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11 Copa De Oro Land Company

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

13 This Pleading Relates To Consolidated
14 Action:

15 REBECCA LEE WILLIS, on behalf of
16 herself and all others similarly situated,

17 Plaintiff,

18 vs.

19 LOS ANGELES COUNTY
20 WATERWORKS DISTRICT NO. 40;
21 CITY OF LANCASTER; CITY OF LOS
22 ANGELES; CITY OF PALMDALE;
23 PALMDALE WATER DISTRICT;
24 LITTLEROCK CREEK IRRIGATION
25 DISTRICT; PALM RANCH IRRIGATION
26 DISTRICT; QUARTZ HILL WATER
27 DISTRICT; ANTELOPE VALLEY
28 WATER CO.; ROSAMOND
COMMUNITY SERVICES DISTRICT;
MOJAVE PUBLIC UTILITY DISTRICT;
and DOES 1 through 1000,

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Case No. BC 364553
Assigned to Hon. Jack Komar

COPA DE ORO LAND COMPANY'S
REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION
TO LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
BRIEF RE EQUITABLE
APPORTIONMENT OF WILLIS CLASS
FEE AWARD

Date: March 22, 2011
Time: 10:00 a.m.
Dept: 1
Judge: Hon. Jack Komar

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INTRODUCTION

Copa de Oro Land Company is a party to these coordinated cases only because the public water suppliers named Copa de Oro as a defendant in *Los Angeles County Waterworks District No. 40, et al., v. Diamond Farming Co*, Kern County Superior Court Case No. S-1500-CV-254-348. On February 19, 2010, by its Order Transferring and Consolidating Actions for All Purposes ("Consolidation Order"),¹ the Court consolidated that action with *Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40*, Los Angeles County Superior Court Case No. BC364553 (the "Willis Class action"). The Consolidation Order specifically states that consolidation would not create new adversarial relationships among parties or subject parties to increased liability for attorney fees and costs. Despite the Court's clear order, Los Angeles County Waterworks District No. 40's ("LAWD") Brief Re Equitable Apportionment Of Willis Class Fee Award (the "LAWD Brief") requests that the Court force landowners like Copa de Oro to contribute to any attorney fees awarded to the Willis Class. The Court should reject the position asserted the LAWD Brief because it is contrary to the Court's Consolidation Order and California law and is incorrect even accepting LAWD's theory that beneficiaries of the Willis Class's participation should contribute to the Class's fees and costs. The only beneficiaries of the Willis Class's participation have been the public water suppliers.

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ARGUMENT

A. Under This Court's Consolidation Order And Supporting California Law, Any Fee Award Cannot Be Apportioned Among Those That Are Only Parties To An Action Consolidated With Willis Class Action

LAWD argues that all parties that pump groundwater from the Antelope Valley groundwater basin have a sufficient interest in the Willis Class action judgment, and will realize sufficient benefits from a managed groundwater basin, to enable the Court to apportion among benefited parties any attorney fee award to the Willis Class. (LAWD Brief, pp., 1, 5.)

¹ The Consolidation Order is available on the Court's website for the Antelope Valley Groundwater Cases at: <http://www.scefiling.org/document/document.jsp?documentId=31106>.

1 Willis Class may be apportioned only among the public water suppliers that the Willis Class
2 sued. As the Court recognized in its Consolidation Order, landowners like Copa de Oro that
3 are part of these consolidated actions only because the public water suppliers sued them cannot
4 be held responsible for the Willis Class's attorney fees and costs.

5 Moreover, if the Court were to accept LAWD's apportionment arguments, then the
6 public water suppliers would gain an impermissible bounty at the expense of the landowners
7 they sued. Under Code of Civil Procedure section 1021.5, public agencies cannot obtain fee
8 awards from private parties; and public agencies are not to be enriched or compensated under
9 that code section. (See Code Civ. Proc., § 1021.5; *People ex rel. Brown v. Tehama County Bd.*
10 *of Supervisors* (2007) 149 Cal. App. 4th 422, 450.) The arguments in the LAWD Brief would
11 subvert this law by allowing the public water suppliers to force the landowners they sued to
12 contribute to the fees and costs that those suppliers would have incurred by litigating the Willis
13 Class action. Such a result would be inequitable and contrary to the equitable basis of the
14 LAWD Brief's own arguments.

15 Consistent with this Court's Consolidation Order and California law, the Court should
16 apportion any attorney fee and cost award in the Willis Class action among only the public
17 water suppliers who are adverse to the Willis Class.

18 **B. Even Under LAWD's Proposed Approach To Apportioning Any Fee**
19 **Award To The Willis Class, Only The Public Water Suppliers**
20 **Should Pay Such An Award**

21 LAWD argues that, if the Court concludes that the Willis Class's participation
22 conferred any benefit, then a benefit was conferred on all groundwater pumpers and therefore
23 each groundwater pumper should pay an equitable portion of any fee award in the Willis Class
24 action. (LAWD Brief, pp., 1, 5.) LAWD describes those other parties as real parties in interest
25 to the Willis Class action. (LAWD Brief, pp. 2, 5.)

26 As discussed above, Copa de Oro is only a party to these consolidated cases because the
27 public water suppliers sued Copa de Oro, claiming, among other things, that they have
28 prescribed rights against Copa de Oro. Copa de Oro cannot become a real party in interest to

1 the Willis Class action because LAWD declares it to be so. A real party in interest is a person
2 that is entitled to enforce the right sued upon; and to be a real party in interest a party must have
3 a, "special interest to be served or some particular right to be protected over and above the
4 interest held in common with the public at large." (*Connerly v. State Personnel Bd.* (2006) 37
5 Cal.4th 1169, 1179.) The Willis Class necessarily represents only landowners that the public
6 water suppliers have not sued individually. The Court recognized this fact in its order
7 approving the Willis Class settlement by stating that the settlement does not affect the rights of
8 parties to these cases that are not signatories to that settlement. (See Order Approving Willis
9 Class Settlement, Filed Mar. 1, 2011, p. 2, lines 10-12 ("The Court finds that the settlement
10 does not prejudice the legal rights of any non-settling parties, and such parties retain any and all
11 rights they currently have to contest any of the issues as to which the Settling Parties [(i.e.
12 Willis Class and public water suppliers)] agreed among themselves."))² Non-parties to the
13 Willis Class action, such as Copa de Oro, therefore are not real parties in interest to that action.

14 Contrary to LAWD's arguments, only the public water suppliers benefited from the
15 Willis Class's participation in this matter because the Willis Class enabled the public water
16 suppliers to proceed with their claims against landowners like Copa de Oro. The United States
17 is a landowner in the basin and therefore, under the McCarran Amendment, the public water
18 suppliers needed to join all landowners in the basin in order to conduct their desired basin-wide
19 adjudication. (See 43 U.S.C., § 666.) Only the public water suppliers have benefited from the
20 Willis Class's participation because the Willis Class's existence has allowed the public water
21 suppliers to seek to satisfy the McCarran Amendment without incurring the trouble – practical
22 and political – and the costs of naming and serving every landowner in the basin. Landowners
23 like Copa de Oro have received no benefit from the Willis Class's participation because such
24 landowners' interest in defeating the public water suppliers' claims against them would have
25 been promoted if the McCarran Amendment had caused those claims to be dismissed.

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27 ² The Order Approving Willis Class Settlement is available on the Court's website for the Antelope Valley
28 Groundwater Cases at: <http://www.scefilings.org/filingdocs/194/35084/57942_2011x03x01xOrderxApprovingxWillisxSettlement.pdf>.

1 Landowners like Copa de Oro have received no benefit from the Willis Class that could justify
2 requiring them to contribute to paying that Class's attorney fees even under LAWD's theory.

3 **C. Any Fee Award Cannot Be Apportioned Among Parties That Are**
4 **Not Targeted By The Willis Class's Motion**

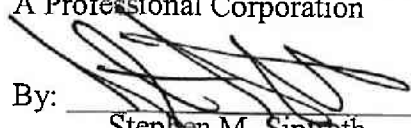
5 LAWD argues that the Court should apportion any fee award among other groundwater
6 pumpers and parties. The Willis Class, however, did not target other landowners in the pending
7 motion. That motion seeks relief only from the public water suppliers. The Court should deny
8 LAWD's request to apportion relief among parties to other consolidated cases because that
9 request is not included in the Class's pending attorney fee motion. The Court is limited to
10 considering only what is requested in the Willis Class's motion and issuing an order on only the
11 grounds raised in that motion. (See *Quevedo v. Superior Court* (1933) 131 Cal.App. 698, 702
12 ("There is a wide difference between a court giving a party something less than asked for, but
13 included therein, and giving him something entirely apart from the thing asked for . . . [¶] the
14 court was without authority to do more than to act upon the motion as made"); see also *Cox v.*
15 *Tyrone Power Enterprises, Inc.* (1942) 49 Cal.App.2d 383, 389.) The Willis Class targeted
16 only the public water suppliers in the pending motion, and LAWD cannot now redirect the
17 motion's impact to other parties. If the Court grants the pending motion, then Copa de Oro
18 respectfully submits that any fee award only may be directed to and apportioned among only
19 the parties that the motion targets – the public water suppliers.

20 **CONCLUSION**

21 For the foregoing reasons, Copa de Oro respectfully requests that, if the Court grants the
22 Willis Class's pending motion, then the Court allocate responsibility for any attorney fee and
23 cost award to the Willis Class only among the public water suppliers adverse to the Willis Class
24 and targeted by its motion.

25 Dated: March 14, 2011

Respectfully submitted,
BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

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27 By: 
Stephen M. Siproth
Attorneys for Copa de Oro Land Company

28 8792/P031411srm (Final)

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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 March 14, 2011, I served, in the manner described below, the following documents:

I posted these documents to the Court's World Wide Website located at www.scefiling.org.

Executed at Sacramento, California on March 14, 2011

8792/P031411sms (Final)

COPA DE ORO'S REPLY IN OPPOSITION TO L.A. COUNTY WATERWORKS DISTRICT NO. 40'S BRIEF RE EQUITABLE APPORTIONMENT OF WILLIS CLASS FEE AWARD
