

1 Michael Duane Davis, State Bar No. 93678
2 Marlene Allen-Hammarlund, State Bar No. 126418
3 Ben A. Eilenberg, State Bar No. 261288
4 **GRESHAM SAVAGE NOLAN &**
5 **TILDEN, A Professional Corporation**
6 3750 University Avenue, Suite 250
7 Riverside, CA 92501-3335
8 Telephone: (951) 684-2171
9 Facsimile: (951) 684-2150

6 Attorneys for Cross-Defendant,
SHEEP CREEK WATER COMPANY, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 Coordination Proceeding) Judicial Council Coordination
12 Special Title (Rule 1550(b))) Proceeding No. 4408
13 ANTELOPE VALLEY GROUNDWATER)
14 CASES) Santa Clara Case No. 1-05-CV-049053
15 Including Actions:) Assigned to the Honorable Jack Komar
16 Los Angeles County Waterworks District No.) **REPLY TO PUBLIC WATER**
17 40 v. Diamond Farming Co.) **SUPPLIERS,' FEDERAL**
18 Superior Court of California, County of Los) **DEFENDANTS,' BOLTHOUSE**
19 Angeles, Case No. BC 325 201) **PROPERTIES AND WM. BOLTHOUSE**
20 Los Angeles County Waterworks District No.) **FARMS' [May 15, 2009] OPPOSITION**
21 40 v. Diamond Farming Co.) **TO SHEEP CREEK WATER**
22 Superior Court of California, County of Kern,) **COMPANY'S MOTION TO BE**
23 Case No. S-1500-CV-254-348) **EXCLUDED FROM THE ANTELOPE**
24 Wm. Bolthouse Farms, Inc. v. City of) **VALLEY GROUNDWATER**
25 Lancaster) **ADJUDICATION, OR, IN THE**
26 Diamond Farming Co. v. City of Lancaster) **ALTERNATIVE, FOR RECOGNITION**
27 Diamond Farming Co. v. Palmdale Water Dist.) **OF ITS PRIOR RIGHTS TO THE**
28 Superior Court of California, County of) **WATERS OF SHEEP CREEK**
Riverside, consolidated actions, Case Nos. RIC)
353 840, RIC 344 436, RIC 344 668)
NOTICE DATE: October 3, 2008
CONT'D DATE: May 28, 2009
TIME: 9:00 a.m.
DEPT: 17C (SCCSC)
JUDGE: Hon. Jack Komar

24 AND RELATED CROSS-ACTIONS.

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1 Sheep Creek Water Company submits this Reply to Public Water Suppliers,' Federal
2 Defendants,' Bolthouse Properties and Wm. Bolthouse Farms' [May 15, 2009] Opposition to
3 Sheep Creek Water Company's Motion.

4 **I. INTRODUCTION**

5 **Sheep Creek Water Company's Motion does not petition the Court for a change to**
6 **the status quo.** Rather, the *Motion* requests that this Court hold the County of Los Angeles to
7 California Division of Water Rights' Decision 5885 D 119 (1926) ("*DWR Decision 1926*") and
8 the 1931 *Stipulated Judgment in Pacific Southwest Trust and Savings Bank, et al. v. Sheep Creek*
9 *Water Company*, Riverside Superior Court Case No. 15583 ("*L.A. v. Sheep Creek 1926*").

10 In *L.A. v. Sheep Creek 1926*, the County of Los Angeles committed to Sheep Creek
11 Water Company that it could take the waters of Sheep Creek below a line drawn across Sheep
12 Creek Canyon to serve its Service Area in San Bernardino County.

13 That commitment is exactly what Sheep Creek Water Company is now asking this Court
14 to confirm by way of the *Motion*.

15 **II. FACTS NOT DISPUTED IN THE OPPOSITIONS**

16 The Oppositions filed by the Public Water Suppliers and the Federal Defendants do not
17 dispute the following facts that were presented in the *Motion*:

18 1. *DWR Decision 1926* awarded Sheep Creek [Mutual] Water Company the right to
19 annually take 3,000 acre feet of the waters of Sheep Creek to serve its Service Area.

20 2. Sheep Creek Canyon is, and the Service Area is [at least partially] in the El Mirage Basin.

21 3. The County of Los Angeles [along with farmers in the El Mirage Lake area and others]
22 filed *L.A. v. Sheep Creek 1926*, challenging *DWR Decision 1926*, claiming that Sheep Creek
23 Water Company's taking of the waters of Sheep Creek would deprive the County of Los Angeles
24 of the water that it needed for its purposes in Los Angeles County.

25 4. *L.A. v. Sheep Creek 1926* was litigated until resolved by the "1931 *Stipulated Judgment*,"
26 in which Sheep Creek Water Company and the County of Los Angeles drew a line across Sheep
27 Creek Canyon, above which Sheep Creek Water Company gave up its rights to take and below
28 which County of Los Angeles gave up the right to take the waters of Sheep Creek.

1 5. Sheep Creek Water Company relocated its well field to a point below the line drawn
2 across Sheep Creek Canyon, from which it has since annually produced roughly 1,000 acre feet
3 of its 3,000 acre foot *DWR Decision 1926* right.

4 6. Sheep Creek Water Company was excluded from the Mojave Basin Adjudication because
5 its Sheep Creek Canyon well field lies in the San Bernardino National Forest, to the south of the
6 Mojave Water Agency's jurisdictional boundary.

7 7. Not being a party to the Mojave Adjudication, Sheep Creek Water Company is not
8 permitted to produce water in San Bernardino County north of the National Forest boundary.

9 8. In 2004, Sheep Creek Water Company imposed a moratorium on its roughly 3,200
10 members, sought another well site for its Service Area, and ultimately acquired a 1.09 acre parcel
11 of property that is bounded on the east by the Los Angeles / San Bernardino County Line (the
12 "Property"), for the production of another 1,000 acre feet of its *DWR Decision 1926* right.

13 9. The Property was selected because Sheep Creek Water Company is not permitted to
14 produce water within the Mojave Adjudication area; and because the waters at the Property come
15 from Sheep Creek Canyon and, under *DWR Decision 1926* and the 1931 *Stipulated Judgment*,
16 Sheep Creek Water Company is entitled to produce the waters of Sheep Creek below the line
17 drawn across Sheep Creek Canyon.

18 10. None of the Public Water Suppliers or Bolthouse Properties / Wm. Bolthouse Farms
19 ("Bolthouse") produce any water in the vicinity of the Property.

20 11. The Federal Defendants' production is to the north of the non-water bearing rocks of the
21 Shadow Mountains, Adobe Mountain and Nash Hill [on the north and northwest of the El Mirage
22 Basin], and the northwest-trending Mirage Valley fault [in northern El Mirage Basin] that *DWR*
23 *Bulletin 118-2003* ("*Bulletin 118*") acknowledges may impede the movement of groundwater
24 between El Mirage and the Antelope Valley.

25 **III. THE 1931 STIPULATED JUDGMENT BINDS THE**
26 **COUNTY OF LOS ANGELES AS TO THE WATERS OF**
27 **SHEEP CREEK**

28 The Public Water Suppliers' assertion that Sheep Creek Water Company has not satisfied
the procedural requirements of the doctrines of *res judicata* and *collateral estoppel* ignores the

1 realities of the 1931 *Stipulated Judgment*.

2 Sheep Creek Water Company only seeks to bind the County of Los Angeles (and parties
3 whose rights are derived from the County of Los Angeles) to *DWR Decision* 1926 and the 1931
4 *Stipulated Judgment* ... not the other Public Water Suppliers, not the Federal Defendants, not
5 Bolthouse.

6 **A. SHEEP CREEK WATER COMPANY IS ENTITLED TO THE SHEEP CREEK
7 WATERS PURSUANT TO THE 1931 STIPULATED JUDGMENT ON THE
8 BASIS OF THE DOCTRINE OF RES JUDICATA.**

9 In Section III C of the *Motion*, Sheep Creek Water Company applied the doctrine of *res*
10 *judicata*¹ to the facts in *L.A. v. Sheep Creek* 1926 and the present action.

11 As between the County of Los Angeles and Sheep Creek Water Company, the central
12 issue decided in *L.A. v. Sheep Creek* 1926 is exactly the same as in the present action. The
13 County of Los Angeles filed *L.A. v. Sheep Creek* 1926 expressing concern that Sheep Creek
14 Water Company's taking of the waters of Sheep Creek would deprive the County of Los Angeles
15 of the water that it needed for its purposes in Los Angeles County. The County of Los Angeles
16 filed the present action again expressing concern that Sheep Creek Water Company's taking of
17 the waters of Sheep Creek would deprive the County of Los Angeles of water that it wants for its
18 purposes in Los Angeles County.

19 *L.A. v. Sheep Creek* 1926 was litigated for 5 years and resolved by the 1931 *Stipulated*
20 *Judgment*, a final judgment on the merits.² In the 1931 *Stipulated Judgment*, the County of Los
21 Angeles committed not to take the waters of Sheep Creek down gradient of the line drawn across
22 Sheep Creek Canyon; in exchange, Sheep Creek Water Company committed not to take the
23 waters of Sheep Creek up gradient of that point.

24 Sheep Creek Water Company and the County of Los Angeles were both parties to *L.A. v.*
25 *Sheep Creek* 1926. Both are parties to the present action. In both actions, the County of Los
26 Angeles sued Sheep Creek Water Company to enjoin its production of water for the same

27 ¹ *Lyons v. Security Pacific National Bank*, 40 Cal. App. 4th 1001, 1015 (1995) requires that: (1) the issues decided
28 in the prior action must be identical with those presented in the later action; (2) there had to be a final judgment on
the merits in the prior action; and (3) the party against whom the plea is raised was a party or was in privity with a
party to the prior action.

² *Citizens for Open Access Etc. Tide v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1066 (1998).

1 Service Area. The County of Los Angeles was a party (and any other party whose rights derive
2 from the County of Los Angeles was a party in privity) to *L.A. v. Sheep Creek* 1926.³

3 The doctrine of *res judicata* is applicable against the County of Los Angeles in the
4 present action. Obviously, no public policy militates against its application in this instance.

5 **B. SHEEP CREEK WATER COMPANY IS ENTITLED TO THE SHEEP CREEK
6 WATERS PURSUANT TO THE 1931 STIPULATED JUDGMENT ON THE
7 BASIS OF THE DOCTRINE OF COLLATERAL ESTOPPEL.**

8 In Section III D of the *Motion*, Sheep Creek Water Company applied the doctrine of
9 *collateral estoppel*⁴ to the facts in *L.A. v. Sheep Creek* 1926 and the present action.

10 Again, as between the County of Los Angeles and Sheep Creek Water Company, the
11 central issue to *L.A. v. Sheep Creek* 1926 is identical to the central issue to the present action.
12 Not only was that issue necessarily decided in the 1931 action, it was decided after 5 years of
13 litigation by the 1931 *Stipulated Judgment*, a final judgment on the merits.⁵ Again, both Sheep
14 Creek Water Company and the County of Los Angeles were parties to both actions.

15 For collateral estoppel to apply to a stipulated judgment, the parties must intend to be
16 bound by it.⁶ The language in the 1931 *Stipulated Judgment* that “the water rights and water
17 interests of the parties hereto shall be for all time settled and determined for themselves and for
18 their successors[,]” [RJN Doc. 7] shows the clear intent of the County of Los Angeles and Sheep
19 Creek Water Company to be permanently bound by the 1931 *Stipulated Judgment*.

20 Thus, the County of Los Angeles is collaterally estopped to deny Sheep Creek Water
21 Company the right to serve customers in its Service Area with the waters of Sheep Creek.

22 ³ *Nevada v. United States*, 463 U.S. 110, 135 (1983) [The facts in *Nevada* are nearly indistinguishable from the
23 facts in this case. In *Nevada*, two parties had entered into a settlement agreement that apportioned their water
24 rights to the Truckee River and Watershed. Years later, both were again parties to a lawsuit regarding the rights to
25 the water of the Truckee River. The Court found that, in the first lawsuit, the parties intended to adjudicate all
26 rights and claims in and to the waters of Truckee River. Because both actions sought to establish their rights to
27 water from the same source of supply and the first action (which involved the same parties) ended in a settlement
28 agreement, all the elements of the doctrine of *res judicata* were satisfied and the complaint was dismissed.

⁴ *Pacific Lumber Company v. State Water Resources Control Board*, 37 Cal. 4th 921, 944 (2006) requires that: (1)
the issue sought to be precluded is identical to that decided in a prior proceeding; (2) the issue was actually
litigated; (3) the issue was necessarily decided in the prior proceeding; (4) the decision in the former proceeding
was final and on the merits; and, (5) the party against whom issue preclusion is asserted must be the same as or in
privity with the party to the prior proceeding.

⁵ *Citizens for Open Access Etc. Tide v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1066 (1998).

⁶ *Cal. State Auto. Ass'n Inter-Ins. Bureau v. Superior Court*, 50 Cal. 3d 658, 664 (1990); see also *State of Arizona v. State of California*, 530 U.S. 392, 414 (2000).

1 **IV. THE PROPERTY IS IN THE**
2 **GREATER EL MIRAGE BASIN**

3 Sheep Creek Water Company presented the Court with numerous treatises and reports
4 that place the Property just inside the westerly boundary of the El Mirage Basin, though not all
5 agree on the exact boundary location. The Public Water Suppliers and Federal Defendants argue
6 that *Bulletin 118* places the Property just outside the westerly boundary of the El Mirage Basin.
7 However, all are in agreement that the Property is situated on the western boundary of the El
8 Mirage Basin. Whether the Property is “just in” or “just out” of a basin “boundary,” i.e., being on
9 the “right” side of a dirt road in the middle of the desert, is not dispositive of the issue.

10 In basins that are bounded by alluvial drainage divides, changes in groundwater storage
11 and flow can move the boundaries of a basin. [See Arora Supp. Decl., page 5 line 24 – page 6
12 line 9.] El Mirage and Antelope Valley are just such basins in the vicinity of the Property. As
13 conditions change, the Property may, at times, technically be in Antelope Valley; and, at times,
14 in El Mirage. [See Arora Supp. Decl., page 5 line 24 – page 6 line p. 9.]

15 Whether the Property is technically within or without the El Mirage Basin as calculated
16 by those opposing the *Motion* is almost irrelevant because the waters in the vicinity of the
17 Property undisputedly flow toward the El Mirage Basin, not Antelope Valley. Regardless of the
18 route the water take, the Property is still fed by the waters of Sheep Creek. The Property is
19 hydrologically connected with the El Mirage Basin, not Antelope Valley. [See Arora Supp.
20 Decl., page 4 line 21 – page 5 line 1 and page 7 lines 8-10.]

21 **V. THE WATERS IN THE VICINITY OF THE**
22 **PROPERTY COME FROM SHEEP CREEK**

23 The waters of Sheep Creek flow out of the mouth of Sheep Creek Canyon, toward the
24 north and the El Mirage Basin, and the Property is situated to the north of the Canyon [see
25 “Exhibit H” to the *Motion*], such that it receives those flows. [See Arora Supp. Decl., page 4,
26 lines 2-20 and page 5 lines 2-3.]

27 The groundwater contour lines drawn on “Exhibit 3” to Mr. Scalmanini’s Declaration
28 clearly evidence the migration of the waters of Sheep Creek north to the Property. Overlaying

1 direction of flow arrows on the groundwater contours on Mr. Scalmanini's Exhibit 3, Dr. Arora
2 demonstrates that the direction of flow of the waters of Sheep Creek is north from the mouth of
3 Sheep Creek to the Property. [See Arora Supp. Decl., page 4, lines 2-20; and *Figure 3*.]

4 Possibly because his own Exhibit 3 demonstrates that the direction of flow of the waters
5 of Sheep Creek is north from the mouth of Sheep Creek to the Property, Mr. Scalmanini suggests
6 that only some of the waters in the vicinity of the Property flowed from Sheep Creek, the rest
7 having migrated from mountain fronts to the south and west of the Property. Dr. Arora's
8 analysis of that question led him to conclude that a substantial portion of the waters in the
9 vicinity of the Property came from Sheep Creek. [See Arora Supp. Decl., page 5, lines 2-3.]

10 In the final analysis, the only real disagreement of the experts is over the relative
11 percentages of the waters in the vicinity of the Property that have flowed from Sheep Creek and
12 that have flowed from the mountain fronts to the south and west of the Property. Only an
13 extremely twisted reading of the 1931 *Stipulated Judgment* would require Sheep Creek Water
14 Company to take only the molecules of water that flowed from Sheep Creek and leave the
15 molecules of water that flowed from the mountain fronts to the south and west of the Property.

16 **VI. THE WATERS IN THE VICINITY OF THE**
17 **PROPERTY DO NOT CONSTITUTE A SOURCE OF**
18 **SUPPLY TO THE ANTELOPE VALLEY**

19 Though the experts may be in disagreement over the relative percentages of the waters in
20 the vicinity of the Property that have flowed from Sheep Creek, they all agree that the waters in
21 the vicinity of the Property do not constitute a source of supply to the Antelope Valley. [See
22 Arora Supp. Decl., page 8, lines 1-6.]

23 The Public Water Suppliers apparently misperceived that Sheep Creek Water Company is
24 asserting that there is a physical barrier to flow across the southeasterly boundary of the
25 Antelope Valley Basin and the westerly boundary of the El Mirage Basin. Sheep Creek Water
26 Company was only asserting that the waters of Sheep Creek, in general, and in the vicinity of the
27 Property, in particular, do not constitute a source of supply to the Antelope Valley Basin. [See
28 Arora Supp. Decl., page 7, lines 8 – 10 and page 8, lines 1-6.]

1 In fact, Sheep Creek Water Company attached the El Mirage Basin Appendix to *Bulletin*
2 *118* as Exhibit “E” to the *Motion*, which clearly states that “[a]lluvial drainage divides extending
3 from the San Gabriel Mountains define the western and eastern boundaries of the [El Mirage]
4 basin.” The barrier that Sheep Creek Water Company was discussing is that described in the El
5 Mirage Basin Appendix to *Bulletin 118* as “... the nonwater-bearing rocks of the Shadow
6 Mountains on the north, Adobe Mountain and Nash Hill on the northwest ... [and] ... the
7 northwest-trending Mirage Valley fault, located in the northern part of the basin, [that] may
8 impede the movement of groundwater”

9 The Public Water Suppliers⁷ and Federal Defendants⁸ both acknowledge that the
10 direction of flow of waters in the vicinity of the Property is away from the Antelope Valley and
11 toward the El Mirage Basin. “Exhibit 3” to the Scalmanini Declaration also indicates that
12 immediately to the west of the Property, water flows toward the Property and the El Mirage
13 Basin, and away from the Antelope Valley. Assuming that Mr. Scalmanini and Dr. Oberdorfer
14 are correct on that point, the waters of Sheep Creek, in general, and in the vicinity of the
15 Property, in particular, cannot constitute a source of supply to the Antelope Valley.

16 Whether the Antelope Valley would receive any recharge from water transported from
17 the Property to Sheep Creek Water Company’s Service Area is irrelevant, since the prevailing
18 direction of flow is away from the Antelope Valley. With the Property bounded on the east by
19 the County Line, if the prevailing direction of flow is to the east, no part of the Antelope Valley
20 would receive the benefit of return flow from water produced on the Property, even if it were
21 only used on the Property. Citing to the Phase II Order at page 2, the Federal Defendants
22 correctly note that the issue of connectivity for the purpose of determining source of supply is
23 “... where ground water actually or potentially moves from one part of the basin to the other
24 with the potential to affect the water status or condition of the other portion of the basin
25 aquifer.”⁹ Waters in the vicinity of the Property do not move to the Antelope Valley Basin, they

26 _____
27 ⁷ Mr. Scalmanini concluded that “... the predominant groundwater flow directions from the mouth of Sheep Creek
28 are north to northeast, primarily toward the greater El Mirage Basin and partially toward the Upper Mojave River
Valley Basin.” [Scalmanini Decl. page 3, lines 26 – 28].

⁸ In essence, Dr. Oberdorfer agreed. [Oberdorfer Response, page 3, 2nd paragraph].

⁹ Federal Defendants’ Response, page 3, lines ___ to ____.
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1 move away. With waters in the vicinity of the Property flowing away from the Antelope Valley,
2 water produced on the Property has no potential to affect the water status or condition in other
3 portions of the Antelope Valley Basin. It only constitutes a source of supply to the El Mirage
4 Basin, not the Antelope Valley Basin. [See Arora Supp. Decl., page 8, lines 1-6; *Exhibit 3*; and
5 *Figure 3*.]

6 Further, with only 1000 acre feet of Sheep Creek Water Company's *DWR Decision 1926*
7 right physically producible from the Property, there is virtually no chance that the production of
8 water on the Property to serve the Service Area could materially affect the water in the other
9 portions of the Antelope Valley Basin. [See Arora Supp. Decl., page 8, lines 1-6.]

10 VII. MOTION NOT BARRED BY PHASE II ORDER

11 Neither the physical conditions of the Antelope Valley in the vicinity of the Property nor
12 the relationship of the El Mirage Basin to the Property were considered by the Court in the Phase
13 II Trial. Jeff Dunn stipulated, on October 9th, that Mr. Scalmanini's testimony was not being
14 offered by the Public Water Suppliers on the issues raised in Sheep Creek Water Company's
15 *Motion*; and, the Court confirmed that Sheep Creek Water Company did not participate in the
16 Phase II Trial in the *Order After Phase Two Trial, etc.* on page 2, lines 18 and 19.

17 The Phase II Trial was about sub-basins --- about whether the Anaverde Creek "basin"
18 was hydrologically separate from the Antelope Valley Basin [Anaverde]; whether the "Bedrock
19 Ridge" separated the western portion of the Antelope Valley Basin from the eastern portion
20 [Tejon Ranchcorp]; and, whether the Willow Springs Fault separated the area to the north from
21 the balance of the Antelope Valley Basin [Bolthouse]. On the other hand, this *Motion* is about
22 recognizing the binding effect of *DWR Decision 1926* and the 1931 *Stipulated Judgment* on the
23 County of Los Angeles, and the relationship of *DWR Decision 1926* and the 1931 *Stipulated*
24 *Judgment*, Sheep Creek Water Company and the waters of Sheep Creek to the Property and the
25 El Mirage Basin, as opposed to the Antelope Valley Basin. *Bulletin 118* does not recognize the
26 Anaverde Valley, the area north of the Willow Springs Fault or the area to the west of the
27 Bedrock Ridge as separate basins. To the contrary, the El Mirage Basin is recognized as one of
28

1 the 431 groundwater basins that are delineated in Chapter 7 of *Bulletin 118*, identified as Basin
2 No. 6-43, and described in the El Mirage Basin Appendix to *Bulletin 118*.

3 The Phase II Order does not bar the Court's consideration of this *Motion*.

4 **VIII. THE MOTION IS PROPERLY STYLED**

5 The Public Water Suppliers' and the Federal Defendants' assertion that the *Motion*
6 should have been but was not a motion for summary judgment ignores the Court's March 12,
7 2007 *Revised Order after Hearing on Jurisdictional Boundaries* (the "*Revised Order*") [Exhibit
8 "O" to the *Motion*]. Further, they have had since September 2008 to prepare their opposition and
9 are not prejudiced by the manner in which the issues in the *Motion* were presented to the Court.

10 In its March 12, 2007 *Revised Order after Hearing on Jurisdictional Boundaries* (the
11 "*Revised Order*") [Exhibit "O" to the *Motion*], this Court made certain relevant findings and
12 rulings, including: (a) that the "alluvial basin as described in California Department of Water
13 Resources Bulletin 118-2003 should be the basic jurisdictional boundary for purposes of this
14 litigation[]" [*Revised Order*, page 4, lines 7-9]; (b) that "the eastern boundary will be the
15 jurisdictional line on the east which was established as the westernmost boundary in the Mojave
16 litigation[]" [*Revised Order*, page 4, lines 17-18] primarily for judicial convenience and without
17 evidence having been received as to the specific location of the El Mirage Basin, which the
18 Department of Water Resources has recognized as a separate and hydrologically distinct basin to
19 the east of the Antelope Valley Basin; and, (c) that "[a]s the litigation in this case progresses
20 certain geographical areas, upon further evidence, may appear to lack any real connection to the
21 Antelope Valley aquifer and such area may ultimately be excluded[]" [*Revised Order*, page 4,
22 lines 23-25].

23 Sheep Creek Water Company filed the *Motion*, as authorized by the Court in the *Revised*
24 *Order*, because: (1) the Property is in or on the boundary of the El Mirage Basin, a separate and
25 distinct hydrologic basin that is situated to the east of the Antelope Valley Groundwater Basin,
26 and is recognized as such in *Bulletin 118* and most other recognized technical reports; (2) the El
27 Mirage Basin has no material hydrogeologic connectivity with the Antelope Valley Basin in the
28 general vicinity of the Property, and waters in the vicinity of the Property flow away from the

1 Antelope Valley and toward the El Mirage Basin; (3) the waters of Sheep Creek arise in the
2 southerly end of the El Mirage Basin and descend to El Mirage Lake in the northerly end of the
3 El Mirage Basin; and (4) the waters in the vicinity of the Property are derivative of the waters of
4 Sheep Creek. These are precisely the issues that Court invited Sheep Creek Water Company to
5 address in the *Revised Order*.

6 The *Motion* is not one for summary judgment or summary adjudication.

7 **IX. CONCLUSION**

8 The County of Los Angeles waived its claims to the waters of Sheep Creek below the line
9 drawn across Sheep Creek Canyon in 1931. The County of Los Angeles is now attempting to
10 ignore that waiver and its commitments to Sheep Creek Water Company, and is leading the other
11 Public Water Suppliers' in opposing the *Motion*, seeking to preclude Sheep Creek Water
12 Company from taking the waters of Sheep Creek to serve mutual customers in its Service Area.

13 The *Motion* should be granted to preserve the commitments made by the County of Los
14 Angeles to Sheep Creek Water Company nearly a century ago. It will not affect the status or
15 condition of the water in any portion of the Antelope Valley Adjudication Area, including those
16 in which the other Public Water Suppliers, the Federal Defendants or Bolthouse have their
17 production facilities.

18
19 Respectfully Submitted,

20 Dated: May 20, 2009.

GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation

21
22 By: 

23 Michael Duane Davis
24 Marlene L. Allen-Hammarlund
25 Ben A. Eilenberg
26 Attorneys for Cross-Defendant,
27 SHEEP CREEK WATER COMPANY, INC.
28

1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

3 Re: *ANTELOPE VALLEY GROUNDWATER CASES*
4 Los Angeles County Superior Court Judicial Council Coordinated
5 Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

6 I am employed in the County of Riverside, State of California. I am over the age of 18
7 years and not a party to the within action; my business address is: 3750 University Avenue,
8 Suite 250, Riverside, CA 92501-3335.

9 On May 20, 2009, I served the foregoing document(s) described as **REPLY TO
10 PUBLIC WATER SUPPLIERS' OPPOSITION TO SHEEP CREEK WATER
11 COMPANY'S MOTION TO BE EXCLUDED FROM THE ANTELOPE VALLEY
12 GROUNDWATER ADJUDICATION, OR, IN THE ALTERNATIVE, FOR
13 RECOGNITION OF ITS PRIOR RIGHTS TO THE WATERS OF SHEEP CREEK** on
14 the interested parties in this action in the following manner:

15 (X) **BY ELECTRONIC SERVICE** – I posted the document(s) listed above to the
16 Santa Clara County Superior Court website, <http://www.scefiling.org>, in the action of the
17 Antelope Valley Groundwater Cases,

18 (X) **BY EXPRESS MAIL/OVERNIGHT DELIVERY** - I caused such envelope
19 to be delivered by hand to the office of the addressee via overnight delivery pursuant to
20 C.C.P. §1013(c), with delivery fees fully prepaid or provided for.

21 Honorable Jack Komar
22 Santa Clara County Superior Court
23 191 North First Street, Dept. 17C
24 San Jose, CA 95113

25 Superior Court of California [Original Documents to be filed at this location]
26 County of Los Angeles
27 Stanley Mosk Courthouse, Dept. 1, Room 534
28 111 North Hill Street
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on May 20, 2009, at Riverside, California.


TERI D. GALLAGHER