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11 **Copa De Oro Land Company**

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

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

16 **ANTELOPE VALLEY GROUNDWATER**
17 **CASES**

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

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

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

23 **COPA DE ORO LAND COMPANY'S**
24 **CASE MANAGEMENT STATEMENT**

25 **BY FAX**

26 **Date: November 15, 2011**

27 **Time: 9 a.m.**

28 **Dept: 316**

Judge: Hon. Jack Komar

8792/P110711rsb CMC

COPA DE ORO'S CASE MANAGEMENT STATEMENT

1 CASE MANAGEMENT STATEMENT

2 Cross-defendant Copa de Oro Land Company (“Copa de Oro”) respectfully submits the
3 following case management statement:

4 1. Allocation Issues

5 At the October 12, 2011 case management conference, the Court stated that allocation
6 of rights in the basin’s groundwater would be the subject for the next phase of trial in this
7 action. In order to guide the parties’ preparation for trial, the Court should issue a written order
8 confirming this decision and listing specifically the subjects to be tried as part of the planned
9 allocation of groundwater rights. This list should include at least the following:

- 10 A. *Elements of prescription* – To establish prescription under their effective
11 complaint against the landowners, the public water suppliers must prove all
12 elements of prescription, including adversity and notice, as against all
13 landowners named in that complaint (see *City of Barstow v. Mojave Water*
14 *Agency* (2000) 23 Cal.4th 1224, 1241 (“*Mojave*”));
- 15 B. *Self-help affirmative defense* – Landowners may seek to establish the affirmative
16 defense of self-help in response to the public water suppliers’ prescriptive
17 claims and thus preserve priority overlying rights to quantified amounts of water
18 (*Mojave, supra*, 23 Cal.4th, at pp. 1241, 1253-1254);
- 19 C. *Allocation of native recharge among overlying landowners and appropriative*
20 *rightholders* – A landowner that proves the affirmative defense of self-help
21 retains its overlying right in a quantified amount. (*Mojave, supra*, 23 Cal.4th, at
22 pp. 1241, 1253-1254.) An allocation of rights accordingly must involve a
23 determination about whether the total amount of overlying rights, if quantified
24 following prescription, exceeds the basin’s safe yield, minus any recharge that
25 derives from imported-water deliveries. (*Mojave, supra*, 23 Cal.4th, at pp. 1241,
26 1253-1254.) If quantified overlying rights were to exceed the “native safe
27 yield,” then the Court might determine: (i) whether there is any surplus water
28 available to appropriative rights, which would remain junior to quantified

1 overlying rights (*Mojave, supra*, 23 Cal.4th, at pp. 1241, 1253-1254); and (ii)
2 whether correlative adjustments among such overlying rights, including those
3 held by public agencies, are necessary (*Tehachapi-Cummings Water Dist. v.*
4 *Armstrong* (1975) 49 Cal.App.3d 992, 1000-1001, part. fn. 6 (state prison is
5 overlying use));

6 D. *Federal reserved right* – The United States may claim a federal reserved right to
7 the amount of water necessary to serve Edwards Air Force Base, which right the
8 United States may claim has a priority over overlying and appropriative rights in
9 the basin. Allocating groundwater rights in the basin therefore may involve
10 determining at least: (i) whether such a reserved right exists; (ii) the priority of
11 any such a right; and (iii) the amount of any such right (see *Cappaert v. United*
12 *States* (1976) 426 U.S. 128, 138 (in withdrawing land from the public domain,
13 the United States “reserves appurtenant water then unappropriated to the extent
14 needed to accomplish the purpose of the reservation [and] acquires a reserved
15 right in unappropriated water which vests on the date of the reservation and is
16 superior to the rights of future appropriators”));

17 E. *Priority among appropriative and prescriptive rights* – Appropriative
18 groundwater rights’ priorities are determined by the rule of “first in time, first in
19 right” and that rule also applies to rights acquired through prescription.
20 (*Mojave, supra*, 23 Cal.4th, at p. 1241; *City of Los Angeles v. City of San*
21 *Fernando* (1975) 14 Cal.3d 199, 294 (allocations among “holders of
22 appropriative and prescriptive rights in accordance with the principle that ‘the
23 one first in time is first in right’”)(“*San Fernando*”).) Allocating rights in the
24 basin’s groundwater therefore may involve determining the priorities of holders
25 of appropriative rights, including the United States if any reserved right that it
26 holds is determined to be an appropriative right; and

27 F. *Ownership of return flows from imported water use* – There appear to be three
28 sources of imported-water return flows in the basin: (i) discharges of treated

1 wastewater; (ii) application of imported water within urban areas; and (iii)
2 application of imported water through agricultural use. Each of these sources
3 may have different recharge rates and may be governed by different ownership
4 rules. (See, e.g., *San Fernando, supra*, 14 Cal.3d, at pp. 262 (“The right to
5 return waters attributable to [imported water] deliveries is an undivided right to
6 a quantity of water in the ground reservoir equal to the net amount by which the
7 reservoir is augmented by such deliveries”), 294; Water Code § 1210 (“The
8 owner of a waste water treatment plant operated for the purpose of treating
9 wastes from a sanitary sewer system shall hold the exclusive right to the treated
10 waste water as against anyone who has supplied the water discharged into the
11 waste water collection and treatment system, including a person using water
12 under a water service contract, unless otherwise provided by agreement”).)

13 2. Trial date and parties’ disclosures

14 Given the breadth of issues that will have to be litigated in order to allocate water rights
15 in the basin, the Court should set a trial date that is at least 18 months in the future, such as
16 May 15, 2013.

17 The Court should set a further case management conference for mid-December 2011 to
18 consider whether to order that the parties disclose certain types of information to expedite
19 litigation of the next phase of the case. For example, in the Santa Maria groundwater
20 adjudication, the Court issued an order requiring disclosures concerning information about their
21 water uses during the alleged prescriptive period. (The Santa Maria order is available on-line at
22 the Santa Clara County Superior Court’s Complex Litigation Web site at www.sccomplex.org.
23 The Santa Maria page appears to be reached by clicking on the home page. The relevant order
24 is filed under “Case Pleading Documents” and has a filing date of June 11, 2001.) Such
25 disclosures also might assist the parties in settlement negotiations in addition to expediting the
26 next phase of litigation.

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3. Telephonic appearance

At the October 12, 2011 case management conference, the Court ordered that parties appear in person at this conference unless otherwise arranged with the Court. On Friday, November 4, 2011, Copa de Oro's counsel contacted Rowena Walker of the Santa Clara Superior Court's Complex Litigation Department to make arrangements to make a telephonic appearance. Ms. Walker instructed counsel that he should state in this statement that he will make a telephonic appearance. Accordingly, Copa de Oro's counsel hereby provides notice that he will be making a telephone appearance on November 15, 2011.

Dated: November 8, 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:

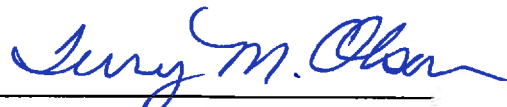
I am a citizen of the United States and a resident of Sacramento County. I am over the age of 18, not a party to this action and am employed at Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. On June 21, 2011, I served, in the manner described below, the following documents:

COPA DE ORO LAND COMPANY'S CASE MANAGEMENT STATEMENT

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 November 8, 2011.



Terry M. Olson