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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 **Included Actions:**

19 **Los Angeles County Waterworks District**
20 **No. 40 v. Diamond Farming Co., Superior**
21 **Court of California, County of Los Angeles,**
22 **Case No. BC 325 201;**

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

27 **Wm. Bolthouse Farms, Inc. v. City of**
28 **Lancaster, Diamond Farming Co. v.**
29 **Lancaster, Diamond Farming Co. v.**
30 **Palmdale Water Dist., Superior Court of**
31 **California, County of Riverside, Case No.**
32 **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)

COPA DE ORO LAND COMPANY'S
TRIAL SETTING CONFERENCE
STATEMENT

Date: December 11, 2012

Time: 9 a.m.

Dept: 316, Room 1515

Judge: Hon. Jack Komar

8792/P120512kcg

COPA DE ORO'S TRIAL SETTING CONFERENCE STATEMENT

TRIAL SETTING CONFERENCE STATEMENT

Cross-defendant Copa de Oro Land Company ("Copa de Oro") respectfully submits this trial setting conference statement for the conference on December 11, 2012.

I. INTRODUCTION

The Court previously has indicated that, with respect to the next phase of trial, it is interested in having a factual hearing regarding each party's claimed water rights, and further has instructed the parties to meet and confer on appropriate language for an order requiring each party to disclose certain information concerning its pumping and water use. In order for the Court to evaluate each party's claimed water rights and determine what the disputes are concerning such claims in an efficient manner, the Court should take the following steps:

- (1) Define the narrow issue to be tried in the next phase of trial as follows: Disputed claims of pumping and water use during the 2000-2004 period, including quantified claims of prescription and pumping of pump return flows from the use of State Water Project water, and issues relating to those disputes.
- (2) Establish a streamlined procedure for each party to: (1) submit evidence supporting its claimed water rights to the Court; and (2) object to another party's claims so that only those disputed claims, and issues relating to such disputes, will be subject to additional discovery and litigated during the next phase of trial.
- (3) Require any party proposing to propound additional discovery, other than the information required by the Court to support each party's pumping and water use during the 2000-2004 period, to confer with the Court before serving such discovery and to limit such discovery only to issues concerning another party's disputed claimed water use or evidence supporting such disputed water use.
- (4) Set the deadline for exchanging expert witness information concerning any disputed claims pursuant to Code of Civil Procedure section 2034.010 et seq. for February 1, 2013.

(5) Set the next phase of trial for April 15, 2013 to allow the parties sufficient time to prepare for trial.

Adopting these steps would significantly limit the burden on the Court and the parties of producing, litigating and evaluating the pumping and water use information that the hundreds of parties would need to present should the Court require all parties to present their individual water right claims in the next phase of trial, and would be consistent with the Court's authority to manage complex and coordinated cases. (See Cal. Rules of Ct., rules 3.541(b), 3.750(b)(10); *Lu v. Superior Court* (1997) 55 Cal.App.4th 1264, 1267-1271.)

II. STREAMLINED PROCEDURE FOR NEXT PHASE OF TRIAL

Pursuant to the Court's authority over this complex case (Cal. Rules of Ct., rule 3.541(b), 3.750), Copa de Oro respectfully requests that the Court adopt the following schedule for the next phase of litigation:

Deadline	Action
January 4, 2013	Each party must submit to the Court <u>evidence to support its claimed water rights</u> , including evidence of the following: average annual pumping or other water use for the 2000-2004 period (parties may submit evidence of pumping or other water use for other time periods with leave of the Court); type of water use; sources of used water; quantified claims of prescription, return flows and other water rights; and location of the property/properties where pumping or water use occurs or has occurred.
January 25, 2013	<p>Any party may submit to the Court <u>objections regarding another party's claimed water rights and evidence supporting such claimed rights</u> on or before this date. Such objection shall be served on all other parties by posting on the Court's website.</p> <p>Any party that objects to another party's water use claim may engage in additional discovery so long as such discovery relates to issues concerning that other party's disputed claimed water use or evidence supporting such disputed water use. No additional discovery shall be propounded by any party without leave of the Court.</p>

Deadline	Action
February 1, 2013	Each party must post the <u>expert witness information</u> required by Code of Civil Procedure section 2034.260 to the Court's website on or before this date.
February 15, 2013	Each party must post <u>supplemental expert witness information</u> , if any, pursuant to Code of Civil Procedure section 2034.280 to the Court's website on or before this date.
February 20, 2013	The Court shall conduct a conference to organize expert depositions.
March 1 – April 1, 2013	Each party may <u>depone another party's expert witnesses</u> during this time period. At least three days prior to the date of deposition, the expert witness to be deposed shall provide any disclosable reports or writings in his or her file to the deposing party.
April 8, 2013	The Court shall conduct a pre-trial conference to organize the presentation of evidence at the next phase of trial.
April 15, 2013	Begin next phase of trial to litigate <u>disputed water rights claims</u> and issues relating to those disputes.

Under this approach, if a party's water right claim were not disputed, then discovery regarding such claim would be limited and the Court could find that the amounts of pumping or water use on which the party bases its claim to be undisputed and therefore factually determined and properly documented. If necessary, the parties then could make any further legal arguments to determine the legal status of a party's water right claim.

In the event that the Court decides to require individual parties to present their water right claims in the next phase of trial, Copa de Oro is submitting the attached proposed order to reflect the above proposed schedule and actively manage the next phase of litigation.

1 Dated: December 6, 2012

Respectfully submitted,

2 BARTKIEWICZ, KRONICK & SHANAHAN
3 A Professional Corporation

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5 By: 

Katrina C. Gonzales

6 Attorneys for Copa de Oro Land Company
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PROOF OF SERVICE

I, Terry M. Olson, declare as follows:

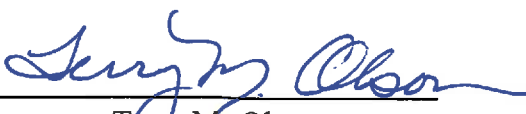
I am a citizen of the United States and a resident of Sacramento County. I am over the age of 18, not a party to this action and am employed at Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. On December 6, 2012, I served, in the manner described below, the following document:

COPA DE ORO LAND COMPANY'S TRIAL SETTING CONFERENCE STATEMENT

I posted this document 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 December 6, 2012.


Terry M. Olson

1 **RYAN S. BEZERRA, State Bar No. 178048**
2 **KATRINA C. GONZALES, State Bar No. 258412**
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(Santa Clara Case No. 01-05-CV-049053)

[PROPOSED] ORDER FOR PHASE 4
TRIAL

1 After hearing the issues at the Trial Setting Conference held on December 11, 2012 at
2 9:00 a.m., in Department 1, Room 534, the Honorable Jack Komar presiding, and good cause
3 appearing therefor, the Court issues the following Order to all parties pursuant to Code of Civil
4 Procedure section 187 and California Rules of Court rules 3.541, 3.728, 3.729 and 3.750:

5 (1) The next phase of trial ("Phase 4 Trial") shall commence at 9:00 a.m. on April
6 15, 2013 in Department 1 of the Superior Court of the County of Los Angeles, located at 111
7 North Hill Street, Los Angeles, California. The Phase 4 Trial shall address claims of pumping
8 and water use during the 2000-2004 period, including quantified claims of prescription and
9 pumping of return flows from the use of State Water Project water, that have been submitted by
10 a party and that have been disputed by another party.

11 (2) Each party shall submit to the Court on or before January 4, 2013 a statement to
12 support its claimed water rights, specifically the following:

- 13 (a) Total pumping or other water use for each calendar year from 2000 to 2004;
- 14 (b) The source or sources of the water used in each year reported;
- 15 (c) The ownership of the property or properties where pumping or water use
16 occurred for each reported year;
- 17 (d) The Kern or Los Angeles County Assessor's Parcel Numbers of the parcels
18 where the reported pumping or water use occurred; and
- 19 (e) That party's quantified claim of prescription or right to pump return flows, as the
20 party best estimates.
- 21 (f) At that party's election, any other materials the party claims as support for its
22 claimed water rights.

23 Each party that submits a claim shall declare under penalty of perjury that the
24 information provided is true and correct to the best of the party's knowledge.

25 (3) Any objection to a party's claim submitted under this Order shall be filed with
26 the Court and served on all parties on or before the close of business on January 25, 2013.
27 Only those claims to which such an objection is filed will be at issue in the next phase of trial.
28 Claims to which no objection is filed shall not be deemed to be water rights for purposes of this

1 matter, but rather to be properly-documented water use whose legal status is to be determined
2 in subsequent phases of this litigation.

3 (4) A party that objects to a water use claim may take the deposition of the
4 claimant's person most knowledgeable about that claim. Any party proposing to propound any
5 additional lay discovery in this phase of this litigation pursuant to the Civil Discovery Act
6 (Code of Civil Procedure §§ 2016.010 through 2036.050) shall schedule a conference with the
7 Court before serving such discovery. No additional discovery shall be propounded by any
8 party without leave of the Court. The Court shall permit a party to engage in additional
9 discovery only if such discovery relates to issues concerning another party's disputed claimed
10 water use or evidence supporting such disputed water use. For purposes of both expert and lay
11 discovery, Evidence Code section 1119 applies to all information prepared specifically for the
12 parties' mediation in this matter.

13 (5) The simultaneous exchange of expert witness information concerning any
14 disputed claims pursuant to Code of Civil Procedure section 2034.010 et seq. shall take place
15 on February 1, 2013. Each party shall post the expert witness information set forth in Code of
16 Civil Procedure section 2034.260 to the Court's website on or before February 1, 2013.

17 (6) Any party proposing to designate supplemental expert witnesses must do so by
18 February 15, 2013. Such party shall post the supplemental expert witness information required
19 by Code of Civil Procedure section 2034.280 to the Court's website on or before February 15,
20 2013.

21 (7) The deposition of expert witnesses shall take place from March 1 – April 1,
22 2013. The Court shall conduct a conference to organize expert depositions on February 20,
23 2013. At least three days prior to the date of deposition, the expert witness to be deposed shall
24 provide any disclosable reports or writings in his or her file to the deposing party.

25 (8) The Court shall conduct a pre-trial conference on April 8, 2013 to organize the
26 presentation of evidence. The Court expects that individual parties' presentations of their
27 water-use claims will consume one day or consecutive days and that individual parties
28 therefore will not be required to participate in the entirety of the trial.

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It is so ordered.

Dated: December __, 2012

BY THE COURT

The Hon. Jack Komar
Judge of the Superior Court

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