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11 **Copa De Oro Land Company**

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

14 **ANTELOPE VALLEY GROUNDWATER**
15 **CASES**

16 **Included Actions:**

17 **Los Angeles County Waterworks District No.**
18 **40 v. Diamond Farming Co., Superior Court of**
19 **California, County of Los Angeles, Case No.**
20 **BC 325201;**

21 **Los Angeles County Waterworks District No.**
22 **40 v. Diamond Farming Co., Superior Court of**
23 **California, County of Kern, Case No. S-1500-**
24 **CV-254-348;**

25 **Wm. Bolthouse Farms, Inc. v. City of**
26 **Lancaster, Diamond Farming Co. v.**
27 **Lancaster, Diamond Farming Co. v. Palmdale**
28 **Water Dist., Superior Court of California,**
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

CROSS-DEFENDANT COPA DE
ORO LAND COMPANY'S CASE
MANAGEMENT STATEMENT

Date: July 21, 2008
Time: 10 a.m.
Dept.: 1
Judge: Hon. Jack Komar

1 **CASE MANAGEMENT STATEMENT**

2 Cross-defendant Copa de Oro Land Company ("Copa de Oro") respectfully requests
3 that the Court issue an order: (1) defining more precisely the issues to be litigated in the Phase
4 II trial; and (2) delaying that trial at least six months to allow the cross-defendant landowners to
5 adequately address the defined issues and to determine on what prescriptive period the public
6 water suppliers (the "purveyors") are basing their main claim against the landowners, namely
7 their prescription claim. Such a delay also is necessary so that the purveyors can serve all
8 parties that are necessary to this action and to resolve continuing disputes over the definition of
9 plaintiff landowner classes.

10
11 **I. THE COURT SHOULD DEFINE MORE PRECISELY WHAT**
12 **ISSUES ARE TO BE LITIGATED IN THE PHASE II TRIAL**

13 In its May 27, 2008 Amended Order After Case Management Conference, the Court
14 defined the issues to be tried in the Phase II trial as "basin/aquifer characteristics, safe yield and
15 overdraft." This definition requires two important clarifications.

16 First, the term "basin/aquifer characteristics" needs to be defined more precisely. It is
17 not clear what a "basin/aquifer characteristic" may include. For example, does that term
18 include defining and quantifying the sources of recharge, natural and artificial, in the basin?
19 This issue would be a highly technical one and it is not clear as of the date of this case
20 management conference – 25 days before expert designations and summaries of expert
21 testimony are due – whether the issue will even be litigated in the Phase II trial.

22 Second, the Court's existing definition of the Phase II trial issues includes no temporal
23 limits on the issues. This is an important omission. California law supports no cause of action
24 for general judicial management of a groundwater basin. (See *City of Barstow v. Mojave Water*
25 *Agency* (2000) 23 Cal.4th 1223, 1249-1250 (a physical solution may not disregard water-right
26 priorities).) While generally determining a basin's characteristics may be important for
27 managing a basin in legislative or quasi-legislative processes, court cases such as this one
28 necessarily originate from specific allegations. In this case, the purveyors' key allegation
against cross-defendant landowners like Copa de Oro is that the purveyors obtained

1 prescriptive water rights over some five-year period. (See First-Amended Cross Complaint of
2 Public Water Suppliers For Declaratory And Injunctive Relief And Adjudication Of Water
3 Rights, filed March 13, 2007, ¶¶ 31, 41-45 (“Purveyor Cross-Complaint”).)¹ In order to allow
4 the cross-defendant landowners a fair opportunity to defend themselves, the Court must define
5 – or compel the purveyors to define – the time periods with which the landowners must be
6 concerned before the landowners are required to present evidence in opposition to the
7 purveyors’ claims.

8
9 **II. THE COURT SHOULD DELAY THE PHASE II TRIAL
BECAUSE THE PURVEYORS HAVE NOT DEFINED THEIR
10 PRESCRIPTIVE CLAIMS**

11 Since the Court issued its May 27, 2008 Amended Order After Case Management
12 Conference, circumstances have evolved that make the current October 6, 2008 Phase II trial
13 date inappropriate. One such circumstance is the purveyors’ failure to define their claimed
14 prescriptive period in their July 14, 2008 discovery responses.

15 On July 14, 2008 – seven days before this case management conference and 32 days
16 before the August 15 deadline for Phase II expert disclosures – the purveyors served responses
17 to plaintiff class representative Rebecca Willis’s discovery requests. Those discovery requests
18 included the following special interrogatories:

19 SPECIAL INTERROGATORY NO. 20:

20 If YOU contend that YOU have acquired a prescriptive right to use
21 groundwater with the Basin, when was that prescriptive right acquired?

22 SPECIAL INTERROGATORY NO. 21:

23 If YOU contend that YOU have any prescriptive rights to the use of
24 groundwater in the Basin, state when the five year prescriptive period
commenced.

25 Responding to these elementary interrogatories, the purveyors:

- 26 • objected that the interrogatories do not seek information for the Phase 2 trial,
27 that the Court has directed the parties to focus their discovery requests upon the

28 ¹ www.scefiling.org/filingdocs/214/2601/6038_FirstxAmendedxCrossxComplaint.pdf.

1 subject matter of the Phase 2 trial and that the answers are the subject of
2 testimony which has not yet been fully developed;

- 3 • stated "the Basin has been in an overdraft since at least 1946" (emphasis
4 added); and
- 5 • stated that they will further supplement their responses "at a reasonable time
6 after the Phase 2 trial."²

7 In short, the landowners are faced with disclosing expert testimony in less than one
8 month for a trial in less than three months on elements of prescriptive claims for which the
9 purveyors are unwilling to even disclose the relevant prescriptive period. The purveyors were
10 not even willing to limit their claims to the post-1946 period, instead stating that the basin has
11 been overdrafted "since at least 1946."

12 In light of the purveyors' failure to define one of the basic elements of their prescriptive
13 claims – namely, the prescriptive period – the Court should vacate the existing October 6, 2008
14 Phase II trial date and delay that trial a sufficient amount of time to allow the landowners –
15 apparently through adversarial discovery procedures – to obtain further definition of the claims
16 asserted against them.

17 **III. THE COURT SHOULD DELAY THE TRIAL DATE IN ORDER**
18 **TO REQUIRE THE PURVEYORS TO SERVE ALL**
19 **LANDOWNERS BEFORE THAT TRIAL**

20 Another circumstance that has changed since May 27, 2008 is that there is continuing
21 controversy over the definitions of the landowner classes and the apparent failure of the
22 purveyors to serve additional landowners other than those already served and those in the
23 classes. There is no indication that the purveyors have served all landowners who are subject
24 to the Purveyor Cross-Complaint and the Court should not proceed to trial on elements of the
25 prescription claim asserted by that Cross-Complaint before the purveyors have served all
26 necessary parties to it.

27 ²See the following responses to special interrogatories posted July 14, 2008: (1) County Waterworks
28 District No. 40's response, pp. 11:17-12:20; (2) Rosamond Community Services District's response, pp. 11:4-
12:5; (3) Palmdale Water District's response, pp. 11:7-12:5 ; (4) California Water Service Company's response,
pp. 15:15-17:8; and (5) Littlerock Creek Irrigation District's response, pp. 10:19-11:22

1 The purveyors' recent filings indicate that they have not served all of those relevant
2 parties and may not intend to do so. In their opposition to Richard Wood's motion to certify a
3 class of "small pumpers," the purveyors appear to have argued that Mr. Wood's proposed
4 exclusion, from his class, of landowners who pump more than 25 acre-feet a year would "delay
5 the adjudication proceedings for many months or even years at enormous costs in order to
6 identify smaller pumpers." (Public Water Suppliers' Opposition to Motion to Certify Class
7 Action Complaint, filed July 11, 2008, p. 6:12-15.) Presumably what this means is that the
8 purveyors are not serving additional landowners in hopes of convincing the Court to modify the
9 proposed plaintiff classes to include all of those landowners. Whether or not this effort by the
10 purveyors is valid – it would seem odd to compel Mr. Wood and his attorneys to represent a
11 class they did not choose – the effort itself demonstrates that: (1) not all of the necessary
12 landowners are parties to the case yet; and (2) the Court should not hold a trial on elements of
13 the purveyors' prescriptive claims until all parties that will be subject to those claims have been
14 served. In order to avoid potentially serious due process issues when all necessary landowners
15 are eventually served, the Court should vacate the October 6, 2008 Phase II trial date and delay
16 that trial for an amount of time that will allow the definition of the plaintiff landowner classes
17 to be resolved and the purveyors to serve all necessary landowners who are not in those classes.

18 CONCLUSION

19 For the reasons stated above, Copa de Oro respectfully requests that the Court vacate
20 the October 6, 2008 Phase II trial date, delay the Phase II trial at least six months to allow all
21 necessary parties to be joined to the case and issue an order more precisely defining the issues
22 to be considered in the Phase II trial.

23 Dated: July 16, 2008

Respectfully submitted,

24 BARTKIEWICZ, KRONICK & SHANAHAN
25 A Professional Corporation

26 By: _____

Ryan S. Bezerra

27 Attorneys for Cross-Defendant Copa de Oro
28 Land Company

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PROOF OF SERVICE

I, Terry 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 July 16, 2008, I served, in the manner described below, the enclosed documents:

1. CASE MANAGEMENT STATEMENT OF CROSS-DEFENDANT COPA DE ORO LAND COMPANY.

I posted that document to the Court's World Wide Web site 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 July 16, 2008

Terry Olson