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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)

REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
LANDOWNERS' MOTION *IN LIMINE*
TO ESTABLISH UNITED STATES'
BURDEN OF PROOF FOR ANY
RESERVED WATER RIGHTS

BY FAX

Date: May 13, 2013
Time: 9 a.m.
Dept.: Room 222
Judge: Hon. Jack Komar
Filing Date: July 11, 2005 (coordination)
Trial Date: May 28, 2013 (Phase IV)

8792/P043013rsb Rsvd Reply

REPLY MEMORANDUM FOR LANDOWNERS' MOTION *IN LIMINE* TO ESTABLISH BURDEN OF
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1 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In reply to the United States' opposition to the landowners' motion *in limine*, the
4 landowners rely primarily on their opposition to the United States' motion *in limine*. The
5 relevant arguments are substantially similar in both cases. The landowners have one
6 supplement to this primary point. The United States' arguments opposing the landowners'
7 motion are inconsistent with controlling California authority, specifically the California
8 Supreme Court's decision in *In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448
9 ("*Hallett Creek*").

10 **ARGUMENT**

11 **I. In Reply, The Landowners Rely Primarily On Their Arguments In
12 Opposing The United States's Motion *In Limine***

13 The United States' opposition to the landowners' motion *in limine* to establish the
14 elements of a federal reserved right essentially repeats the arguments that the United States
15 made in favor of its Motion To Establish The United States' Legal Entitlement To A Federal
16 Reserved Water Right And To Limit The Scope Of Evidence Necessary At Trial. The
17 landowners have filed a detailed opposition to the United States' motion. The landowners
18 primarily rely on the evidence and arguments in their opposition to that motion in replying to
19 the United States' arguments concerning this motion. The landowners supplement their
20 evidence and arguments with the argument below.

21 **II. The United States' Arguments Do Not Account For Controlling
22 California Authority**

23 The United States argues that, under California's riparian/overlying water-right system,
24 any reserved right is "in the nature of an apportionment of a shared resource" that leaves other
25 parties "to draw their correlative share from the remaining available supply." (United States'
26 Response To Landowners' Motion *In Limine* To Establish United States' Burden Of Proof For
27 Any Reserved Water Rights, pp. 2:25-27, 3:21-22, 5:20-22 ("U.S. Response").) This
28 argument's implication appears to be that a reserved right should allocate to the United States a
block of water that is not subject to any reduction and that reduces the water available to all

1 other parties under all conditions. This argument, however, is contradicted by the California
2 Supreme Court's decision in *Hallett Creek*.

3 In *Hallett Creek*, the California Supreme Court held that the United States, like other
4 landowners, holds riparian rights in surface waters adjacent to its reserved lands that can serve
5 those lands' secondary purposes that cannot support a reserved right under *United States v. New*
6 *Mexico* (1978) 438 U.S. 696. In *Hallett Creek*, the Court reviewed a decision of the State
7 Water Resources Control Board (the "SWRCB") that found that the United States held a
8 reserved right for the Plumas National Forest "to divert and use up to 95,000 gallons of water
9 annually for firefighting and roadwatering during timber harvesting." (*Hallett Creek, supra*, 44
10 Cal.3d, at p. 455.) The Court stated that the reserved right was not the first-priority right:

11 The United States reserved right was given a second priority, junior to M.A.
12 Clement and J.C. Bailey, each of whom was awarded a first priority in the
amount of 30 gallons per day.

13 (*Id.* at p. 455 fn. 4.)

14 Over the SWRCB's opposition, the Court then held that the United States holds riparian
15 right like other landowners because, for reserved lands' secondary purposes, the United States
16 acquires water rights like any other party. The Court quoted *United States v. New Mexico's*
17 statement that, for a reservation's secondary purposes, the United States "would acquire water
18 in the same manner as any other public or private appropriator." (*Hallett Creek, supra*, 44
19 Cal.3d, at p. 458 (quoting *United States v. New Mexico, supra*, 438 U.S., at p. 702).) The Court
20 then stated:

21 The only available method of acquiring water under New Mexico law was
22 appropriation. California, however, is one of the few states which recognizes
23 both appropriative and riparian rights . . . The United States asserts that it has the
same riparian water rights under California law as any other "ordinary
proprietor."

24 (*Hallett Creek, supra*, 44 Cal.3d, at p. 458.)

25 In holding that the United States held riparian rights, the Court stated:

26 Although the State of New Mexico recognized only appropriative rights, the
27 underlying principle of deference to state law logically extends to any water
28 right recognized under local law – including riparian rights. Indeed, in a case
concerning federal water rights at Camp Pendleton, California, the Ninth Circuit
Court of Appeals specifically held that under California law the United States

1 had riparian rights in "acquired" lands, i.e., lands acquired by the federal
2 government from a nonfederal owner by purchase, condemnation, gift or
exchange. (See *California v. United States* (9th Cir. 1956) 235 F.2d 647, 656.)

3 (*Hallett Creek, supra*, 44 Cal.3d, at p. 462.)

4 Finally, the Court affirmed the procedures established to govern the United States'
5 assertion of unexercised riparian rights following Hallett Creek's adjudication, which required
6 the United States to apply to the SWRCB before exercising those rights. (*Id.* at p. 472.)

7 Nothing in the California Supreme Court's *Hallett Creek* decision suggests that
8 California's riparian/overlying water-right system causes a federal reserved right to be an
9 apportionment of water that, however established, is fixed and reduces the water available to all
10 other parties. *Hallett Creek* does not suggest that, in California's riparian/overlying system, the
11 federal reserved right occupies a super-priority. *Hallett Creek* contradicts a claim that the
12 references to "appropriations" in *United States v. New Mexico* and other reserved-right cases
13 indicate that the United States need not prove the availability of water in riparian/overlying
14 systems because *Hallett Creek* interprets those references as simply referring to whatever kinds
15 of water rights are available under any given state's law. (*Hallett Creek, supra*, 44 Cal.3d, at
16 pp. 458, 462.) Moreover, *Hallett Creek* cites the Ninth Circuit's decision in *California v.*
17 *United States, supra*, which, as discussed in more detail in the landowners' opposition to the
18 United States' motion, also contradicts the United States' arguments. (See Landowners'
19 Memorandum Of Points And Authorities In Opposition To The United States' Motion *In*
20 *Limine* To Establish Legal Entitlement To A Federal Reserved Right And To Limit The Scope
21 Of Evidence Necessary At Trial, p. 12 (posted on the Court's Web site on April 19, 2013)
22 (<http://www.scefiling.org/document/document.jsp?documentId=79904>.)

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CONCLUSION

For the reasons stated in the landowners' opening papers and above, the landowner parties respectfully request that the Court grant the landowners' motion *in limine*.

Dated: May 3, 2013

Respectfully submitted,

BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

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

Attorneys for Cross-defendant 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 3, 2013, I served, in the manner described below, the following document:

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LANDOWNERS' MOTION *IN LIMINE* TO ESTABLISH UNITED STATES' BURDEN OF PROOF FOR ANY RESERVED WATER RIGHTS

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 May 3, 2013.

Terry M. Olson