

1 **RYAN S. BEZERRA, State Bar No. 178048**  
2 **JOSHUA M. HOROWITZ, State Bar No. 186866**  
3 **KATRINA C. GONZALES, State Bar No. 258412**  
4 **BARTKIEWICZ, KRONICK & SHANAHAN**  
5 **A PROFESSIONAL CORPORATION**  
6 **1011 TWENTY-SECOND STREET**  
7 **SACRAMENTO, CALIFORNIA 95816-4907**  
8 **TELEPHONE: (916) 446-4254**  
9 **TELECOPIER: (916) 446-4018**  
10 **E-MAIL: rsb@bkslawfirm.com**

11 **Attorneys for Cross-Defendant**  
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)**

**CASE MANAGEMENT STATEMENT**  
**OF COPA DE ORO LAND COMPANY**

**VIA FAX FILING**

**Date: January 16, 2013**  
**Time: 9 a.m.**  
**Dept.: 1 (Santa Clara, 191 N. 1<sup>st</sup> St.)**

1 **CASE MANAGEMENT STATEMENT**

2 Cross-defendant Copa de Oro Land Company respectfully urges the Court to continue  
3 the Phase 4 trial as proposed in the January 10, 2013 *ex parte* application of Tejon Ranchcorp,  
4 Tejon Ranch Company and Granite Construction Company (collectively, "Tejon Ranch"). In  
5 issuing its December 12, 2012 Case Management and Discovery Orders, the Court intended to,  
6 and successfully did, compel the parties to disclose extensive information about their water-use  
7 claims and the evidence to support those claims. The evidence and witness disclosure indicate  
8 that, in order to litigate those claims based on the disclosed evidence consistent with due  
9 process requirements and the specific requirements of California water law as described in *City*  
10 *of Barstow v. Mojave Water Agency* (2000) 23 Cal.4<sup>th</sup> 1224 ("*Mojave*"), the parties require  
11 more time for discovery and trial preparation. Such additional time also is required to enable  
12 the Court to develop an adequate record to adjudicate disputes that not only will affect the  
13 future of the Antelope Valley's communities, but also present numerous issues of first  
14 impression under California water law. Copa de Oro respectfully urges the Court to continue  
15 the Phase 4 trial date to May 28, 2013, as requested by Tejon Ranch.

16 **1. The Court Should Clarify The Phase 4 Trial's Scope**

17 Preliminarily, the Court should clarify the scope of the Phase 4 trial's consideration of  
18 the parties' "claimed reasonable and beneficial use of water," as discussed in the Court's  
19 December 12, 2012 Case Management Order for Phase 4 Trial. Specifically, consistent with  
20 the Court's discussion of the issue during the January 11, 2012 meet-and-confer conference, the  
21 Court should clarify that the trial will concern the amounts of the parties' water use and the  
22 identification of beneficial uses to which water was applied, but not the reasonableness of those  
23 uses or the manner in which water was applied to those uses.

24 **2. The Parties Have Disclosed An Enormous Amount Of Information And**  
25 **Approximately 150 Potential Witnesses In Response To The Court's**  
**December Orders**

26 The Court's December 12, 2012 orders essentially required the parties to disclose  
27 substantial information concerning three key issues in this very large action:

28 (A) Recent water use;

- 1 (B) Rights to return flows from the use of imported State Water Project  
2 (SWP) water; and  
3 (C) The United States' claimed federal reserved right.

4 In response, the parties have disclosed an enormous amount of information. Two  
5 examples are illustrative. The United States has disclosed 5,797 pages of documents and has  
6 designated seven expert witnesses, some of whom live as far away as Florida.<sup>1</sup> Grimmway  
7 Enterprises and associated entities have disclosed 559 pages of documents and its designated  
8 witnesses have been co-designated by other landowners, apparently because Grimmway was a  
9 tenant of various landowners' properties. To date, the parties have disclosed approximately  
10 190 potential witnesses. A table summarizing those designations and the subjects about which  
11 the designated experts intend to testify is attached as Exhibit A.

12  
13 3. Preliminary Efforts To Comprehend The Disclosed Information Indicate  
That Doing So Will Take Time And May Involve Disputes

14 The parties' preliminary efforts to review and comprehend the mass of information  
15 indicate that considerable time will be needed to review that information. For example:

- 16 (A) As described in the January 10, 2013 meet-and-confer conference with the  
17 Court, the selected court reporters will not be able to provide certified draft  
18 deposition transcripts to witnesses for 10 days after a deposition, resulting in  
19 approximately a 20-day delay before deposition transcripts can be ready for  
20 potential use at trial;
- 21 (B) As also described in that conference, while the selected deposition-reporting  
22 company can provide remote, Internet-based access to depositions as they occur,  
23 that access does not allow remote viewers to view exhibits being used in a  
24 deposition;

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27 <sup>1</sup>The United States' documents are on-line at [www.scefiling.org/filingdocs/289/58180/usdoj/](http://www.scefiling.org/filingdocs/289/58180/usdoj/), but are password-  
28 protected so only parties can access them. The United States' expert witness designations are on-line at  
[www.scefiling.org/filingdocs/289/58558/93041\\_USxExpertxWitnessxDisclosures.pdf](http://www.scefiling.org/filingdocs/289/58558/93041_USxExpertxWitnessxDisclosures.pdf) (initial expert designation),  
[www.scefiling.org/filingdocs/289/58918/93504\\_USxSupplementalxExpertxWitnessxDesignationxandxDeclaratio](http://www.scefiling.org/filingdocs/289/58918/93504_USxSupplementalxExpertxWitnessxDesignationxandxDeclaratio)  
[n.pdf](http://www.scefiling.org/filingdocs/289/58918/93504_USxSupplementalxExpertxWitnessxDesignationxandxDeclaratio) (supplemental expert designation), respectively.

1 (C) The January 10 deposition of a Grimmway witness consumed an entire day in  
2 Los Angeles, resulting in numerous attorneys being prevented from returning to  
3 their Bakersfield offices via Interstate 5 due to it being closed by snowfall; and

4 (D) The United States has taken the position in its expert-witness designations that  
5 the parties seeking to depose its experts must pay those experts' travel expenses,  
6 a position that appears to contrary to Code of Civil Procedure section 2034.440.

7 The Court's existing case management order provides a window of 21 days for  
8 depositions, from January 10 through January 31, 2013. The window that the order provides  
9 for expert depositions is smaller, namely January 14 through January 31, 2013. These windows  
10 were calculated to complete discovery about two weeks before the existing February 11 trial  
11 date. In light of the very substantial amounts of information that the parties have disclosed in  
12 response to the Court's orders, these dates appear to be unlikely will provide the parties  
13 sufficient time to digest that information and prepare adequately

14 4. The Phase 4 Issues Are Not Only Crucially Important For The Antelope  
15 Valley, But Also Present Numerous Questions Of First Impression, And  
16 Litigating These Issues Will Require More Time Than The Current  
Schedule Allows

17 The Court has found that the total safe yield of the Antelope Valley basin is 110,000  
18 acre-feet per year. Two of the issues that the Court has selected for the Phase 4 trial involve  
19 various parties' claims to have priority rights to substantial portions of that safe yield. First, the  
20 public water suppliers, the Antelope Valley-East Kern Water Agency and others claim the  
21 priority rights to pump return flows from the use of imported SWP surface water. (See *City of*  
22 *Los Angeles v. City of San Fernando* (1974) 14 Cal.3d 199, 255-263 (discussing rights to return  
23 flows from imported water use)(*"San Fernando"*)). Second, the United States claims a  
24 reserved right to 11,658 acre-feet per year, which exceeds 10% of the basin's total safe yield.  
25 (See United States' Response to Court's Discovery Order for Phase 4 Trial, p. 9:27-28 ("The  
26 United States claims 11,658 acre-feet of water annually (AFA) as its total federal reserved  
27  
28

right’’).<sup>2</sup> The Court’s resolution of these claims could have significant impacts on the economic and social development of the Antelope Valley by dedicating priority rights to substantial portions of the basin’s safe yield to some uses over others.

These issues involve legal questions that have not been resolved under California law or even in other jurisdictions in the country.

In the case of rights to return flows from the use of imported surface water, to the best of Copa de Oro’s knowledge, no decision has resolved the issue of whether a water wholesaler that assessed landowners to build the distribution facilities – in this case, presumably AVEK – or its subcontractors who themselves paid for the actual deliveries of the imported water – presumably, certain water suppliers and perhaps landowners – own the priority right to pump the resulting return flows. *San Fernando* does not resolve the issue because, in that case, there apparently was no dispute concerning wholesalers’ and retailers’ relative rights to imported-water return flows. (See *San Fernando*, *supra*, 14 Cal.3d, at pp. 209, 256, 286 fn. 92 (certain retailers purchased imported water from Metropolitan Water District, but Metropolitan apparently did not claim any right to resulting return flows).) The Court’s resolution of the issue in this case could have statewide implications because numerous areas are supplied through similar contractor-subcontractor arrangements. (See, e.g., Water Code § 81301 (describing how many parts of the Bay Area receive wholesale water supplies from the City and County of San Francisco’s system).) This case also may present an issue concerning the relative rights to imported-water return flows under Water Code section 1210 among the public water suppliers that deliver imported water to customers and the sanitation agencies that physically percolate the water into the basin as they dispose of the treated wastewater resulting from public water suppliers’ retail deliveries.

In the case of the United States’ reserved-right claim, this case presents numerous issues that appear to be of first impression, at least in California. These issues include:

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<sup>2</sup>[www.scefiling.org/filingdocs/289/58180/92535\\_DENVERxx421172xv1xLAWater\\_US\\_Discovery\\_Statement\\_12x21x12.PDF](http://www.scefiling.org/filingdocs/289/58180/92535_DENVERxx421172xv1xLAWater_US_Discovery_Statement_12x21x12.PDF)

- 1 (A) Whether the federal reserved right doctrine even applies to groundwater – courts  
2 in other states have divided on the issue (*In re General Adjudication of All*  
3 *Rights to Use Water in the Big Horn River System* (Wyo. 1988) 753 P.2d 76, 99  
4 (right does not apply to groundwater), *overruled on other grounds*, *Vaughn v.*  
5 *State* (Wyo. 1998) 962 P.2d 149, 151; *In re General Adjudication of All Rights*  
6 *to Use Water in the Gila River System and Source* (Ariz. 1999) 195 Ariz. 411,  
7 417-420, 989 P.2d 739 (right applies to groundwater “where other waters are  
8 inadequate to accomplish the purpose of the reservation”); *Confederated Salish*  
9 *& Kootenai Tribes of the Flathead Reservation v. Stults* (Mont. 2002) 312 Mont.  
10 420, 428-431, 59 P.3d 1093 (right applies to groundwater));
- 11 (B) Whether the reserved right applies to property that the United States acquired  
12 from private landowners, as well as to property that the United States reserved  
13 from the public domain for specific federal purposes;
- 14 (C) If the reserved right applies to groundwater, the right’s priority relative to other  
15 rights in groundwater – the U.S. Supreme Court has stated that the right applies  
16 to a specific amount of water as of the date of the relevant federal reservation,  
17 but California courts at least have not decided how such a right fits into the  
18 state’s water-right priority system (see *Cappaert v. United States* (1976) 426  
19 U.S. 128, 138; cf. *In Re Water of Hallett Creek Stream System* (1988) 44 Cal.3d  
20 448 (deciding only whether federal purposes for which no reserved right exists  
21 can have riparian rights));<sup>3</sup>
- 22 (D) Whether the amounts of water physically available on any federal reservation  
23 limit the amount of the reserved right; and  
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26 <sup>3</sup>“This Court has long held that when the Federal Government withdraws its land from the public domain and  
27 reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated  
28 to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved  
right in unappropriated water which vests on the date of the reservation and is superior to the rights of future  
appropriators.” (*Cappaert, supra*, 426 U.S., at p. 138.)

1 (E) If the reserved right is an appropriative right, what its priority date is, what  
2 amount of water was appropriated under the right and what the right's  
3 relationship is to the other appropriative rights in the basin (see *Mojave, supra*,  
4 23 Cal.4<sup>th</sup>, at p. 1241 (appropriative rights are first in time, first in right)).

5 In addition, under established law concerning the reserved right, the Court faces  
6 numerous factual issues. Those issues include, among other things, what land uses are included  
7 in the primary, rather than secondary, federal purposes that the right serves and how much  
8 water is necessary to support those primary purposes. (See *United States v. New Mexico* (1978)  
9 438 U.S. 696, 707-715.)

10 The current discovery schedule does not allow for adequate factual development for the  
11 Court to consider these crucial issues. The PWS's numerous deposition notices have been  
12 served almost entirely on landowners and yet still have consumed essentially every available  
13 court day between now and the current January 31 discovery cut-off – sometimes many times  
14 over. More time is necessary to allow the parties to conduct appropriate depositions, and  
15 possibly other discovery, to develop the facts necessary to litigate the issues presented by the  
16 issues set for trial in the Court's December 12 Case Management Order.

17 5. Due Process And California Water Law Require That Trial Court  
18 Proceedings Give Parties An Adequate Opportunity To Litigate The  
19 Issues That Will Affect Their Water Rights

20 In developing rules to manage complex cases, trial courts must comply with due process  
21 and state law. (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4<sup>th</sup> 645, 649; *Snyder v.*  
22 *Superior Court* (2007) 157 Cal.App.4<sup>th</sup> 1530, 1535-1536.) In cases where governmental action  
23 may deprive private parties of property or liberty interests, discovery procedures must provide  
24 an actually effective opportunity to review the relevant evidence. (*Petrus v. Dept. of Motor*  
25 *Vehicles* (2011) 194 Cal.App.4<sup>th</sup> 1240, 1244-1245.) A primary claim here is the claim by the  
26 PWS – primarily governmental agencies – that, through prescription, they have acquired parts  
27 of landowners' property rights without compensation, so this case's discovery procedures must  
28 provide an adequate opportunity for landowners to discover and present the relevant evidence.

1 Similarly, California water law requires that procedures implemented in the trial court  
2 to simplify the necessarily very complex factual and legal issues presented by a groundwater  
3 adjudication not prevent landowners from having a full opportunity to litigate the issues that  
4 affect their water rights. (See *Mojave*, *supra*, 23 Cal.4<sup>th</sup>, at pp. 1236-1238 (trial court decision  
5 reversed where it did not account for individual water rights).) The Court here has taken great  
6 pains to ensure that this complex matter is litigated under procedures that respect all parties'  
7 rights. Given the very large quantity of information that the parties recently have disclosed in  
8 response to the Court's December 12 orders, the Court should continue the scheduled February  
9 11 trial to May 28, as requested by Tejon Ranch, and adopt the related proposed discovery  
10 schedule proposed by Tejon Ranch.

11  
12 6. The Court Should Adopt A Claim And Objection Procedure Concerning  
Landowners' Claimed Water Use To Narrow The Issues For Trial

13 In its case management statement for the December 11 case management conference,  
14 Copa de Oro proposed that the Court adopt a procedure under which landowners would state  
15 their claimed water use and identify the supporting information and then any parties that sought  
16 to dispute a particular landowner's water use would object to its claim. Under this procedure,  
17 unchallenged water use would be deemed admitted by all parties and would not be at issue in  
18 the Phase 4 trial. The Court effectively has implemented the first part of this proposal by  
19 requiring that landowners disclose their claims and related evidence. The Court now should  
20 implement the second portion of the proposal by ordering that all parties present any objections  
21 to a landowner's claim at least two weeks before the date before the Phase 4 trial.

22 7. Conclusion

23 The Court has succeeded in advancing this case to a resolution by requiring that parties  
24 disclose the basis for their water-right claims. The sheer volume of information that the parties  
25 have disclosed indicates that more time is necessary to develop an adequate record to litigate  
26 the Phase 4 issues identified by the Court, which are not only crucial for the Antelope Valley,  
27 but also are novel and important to the whole state.



1 For the reasons stated above, Copa de Oro respectfully requests that the Court continue  
2 the Phase 4 trial to May 28, 2013 as proposed by Tejon Ranch and adopt Tejon Ranch's  
3 proposal to revise the discovery schedule.

4 Dated: January 14, 2013

Respectfully submitted,

5 BARTKIEWICZ, KRONICK & SHANAHAN  
6 A Professional Corporation

7  
8 By: /s/ Ryan S. Bezerra  
Ryan S. Bezerra

9 Attorneys for Cross-Defendant Copa de Oro Land  
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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 January 14, 2013, I served, in the manner described below, the following document:

**CASE MANAGEMENT STATEMENT OF COPA DE ORO LAND COMPANY**

I posted this document to the Court's World Wide Website located at [www.scefiling.org](http://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 January 14, 2013.

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Terry M. Olson