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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**  
**OBJECTION TO [PROPOSED]**  
**ORDER AMENDING AND**  
**MODIFYING COURT'S CLASS**  
**CERTIFICATION ORDER DATED**  
**SEPTEMBER 11, 2007**

21 Cross-defendant Copa de Oro Land Company ("Copa de Oro") objects to the  
22 [Proposed] Order Amending and Modifying Court's Class Certification Order Dated September  
23 11, 2007, posted by Los Angeles County Waterworks District No. 40 and Rosamond  
24 Community Services District, for the following reasons.

25 The [Proposed] Order proposes that the Court order that a class action is appropriate,  
26 and a class is defined to address, "adjudication of the Public Water Suppliers' groundwater  
27 rights including prescriptive rights." (See [Proposed] Order, pp. 2:10-11, 3:13-14, 4:4-5  
28

1 (emphasis added).) This definition of the issues to be addressed on a class basis, however, is, at  
2 best, vague and ambiguous and, at worst, contrary to California law.

3 As with all causes of action, causes of actions to establish prescriptive water rights have  
4 elements to be established. In order to establish a *prima facie* case for a prescriptive water  
5 right, a claimant must prove that its use of water was: (1) actual; (2) open and notorious; (3)  
6 hostile and adverse to the original owner; (4) continuous and uninterrupted for the statutory  
7 period of five years; and (4) under a claim of right. (See *City of Barstow v. Mojave Water*  
8 *Agency* (2000) 23 Cal.4<sup>th</sup> 1224, 1241.) In addition, a landowner can defeat a prescriptive-right  
9 cause of action, at least in part, if it has continued to use water during the prescriptive period.  
10 (*Id.*; see also *Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23  
11 Cal.App.4<sup>th</sup> 1723, 1731.)

12 Subject to other objections raised by various landowners, some, but not all, of the above  
13 issues may be subject to class treatment. For example, the amount of any prescriptive-right  
14 claimant's water use, and the reasonability of that use, potentially could be litigated on a class  
15 basis because the factual and legal determinations to be made would be common to all  
16 landowners. It would not be possible, however, to litigate some questions relevant to a  
17 prescriptive-right cause of action on a class basis because those issues are unique to each  
18 landowner. The Court has heard extensive arguments about how pumping, and thus the issue  
19 of self-help, cannot be litigated on a class basis. That concern, however, is not limited to self-  
20 help. For example, the issue of notice of adverse pumping may not be susceptible to class  
21 litigation because, among other reasons: (1) groundwater levels from individual landowners'  
22 wells may be relevant; and (2) some landowners may have no wells at all.

23 For these reasons, it is not possible to define the issues to be litigated on a class basis  
24 generally to include "adjudication of the Public Water Suppliers' groundwater rights including  
25 prescriptive rights," as the [Proposed] Order proposes. Any order defining a landowner class  
26 for this action must define much more carefully the "prescriptive rights" issues to be litigated  
27 via a class action.  
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1 Dated: March 13, 2008

Respectfully submitted,

2 BARTKIEWICZ, KRONICK & SHANAHAN  
3 A Professional Corporation

4 By: \_\_\_\_\_

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