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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)

NOTICE OF *EX PARTE* APPLICATION
AND *EX PARTE* APPLICATION OF
COPA DE ORO LAND COMPANY FOR
APPROVAL OF STIPULATIONS
CONCERNING COPA DE ORO LAND
COMPANY AND LEAVE TO SERVE
WRITTEN DISCOVERY;
DECLARATION OF RYAN S.
BEZERRA

Date: April 30, 2013
Time: 9 a.m.
Dept.: TBD (CourtCall)
Judge: Hon. Jack Komar
Filing Date: July 11, 2005 (coordination)
Trial Date: May 28, 2013 (Phase IV)

8792/P042313rsb Stip App

COPA DE ORO'S *EX PARTE* APPLICATION FOR APPROVAL OF STIPULATIONS AND LEAVE TO
SERVE WRITTEN DISCOVERY

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2 **NOTICE OF EX PARTE APPLICATION FOR APPROVAL OF STIPULATIONS**
3 **CONCERNING COPA DE ORO LAND COMPANY AND LEAVE TO SERVE**
4 **WRITTEN DISCOVERY**

5 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

6 PLEASE TAKE NOTICE that, on April 30, 2013, at 9 a.m. or as soon thereafter as the
7 matter may be heard via CourtCall, in a department to be determined of the Los Angeles
8 County Superior Court, cross-defendant Copa de Oro Land Company (“Copa de Oro”) will
9 apply for an order: (1) approving the Stipulation Regarding Facts Pertaining to Copa de Oro
10 Land Company for Trial (the “Ownership Stipulation”) and the Stipulation for Phase IV Trial
11 Regarding Water Use on Copa de Oro’s Property (the “Water Use Stipulation”); (2) granting
12 Copa de Oro leave to serve, on all parties in this action that have not executed the Ownership
13 Stipulation and the Water Use Stipulation, requests for admissions and Form Interrogatory 17.1
14 concerning Copa de Oro’s property ownership and the facts referenced in the Water Use
15 Stipulation; (3) shortening the time for responding to those requests for admission and that
16 Form Interrogatory; and (4) establishing that a failure to respond to those requests for
17 admission shall be deemed to be an admission. The Ownership Stipulation has been executed
18 by Copa de Oro, Los Angeles County Waterworks District No. 40 (“District 40”) and Palmdale
19 Water District. (The City of Palmdale also has stated its agreement with the Ownership
20 Stipulation.) The Water Use Stipulation has been executed by Copa de Oro, District 40,
21 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Palmdale Water District,
22 City of Palmdale, Rosamond Community Services District, City of Lancaster and Antelope
23 Valley-East Kern Water Agency.

24 Copa de Oro will apply to the Court pursuant to Code of Civil Procedure sections 187,
25 404.7, 2033.250 and 2033.280, California Rules of Court rules 3.504(c), 3.1203 and 3.1204 and
26 the Court’s orders in this coordinated action. Copa de Oro will apply to the Court based on the
27 following that are submitted herewith and are posted on the Court’s Web site located at
28 www.scefiling.org:

- (1) This Notice of *Ex Parte* Application;

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- (2) The attached *Ex Parte* Application;
- (3) The attached Declaration of Ryan S. Bezerra;
- (4) The Stipulation Regarding Facts Pertaining to Copa de Oro Land Company for Trial, posted to the Court's Web site on February 28, 2013 (<http://www.scefiling.org/document/document.jsp?documentId=77782>);
- (5) The Stipulation for Phase IV Trial Regarding Water Use on Copa de Oro Land Company's Property, posted to the Court Web site on April 19, 2013 (<http://www.scefiling.org/document/document.jsp?documentId=79881>);
- (6) The [Proposed] Order Approving Stipulations Concerning Copa de Oro Land Company and Granting Leave to Serve Written Discovery, and its exhibits, lodged herewith; and
- (7) Any evidence or argument presented at the hearing on this Application.

Dated: April 23, 2013

Respectfully submitted,
BARTKIEWICZ, KRONICK & SHANAHAN

By: /s/ Ryan S. Bezerra
Ryan S. Bezerra

Attorneys for Copa de Oro Land Company

1 **EX PARTE APPLICATION FOR APPROVAL OF STIPULATIONS CONCERNING**
2 **COPA DE ORO LAND COMPANY AND LEAVE TO SERVE WRITTEN DISCOVERY**

3 Code of Civil Procedure section 187 authorizes the Court to adopt “any suitable process
4 or mode of proceeding . . . which may appear most conformable to the spirit of this Code”
5 where a course of proceeding is not specifically identified by statute. Code of Civil Procedure
6 section 404.7 and California Rules of Court rule 3.504(c) implement this general principle in
7 coordinated cases by authorizing, collectively, the Court to “prescribe any suitable manner of
8 proceeding” consistent with the Code of Civil Procedure and the Rules of Court. As stated in
9 *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 812:

10 [I]t is the intent of the Judicial Council to vest in the coordinating judge whatever
11 great breadth of discretion may be necessary and appropriate to ease the transition
12 through the judicial system of the logjam of cases which gives rise to
13 coordination.

14 This application requests that the Court exercise this authority by approving the
15 stipulations that Copa de Oro Land Company ("Copa de Oro") has signed with adverse public
16 water suppliers and authorizing Copa de Oro to serve written discovery on other parties in
17 order to implement those stipulations. In light of the pending May 28, 2013 Phase IV trial date,
18 this application also requests that the Court exercise its complex-case management authority to
19 require that parties provide any responses to the proposed discovery on shortened time of five
20 court days and to order that a failure to respond to one of the proposed requests for admission
21 shall be deemed an admission.

22 **I. Copa de Oro Has Followed The Court's Discovery Procedures And**
23 **Negotiated Stipulations With Adverse Parties**

24 In this coordinated matter involving thousands of parties, the Court consistently has
25 stated its intent to encourage the parties to stipulate to facts within the Phase IV trial's scope in
26 order to simplify and shorten that trial. The Court therefore has exercised its discretion by
27 establishing discovery procedures under which parties have presented sworn declarations
28 stating evidence that they intend to present at the Phase IV trial and have sought stipulations
with the parties to whom they are adverse. Under these procedures, Copa de Oro served the

1 following discovery responses on all parties by posting them to the Court's Web site on the
2 following dates:

- 3 (1) Response of Cross-Defendant Copa de Oro Land Company to The Court's
4 Discovery Order for Phase 4 Trial, posted December 21, 2012
5 (<http://www.scefilings.org/document/document.jsp?documentId=74752>);
- 6 (2) Declaration of Elliot Joelson for Copa de Oro Land Company, posted January
7 31, 2013, with exhibits, concerning Copa de Oro's property ownership
8 (<http://www.scefilings.org/document/document.jsp?documentId=76507>); and
- 9 (3) Declaration of Vera H. Nelson for Copa de Oro Land Company, posted January
10 31, 2013, with exhibits, concerning water use on Copa de Oro's property
11 (<http://www.scefilings.org/document/document.jsp?documentId=76508>).

12 Based on these materials, Copa de Oro negotiated and obtained stipulations with public
13 water suppliers that are adverse to Copa de Oro concerning Copa de Oro's property ownership
14 and water use on Copa de Oro's property. Copa de Oro posted the stipulation concerning
15 property ownership, which incorporates Mr. Joelson's declaration by reference, to the Court's
16 Web site on February 28, 2013.
17 (<http://www.scefilings.org/document/document.jsp?documentId=77782> ("Ownership
18 Stipulation").) Copa de Oro posted the more recent water use stipulation to the Court's Web
19 site on April 19, 2013. (<http://www.scefilings.org/document/document.jsp?documentId=79881>
20 ("Water Use Stipulation").) Copa de Oro first seeks the Court's approval of these stipulations
21 as among the parties that have signed them and, in the case of the City of Palmdale and the
22 Ownership Stipulation, otherwise stated their agreement.

23 **II. The Court Should Grant Copa de Oro Leave To Serve Written**
24 **Discovery To Ensure That There Is No Dispute Concerning Its**
25 **Property Ownership And Water Use**

26 Copa de Oro now also seeks the Court's leave to serve written discovery that, consistent
27 with the Court's stated intent, ideally will eliminate the need for any presentation of evidence at
28 the Phase IV trial concerning Copa de Oro's property ownership and water use on Copa de

1 Oro's property. In its December 12, 2012 Case Management Order for Phase 4 Trial (p. 4, ¶ 8),
2 the Court barred the service of all written discovery other than deposition notices and the
3 discovery required by the Court's December 12, 2012 Discovery Order for Phase 4 Trial. (Case
4 Management Order at <http://www.scefiling.org/document/document.jsp?documentId=74436>;
5 Discovery Order at <http://www.scefiling.org/document/document.jsp?documentId=74435>.)
6 Copa de Oro therefore seeks the Court's leave to propound written discovery on all parties that
7 are not parties to both the Ownership Stipulation and the Water Use Stipulation. Specifically,
8 Copa de Oro seeks the Court's leave to propound the following written discovery requests on
9 those parties:

- 10 (A) 12 requests for admission that concern Copa de Oro's property ownership (two
11 requests, one for each parcel), 2000-2004 deliveries by Antelope Valley-East
12 Kern Water Agency to Copa de Oro's property (five requests, one for each year)
13 and 2000-2004 water use on Copa de Oro's property (five requests, one for each
14 year); and
15 (B) Form Interrogatory 17.1 to require the disclosure of any evidence on which a
16 party relies in denying any of those requests for admission.

17 These discovery requests are attached as Exhibits A and B to the proposed order lodged
18 herewith. Service of these proposed discovery requests is a statutory means for identifying any
19 further disputes concerning Copa de Oro's property ownership and water use that the parties
20 have not disclosed to date in response to the Court's discovery procedures.

21 There is good cause for the Court to authorize Copa de Oro to propound those proposed
22 discovery requests. Copa de Oro has used the Court's designated procedures to reach
23 stipulations on Phase IV issues with public water suppliers, who are adverse to Copa de Oro
24 and who objected to certain information that Copa de Oro posted for all of the parties' review.
25 (See attached Declaration of Ryan S. Bezerra, ¶ 4.) Propounding these discovery requests
26 would use a statutorily-provided means for obtaining admissions that limit a trial's scope to
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1 finally determine whether the presentation of any evidence concerning Copa de Oro's property
2 ownership and water use on its property will be necessary at the Phase IV trial.

3
4 **III. There Is Good Cause For The Court To Shorten Time For Discovery
Responses And To Order That A Failure To Respond To A Request
5 For Admission Shall Be Deemed An Admission**

6 Copa de Oro seeks an order from the Court that, in approving the stipulations and
7 authorizing the above-referenced proposed discovery requests, would impose the following
8 terms concerning the requests for admission:

- 9 (i) Pursuant to Code of Civil Procedure sections 2033.250, subdivision (a), and
10 2030.260, subdivision (a), shortening of the parties' time to respond to those
11 requests for admission and Form Interrogatory 17.1 to five court days following
12 service of those discovery requests; and
13 (ii) Ordering, pursuant to Code of Civil Procedure sections 404.7 and 2033.280, that
14 a party's failure to respond to one of Copa de Oro's requests for admission shall
15 be deemed an admission.

16 There is good cause to substantially shorten the time for responses to Copa de Oro's
17 proposed discovery. The parties have had approximately 120 days to consider the facts stated
18 in Copa de Oro's December 21, 2012 responses to the Court's discovery requests and over 60
19 days to consider the facts stated in the declarations of Elliot Joelson and Vera H. Nelson that
20 Copa de Oro posted to the Court's Web site on January 31, 2013. All parties therefore have had
21 substantially more time to consider the information covered by the proposed requests for
22 admission and form interrogatory than the standard 30 days provided by Code of Civil
23 Procedure sections 2030.260, subdivision (a), and 2033.250, subdivision (a). In addition, the
24 Phase IV trial is scheduled to start on May 28, 2013, leaving only a few weeks for parties that
25 have been successful in negotiating stipulations with adverse parties to conclude any steps
26 necessary to ensure that they will not need to present evidence concerning the stipulated facts at
27 trial. Shortening time for discovery responses also will enable the Court to determine more
28 quickly what the scope of the Phase IV trial will be. Pursuant to Code of Civil Procedure

1 sections 2030.260, subdivision (a), and 2033.250, subdivision (a), the Court therefore should
2 shorten the time for responses to the proposed requests for admission and form interrogatory.

3 There also is good cause for the Court to order that a failure to respond to the proposed
4 requests for admission shall be deemed an admission. Under the standard practice under Code
5 of Civil Procedure section 2033.280, subdivisions (b) and (c), a party that propounds a request
6 for admission may move for an order that matters specified in a request be deemed admitted
7 where the responding party has not served a timely response. The Court is authorized to adjust
8 this standard practice for this coordinated matter. Code of Civil Procedure section 404.7 states
9 that, "[n]otwithstanding any other provision of law," the Judicial Council's rules "shall provide
10 by rule the practice and procedure for coordination of civil actions . . . including provision for
11 giving notice and presenting evidence." California Rules of Court, rule 3.504(c), in turn
12 authorizes this Court, "if the prescribed manner of proceeding cannot, with reasonable
13 diligence, be followed in a particular coordination proceeding . . . [to] prescribe any suitable
14 manner of proceeding that appears most consistent with . . . statutes and rules."

15 The Court should exercise this authority to order that a failure to respond to the
16 proposed requests for admission shall be deemed admissions. The standard practice for
17 obtaining deemed admissions does not account for this action's unique posture, where a request
18 for admission would be based on discovery declarations served months ago pursuant to the
19 Court's case-specific discovery orders to all parties. An order stating that a failure to respond to
20 the proposed requests for admission shall be deemed an admission also would be consistent
21 with the intent of the standard procedure stated in Code of Civil Procedure section 2033.280,
22 subdivisions (b) and (c), because the responding parties would have had multiple opportunities
23 to object to the relevant facts before being deemed to have admitted them. Finally, ordering
24 that a failure to respond to the proposed requests for admission shall be deemed an admission
25 would save all parties time and money because parties that have no objections to the proposed
26 requests for admissions would be under no obligation to prepare responses to them.

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Executed April 23, 2013 at Sacramento, California.

/s/ Ryan S. Bezerra

Ryan S. Bezerra

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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 March 14, 2013, I served, in the manner described below, the following document:

NOTICE OF *EX PARTE* APPLICATION AND *EX PARTE* APPLICATION OF COPA DE ORO LAND COMPANY FOR APPROVAL OF STIPULATIONS CONCERNING COPA DE ORO LAND COMPANY AND LEAVE TO SERVE WRITTEN DISCOVERY; DECLARATION OF RYAN S. BEZERRA

I posted this document to the Court's World Wide Website located at 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 April 11, 2013.

Terry M. Olson