its order consolidating
23 these cases, however, the Court stated: “Any . . . settlement can only affect the
24 parties to the settlement and cannot have any affect on the rights and duties of
25 any party who is not a party to any such settlement.” (Order Transferring And
26 Consolidating Actions For All Purposes, filed Feb. 24, 2010, p. 5:1-3.)
27 Approval of the proposed Wood settlement would violate the Court’s order by
28

1 resulting in the Wood class obtaining priority rights relative to landowners that
2 were not part of the Wood class action.

3 ● Very large, unknown permanent allotment of portion of safe yield. The Wood
4 class apparently consists of thousands of landowners. The class's June 20, 2008
5 motion for class certification stated: "The Class here is comprised of a large
6 number of property owners believed to total approximately 7,500." (Notice Of
7 Motion And Motion To For [sic] Class Certification; Memorandum of Points
8 and Authorities, dated June 20, 2008, p. p. 7:18-19.) The proposed settlement
9 accordingly would result in an allocation of 22,500 acre-feet to the Wood class,
10 as well as 15% of the basin's "Federally Adjusted Native Safe Yield" to the
11 water suppliers and some unknown amount to the United States. (Wood Class
12 Stipulation of Settlement, pp. 9:8-18, 9:24-26, 11:4-9, 12:14-15.) In total, the
13 proposed Wood settlement appears to attempt to allocate about 40,000 to 50,000
14 acre-feet of water to its preferred parties. Given that the Court's recent tentative
15 decision would establish the basin's safe yield at 110,000 acre-feet a year, the
16 proposed Wood settlement would be an unreasonable allocation that would
17 prejudice other parties' ability to protect their water rights in the remainder of
18 this litigation.

19 ● Asserted priority over other landowners. The proposed Wood settlement seeks
20 to prioritize the rights of Wood class members over other landowners' overlying
21 rights by declaring the class members' use of water "domestic use pursuant to
22 California Water Code section 106." (Wood Class Stipulation of Settlement, p.
23 12:25-27.) Cases interpreting that statute, however, declare that it does not
24 prioritize all uses of water associated with residences and therefore that, under
25 the statute, "[w]hat constitutes a reasonable use is, in the first instance, a
26 question for the trier of facts." (*Prather v. Hoberg* (1944) 24 Cal.2d 549, 562;
27 *Deetz v. Carter* (1965) 232 Cal.App.2d 851, 856 (raising livestock for
28 commercial purposes is not within Water Code § 106).) These cases contradict

1 the proposed settlement's declaration that all water uses by all members of the
2 Wood class would be covered by Water Code section 106.

- 3 • Improper allocation to United States. The proposed settlement would
4 subordinate the Wood class's overlying rights, and the water suppliers'
5 appropriative rights, to an undefined federal reserved right of the United States.
6 (Wood Class Stipulation of Settlement, p. 9:14-18, 9:24-26, 11:16-22.) By
7 subordinating the other landowners' overlying rights to the Wood class's rights,
8 the proposed settlement appears to propose that other landowners' rights would
9 be subordinate to the United States' rights. Federal reserved rights, however,
10 are appropriations that have the priority date of the date of the relevant federal
11 reservation of land from the public domain and are quantified by the
12 reservation's purpose. (*Cappaert v. United States* (1976) 426 U.S. 128, 138 (in
13 reserving land, "the United States acquires a reserved right in unappropriated
14 water which vests on the date of the reservation and is superior to the rights of
15 future appropriators"), 141 (emphasis added).) Such rights therefore are
16 appropriative rights that derive not from the United States' general ownership of
17 land, but rather from the land's specific reservation. Under California law, such
18 appropriative rights cannot be senior to overlying landowners' rights, which
19 derive from simple land ownership. (See *City of Barstow v. Mojave Water*
20 *Agency* (2000) 23 Cal.4th 1224, 1240 (describing basis for overlying rights).)
21 The Wood settlement's purported prioritization of the United States' rights is
22 contrary to law.

23 For these reasons and the reasons stated in the oppositions of other landowners, Copa de
24 Oro respectfully requests that the Court deny the motion for preliminary approval of the Wood
25 class settlement.

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Dated: May 10, 2011

Respectfully submitted,
BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

By: 
Ryan S. Bezerra

Attorneys for Copa de Oro Land Company

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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 May 11, 2011, I served, in the manner described below, the following documents:

COPA DE ORO LAND COMPANY'S OPPOSITION TO MOTION FOR PRELIMINARY APPROVAL OF WOOD CLASS SETTLEMENT

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 May 11, 2011.


Terry M. Olson