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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 Coordination Proceeding Special Title
11 (Rule 1550(b))

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

14 Included Actions:

15 Los Angeles County Waterworks District
16 No. 40 v. Diamond Farming Co., Superior
17 Court of California, County of Los Angeles,
Case No. BC 325 201;

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

21 Wm. Bolthouse Farms, Inc. v. City of
22 Lancaster, Diamond Farming Co. v.
23 Lancaster, Diamond Farming Co. v.
24 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case No.
25 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)

CROSS-DEFENDANT COPA DE ORO
LAND COMPANY'S RESPONSE TO
MOTION FOR APPROVAL OF
PARTIAL CLASS SETTLEMENT

BY FAX FILING

Date: October 25, 2013
Time: 9:00 a.m.
Dept.: TBA
Judge: Hon. Jack Komar

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28 CROSS-DEFENDANT COPA DE ORO LAND COMPANY'S RESPONSE TO MOTION FOR APPROVAL OF
PARTIAL CLASS SETTLEMENT

1 Cross-defendant Copa de Oro Land Company (“Copa de Oro”) responds to the Motion
2 for Preliminary Approval of Partial Class Settlement by the Wood Class and several public
3 water suppliers.

4 **A. LIMITATION ON SCOPE OF SETTLEMENT**

5 Copa de Oro appreciates that the proposed settlement is limited to an agreement among
6 the signatories not to contest certain claims among themselves and does not extend to proposed
7 allotments of water relative to other parties. (Proposed Settlement, pp. 8:16-18, 9:24-27.) The
8 Court should confirm this limitation in any order preliminarily approving the proposed
9 settlement. Copa de Oro also requests clarification of several terms of the proposed settlement,
10 as described below.

11 **B. DEFINITION OF UNCONTESTED WATER-RIGHT CLAIM**

12 The proposed settlement states that the settling defendants would not contest each class
13 member's claim to pump up to 3 acre-feet per year. (Proposed Settlement, p. 9:23-27.) It
14 appears that this term means that each class member's claim would only be uncontested as to 3
15 acre-feet per year, no matter how many properties that class member owns. The Court should
16 clarify that this is the intent of the settling parties.

17 **C. EFFECT OF COURT DECISIONS**

18 The proposed settlement provides that the Wood Class agrees not to contest each
19 Settling Defendant’s right to pump specified amounts of water from the basin, “but only if
20 competent evidence is presented and incorporated by the Court in the Final Judgment[.]”
21 (Proposed Settlement, p. 8:17-21.) Similarly, the proposed settlement provides that if the Court
22 enters findings of fact that vary from the estimated amounts in the proposed settlement, the
23 Court’s findings will control. (Proposed Settlement, pp. 18:25-19:2.) It is ambiguous how
24 these terms would affect the settling parties' rights and obligations, and therefore the conduct of
25 the rest of these coordinated cases, if the Court's findings and orders were to be contrary to the
26 settlement terms. For example, it is unclear whether the use of the term "competent evidence"
27 means only that the settling parties need to introduce evidence that the Court admits at trial or

1 whether the Court must accept that evidence as persuasive. Similarly, the use of the phrase
2 "findings of fact" suggests that contrary legal conclusions by the Court might not affect the
3 settling parties' rights and obligations. Any order by the Court preliminarily approving the
4 proposed settlement should clarify these terms.

5 **D. DEFINITION OF INTENDED BENEFICIARIES**

6 The proposed settlement's Intended Beneficiaries section provides that it shall bind
7 "each and every subsequent property owner who acquires property in the Basin from a Wood
8 Class Member as well as persons who subsequently acquire such properties." (Proposed
9 Settlement, p. 22:22-24.) This provision is unclear in important ways. By apparently covering
10 all properties owned by all class members, it appears to conflict with the proposed settlement's
11 explanatory text, which states, "In particular, the Settling Parties recognize that many persons
12 own more than one parcel of land within the Basin. The foregoing Release only binds Wood
13 Class Members and only with respect to those properties within the Basin on which they have
14 pumped or are pumping within the terms of the class definition." (Proposed Settlement, p.
15 16:19-22.) In addition, the proposed settlement's Intended Beneficiaries section appears to
16 indicate that a subsequent landowner that buys properties from a class member could be bound
17 to the settlement as to all of that landowner's properties, even though that landowner may have
18 been a separately-named party. That would be an inappropriate result. The Court should
19 clarify the proposed settlement's Intended Beneficiaries section before preliminarily approving
20 the proposed settlement.

21 **E. DEFINITION OF NATIVE SAFE YIELD**

22 The proposed settlement defines "Native Safe Yield" as "the amount of pumping, which
23 under a given set of land use and other prevailing cultural conditions, generates Return Flows
24 that, when combined with naturally occurring groundwater recharge to the Basin, result in no
25 long-term depletion of Basin groundwater storage." (Proposed Settlement, p. 5:17-20.) By
26 including consideration of the generation of return flows in the calculation of the native safe
27 yield, this definition may confuse further consideration of safe yield-related issues in the
28 remainder of the coordinated cases.

1 **F. CLARFICIATION OF SCOPE OF SETTLEMENT**

2 The proposed settlement notice states that the class does not include entities that "are
3 already a party to this litigation." (Proposed notice, p. 2, item 6.C.) The proposed settlement
4 itself, however, does not appear to include this exclusion. (Proposed Settlement, p. 7:3-12.)
5 The exclusion in the notice should be included in the proposed settlement itself.

6 **G. WATER CODE SECTION 106**

7 The proposed settlement characterizes Water Code section 106's as follows: "the
8 priority established by Water Code section 106." (Proposed settlement, p. 10:25-26.) Both the
9 California Constitution and the Water Code contain declarations of state policy concerning
10 water resources. (See, e.g., Cal. Const., Art. X, § 2 (reasonable use); Wat. Code §§ 104-105,
11 1005.4, subd. (a), 1011.5, subd. (a).) The Court should not declare that any given statute
12 creates a water-right priority without full briefing of the matter. The Court therefore should
13 reference Water Code section 106 as involving "the claimed priority established by Water Code
14 section 106."

15 Dated: October 21, 2013

Respectfully submitted,

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17 BARTKIEWICZ, KRONICK & SHANAHAN
 A Professional Corporation

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19 By: 
 Andrew J. Ramos

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21 Attorneys for Cross-Defendant
 Copa de Oro Land Company

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PROOF OF SERVICE

I, Terry Olson, declare:


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 October 21, 2013, I served, in the manner described below, the following document:

CROSS-DEFENDANT COPA DE ORO LAND COMPANY'S RESPONSE TO MOTION FOR APPROVAL OF PARTIAL CLASS SETTLEMENT

I posted this document to the Court's World Wide Website 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 October 21, 2013.



Terry Olson