

1 BEST BEST & KRIEGER LLP  
ERIC L. GARNER, Bar No. 130665  
2 JEFFREY V. DUNN, Bar No. 131926  
STEFANIE D. HEDLUND, Bar No. 239787  
3 5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614  
4 TELEPHONE: (949) 263-2600  
TELECOPIER: (949) 260-0972  
5 Attorneys for Cross-Complainants  
ROSAMOND COMMUNITY SERVICES  
6 DISTRICT and LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40

**EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103**

7 OFFICE OF COUNTY COUNSEL  
8 COUNTY OF LOS ANGELES  
RAYMOND G. FORTNER, JR., Bar No. 42230  
9 COUNTY COUNSEL  
MICHAEL L. MOORE, Bar No. 175599  
10 SENIOR DEPUTY COUNTY COUNSEL  
500 WEST TEMPLE STREET  
11 LOS ANGELES, CALIFORNIA 90012  
TELEPHONE: (213) 974-8407  
12 TELECOPIER: (213) 687-7337  
Attorneys for Cross-Complainant LOS ANGELES  
13 COUNTY WATERWORKS DISTRICT NO. 40

14 [See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

18 **ANTELOPE VALLEY  
GROUNDWATER CASES**  
19  
20 Included Actions:  
Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
21 Court of California, County of Los  
Angeles, Case No. BC 325201;  
22  
Los Angeles County Waterworks District  
23 No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Kern, Case  
24 No. S-1500-CV-254-348;  
25  
Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
26 Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
27 California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668  
28

Judicial Council Coordination No. 4408  
CLASS ACTION  
Santa Clara Case No. 1-05-CV-049053  
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'  
OPPOSITION TO SHEEP CREEK WATER  
COMPANY'S MOTION TO BE  
EXCLUDED FROM THE ANTELOPE  
VALLEY GROUNDWATER  
ADJUDICATION, OR, IN THE  
ALTERNATIVE, FOR RECOGNITION OF  
ITS PRIOR RIGHTS TO THE WATERS  
OF SHEEP CREEK**

1 LUCE, FORWARD, HAMILTON & SCRIPPS LLP  
Douglas J. Evertz, Bar No. 123066  
2 250 Main Street, Suite 600  
Irvine, CA 92614  
3 (949) 737-3700 (916) 251-5830 fax  
Attorneys for City of Lancaster

4 RICHARDS WATSON & GERSHON  
5 James L. Markman, Bar No. 43536  
Steven Orr, Bar No. 136615  
6 355 S. Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-3101  
7 (213) 626-8484 (213) 626-0078 fax  
Attorneys for City of Palmdale

8 LEMIEUX & O'NEILL  
9 Wayne Lemieux, Bar No. 43501  
2393 Townsgate Road, Ste. 201  
10 Westlake Village, CA 91361  
(805) 495-4770 (805) 495-2787 fax  
11 Attorneys for Littlerock Creek Irrigation District and  
Palm Ranch Irrigation District

12 LAGERLOF SENEAL GOSNEY & KRUSE  
13 Thomas Bunn III, Bar No. 89502  
301 North Lake Avenue, 10<sup>th</sup> Floor  
14 Pasadena, CA 91101-4108  
(626) 793-9400 (626) 793-5900 fax  
15 Attorneys for Palmdale

16 CHARLTON WEEKS LLP  
Bradley T. Weeks, Bar No. 173745  
17 1007 West Avenue M-14, Suite A  
Palmdale, CA 93551  
18 (661) 265-0969 (661) 265-1650 fax  
Attorneys for Quartz Hill Water District

19 CALIFORNIA WATER SERVICE COMPANY  
20 John Tootle, Bar No. 181822  
2632 West 237<sup>th</sup> Street  
21 Torrance, CA 90505  
(310) 257-1488; (310) 325-4605-fax  
22  
23  
24  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 On September 22, 2008, the Public Water Suppliers filed a procedural opposition to the  
3 motion, which argued that the motion was in essence a motion for summary judgment. Sheep  
4 Creek, however, did not comply with the procedural requirements for a summary judgment  
5 motion. The Public Water Suppliers reiterate that opposition, and in addition submit the  
6 following opposition on the merits.

7 Sheep Creek Water Company owns a well site (“Sheep Creek well”) adjacent to the Los  
8 Angeles – San Bernardino County line, within Los Angeles County and within the Area of  
9 Adjudication. Sheep Creek wants to be excluded from the adjudication, however, because Sheep  
10 Creek claims its well is in a separate groundwater basin. Alternatively, it seeks recognition of  
11 prior groundwater rights to water produced from its well, which it asserts is water from Sheep  
12 Creek. Neither position has merit.

13 Sheep Creek’s well is within the Adjudication Area and not within a separate basin. The  
14 1931 judgment - to which Los Angeles County Waterworks District No. 40 (“District”) and the  
15 many other parties to these consolidated proceedings were not parties – is not *res judicata* or  
16 collateral estoppel as to the claims and issues by the parties in these coordinated proceedings.  
17 Sheep Creek cannot meet the elements of *res judicata* because the 1931 action and the present  
18 coordinated proceedings do not have identical parties, claims and issues. Moreover, public policy  
19 would prevent the application of *res judicata* as explained herein, and this Court should deny the  
20 Motion.

21  
22 **II. SHEEP CREEK’S WELL IS NOT IN A SEPARATE GROUNDWATER BASIN**

23 **A. Sheep Creek’s Well Is Within The Antelope Valley Groundwater Basin, As**  
24 **Mapped By The Department Of Water Resources In Bulletin 118.**

25 Sheep Creek incorrectly asserts that its well is located not in the Antelope Valley  
26 Groundwater Basin, but in the adjacent El Mirage Basin, which it further asserts is  
27 “hydrogeologically separate and distinct” from the Antelope Valley Groundwater Basin. (Motion  
28 at p. 10.) The property on which Sheep Creek’s well is located overlies the Antelope Valley

1 Groundwater Basin, as mapped by the California Department of Water Resources in its Bulletin  
2 118. (Scalmanini Declaration, ¶ 4-¶ 6 and Exhibit 2.) This Court used the Bulletin 118 basin  
3 boundary as the principal basis for the boundary of the Area of Adjudication. (See Order After  
4 Hearing on Jurisdictional Boundaries (November 3, 2006); Scalmanini Declaration, ¶ 7.) One  
5 local exception in the area of the Sheep Creek property was the truncation of the Area of  
6 Adjudication at the county line, because the county line had previously been established as the  
7 westernmost boundary of the Mojave River Area adjudication. (*Id.*)

8 Sheep Creek appears to ask this Court to change the Adjudication Area boundary and use  
9 a more restrictive delineation of the Antelope Valley Groundwater Basin, as depicted by prior  
10 researchers. During the Phase 1 trial, Mr. Scalmanini referred to some of those delineations in his  
11 own testimony. This Court, however, has already determined that it will use the Bulletin 118  
12 boundaries, and Sheep Creek gives no reason to change this conclusion.

13 Additionally, Sheep Creek’s assertion that its property is in the El Mirage Basin is also  
14 incorrect. No mapping of the El Mirage Basin has ever extended west of the Los Angeles County  
15 – San Bernardino County line. (Scalmanini Declaration, ¶ 19.)

16 **B. In Any Case, The El Mirage Basin Is Not Hydrogeologically Separate And**  
17 **Distinct From The Antelope Valley Groundwater Basin.**

18 Irrespective of which basin boundaries are used, the boundary between the Antelope  
19 Valley Groundwater Basin and the El Mirage Basin does not present any barrier to groundwater  
20 flow. The boundaries of the El Mirage Basin are described in Bulletin 118 as “alluvial drainage  
21 divides extending from the San Gabriel Mountains.” (Sheep Creek’s Exhibit E; Scalmanini  
22 Declaration, ¶ 9.) Surface drainage divides do not constitute subsurface hydrogeologic features  
23 that would impede groundwater flow. Therefore, groundwater is free to move across the  
24 boundary in response to prevailing hydraulic gradients. (*Id.*)

25 Sheep Creek’s claim is similar to those claims addressed by the Court in the Phase 2 trial.  
26 Just as the Court determined that the areas claimed by Tejon Ranch, Crystal Organic Farms, and  
27 Anaverde were not in separate groundwater basins, so should it determine that the Sheep Creek  
28 well is not in a separate groundwater basin.

1           **C. Sheep Creek’s Claims That Pumping From Its Well Would Not Impact The**  
2           **Groundwater Supply In The Antelope Valley Groundwater Basin Are Not**  
3           **Supported.**

4           Sheep Creek relies on the declaration of Dr. Ram Arora to support its claim that pumping  
5           from its well would not impact the groundwater supply in the Antelope Valley Groundwater  
6           Basin. Dr. Arora calculates a “radius of influence” for Sheep Creek’s well, and concludes that  
7           this radius of influence does not extend into the Antelope Valley Groundwater Basin or to any  
8           nearby wells. There are several flaws in this analysis, which are discussed in detail in the  
9           Scalmanini Declaration at paragraphs 13 through 22. In summary, first, as discussed above, the  
10          well and its radius of influence are not located in the El Mirage Basin. Second, the distance  
11          between the Sheep Creek property and the Carlson-Phillips basin boundary line is not material to  
12          a determination of whether the Sheep Creek well is in the Antelope Valley Groundwater Basin, as  
13          mapped by the Department of Water Resources. Third, Dr. Arora uses an antiquated method to  
14          determine a fixed radius of influence. This method fails to recognize that the actual radius of  
15          influence will be a function of aquifer parameters and time, and will expand as time goes on.  
16          Fourth, and most importantly, Dr. Arora focuses on direct pumping impacts that derive from the  
17          hydraulics of flow around a well, and ignores basin impacts that derive from the extraction of  
18          water from an aquifer and the subsequent recharge to the aquifer to replace the pumped water.  
19          The conclusion that there are no nearby wells to be affected by Sheep Creek’s pumping does not  
20          mean that Sheep Creek’s groundwater pumping will have no effect on the groundwater supply to  
21          the basin.

22           **D. Delivery Of Water From Sheep Creek’s Well To Its Service Area In San**  
23           **Bernardino County Will Result In A Depletion Of Water In The Antelope**  
24           **Valley Groundwater Basin.**

25          Sheep Creek proposes to export water from its well in Los Angeles County to serve its  
26          customers in San Bernardino County. In contrast to its well, which is in the Antelope Valley  
27          Groundwater Basin, its service area is in the El Mirage and Upper Mojave River Valley  
28          Groundwater Basins. (Sheep Creek Exhibit A; Scalmanini Declaration, ¶ 3.) Although these  
        basins are hydrologically connected with the Antelope Valley Groundwater Basin, there is no

1 prevailing groundwater flow westerly toward Los Angeles County. (*Id.* ¶ 10 and Exhibit 3.)  
2 Thus, the water produced from the Sheep Creek well would be exported from the jurisdictional  
3 portion of the Antelope Valley Groundwater Basin to the Sheep Creek service area in San  
4 Bernardino County, with no return flows from that service area to the Antelope Valley  
5 Groundwater Basin. The planned groundwater pumping would be a net extraction or loss of part  
6 of the groundwater yield of the Antelope Valley Area of Adjudication. (*Id.*)

7 It may be that certain limited exports from the basin will be permitted as part of an overall  
8 physical solution. Sheep Creek’s equity arguments may come into play at that time. But it is  
9 premature to make that determination now because this Court has yet to determine the safe yield  
10 of the basin. If the Court determines that the yield of the basin is insufficient to support in-basin  
11 uses, then exporting water from the basin would exacerbate that shortage.

12  
13 **III. THE 1931 JUDGMENT HAS NO PRECLUSIVE EFFECT IN THESE**  
14 **COORDINATED PROCEEDINGS**

15  
16 Sheep Creek is incorrect to argue that the 1931 judgment has preclusive effect under the  
17 doctrines of *res judicata* and collateral estoppel, thereby barring the District’s claims in these  
18 coordinated proceedings.

19 *Res judicata* describes the preclusive effect of a final judgment on the merits, and  
20 “prevents the relitigation of the same cause of action in a second suit between the same parties or  
21 parties in privity with them.” (*Consumer Advocacy Group, Inc. v. Exxon Mobil Corp.* (2008) 168  
22 Cal.App.4th 675, 683 [quoting *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896].) “A  
23 prior judgment is *not res judicata* on a subsequent action unless three elements are met: (1) the  
24 issues decided in the prior adjudication are identical with those presented in the later action; (2)  
25 there was a final judgment on the merits in the prior action; and (3) the party against whom the  
26 plea is raised was a party or was in privity with a party to the prior adjudication.” (*Id.* at p. 685-  
27 86 [quoting *Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053,  
28 1065].) Even if these requirements are met, “*res judicata* will not be applied if injustice would

1 result or if the public interest requires that relitigation not be foreclosed. (*Ibid* [emphasis added].)

2 Collateral estoppel “precludes relitigation of issues argued and decided in prior  
3 proceedings.” (*Mycogen, supra*, 28 Cal.4th at p. 896 [quoting *Lucido v. Superior Court* (1990)  
4 51 Cal.3d 335, 341].) A prior decision precludes relitigation of an issue under the doctrine of  
5 collateral estoppel only if the party asserting the doctrine meets its burden to establish five  
6 elements: (1) the issue sought to be precluded from relitigation, must have been decided in a  
7 former proceeding; (2) that issue must have been actually litigated; (3) that issue must have been  
8 necessarily decided; (4) the decision in the former proceeding must have been final and on the  
9 merits; and (5) the party against whom preclusion is sought must be the same as, or in privity  
10 with, the party to the former proceeding. (*Johnson v. Glaxosmithkline, Inc.* (2008) 166  
11 Cal.App.4th 1497, 1507-08 [quoting *Lucido, supra*, 51 Cal.3d at p. 341].) Even if these  
12 requirements are met, the court still analyzes the public policies underlying the doctrine of  
13 collateral estoppel before concluding that it applies. (*Id.* at p. 1509.) Collateral estoppel will not  
14 apply if injustice would result or the public interest requires that relitigation not be foreclosed.  
15 (*Rodgers v. Sargent Controls* (2006) 136 Cal.App.4th 82, 90 [quoting *Consumers Lobby Against*  
16 *Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 902].)

17 Sheep Creek has not met its burden to establish that the claims decided and issues actually  
18 and necessarily litigated in the 1931 action were not identical to the claims the District asserts in  
19 this action. Even if Sheep Creek could satisfy all the elements of *res judicata*, the public interest  
20 disfavors applying either doctrine in these coordinated groundwater adjudication proceedings.

21  
22 **A. The Claims And Issues Decided In The 1931 Action Are Not Identical To  
23 Those In This Case.**

24 Sheep Creek argues the 1931 judgment resolved identical claims and issues that the  
25 District raises in these proceedings, but it mischaracterizes those claims and issues, and distorts  
26 the primary right underlying them. Sheep Creek appears to contend that the primary right  
27 vindicated in the 1931 action is Sheep Creek’s right to a certain amount of groundwater from the  
28 Adjudication Area, and that right was determined in the 1931 judgment. Sheep Creek further

1 contends that the Los Angeles County Waterworks District No. 40's actions seek to determine  
2 rights to Sheep Creek water. The supposed "identity" between these claims and issues is that  
3 both actions seek to determine the rights to Sheep Creek surface water. (Sheep Creek Motion, p.  
4 12.) This, Sheep Creek says, shows that both the present groundwater adjudication proceedings  
5 and the 1931 judgment over rights to surface stream water are identical issues. Sheep Creek is  
6 not correct.

7 Unless the issue or cause of action in the actions is identical, the first judgment does not  
8 stand as a bar to the second suit. (*Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass'n*  
9 (1998) 60 Cal.App.4th 1053, 1067.) California's *res judicata* doctrine is based on the "primary  
10 right theory." (*Mycogen, supra*, 28 Cal.4th at p. 904.) It provides that a "cause of action" is  
11 comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant,  
12 and a wrongful act by the defendant to breach that duty. (*Id.* [quoting *Crowley v. Katleman*  
13 (1994) 8 Cal.4th 666, 681-82].)

14 The violation of a single primary right gives rise only to one cause of action. (*Ibid.*) The  
15 primary right is the plaintiff's right to be free from the particular injury suffered, as distinguished  
16 from the various available theories of recovery or remedies sought. (*Ibid.*) The court compares  
17 both actions, looking at the rights which are sought to be vindicated and the harm for which  
18 redress is claimed. (*Citizens for Open Access, supra*, 60 Cal.App.4th at p. 1067.)

19 Sheep Creek's 1931 action did not resolve the same primary right that is at issue in these  
20 proceedings. The purpose of the 1931 action was to resolve a dispute between a few parties over  
21 surface water rights permitted by the State of California. Surface water is regulated by the State  
22 of California and is defined in Water Code section 1200. Surface water does not include  
23 percolating groundwater, the subject of this litigation, and thus the primary right is not the same.

24 In the present litigation, many landowners, the United States, and governmental entities  
25 are involved in a comprehensive adjudication of groundwater rights within the Adjudication Area.  
26 The primary right at issue in these coordinated proceedings involves all parties' claims to  
27 groundwater within the Adjudication Area. Stated simply, the Public Water Suppliers claims for  
28 a comprehensive determination of rights and a physical solution to the Adjudication Area's



1 groundwater overdraft conditions were not and could not have been decided by the 1931  
2 judgment.

3 Finally, the groundwater extracted from Sheep Creek’s well is not derived from Sheep  
4 Creek. (Sheep Creek Exhibit A; Scalmanini Declaration, ¶¶ 9 - 16.) Thus, there cannot be issue an  
5 identity of issues in these coordinated proceedings and the 1931 judgment.

6  
7 **B. Public Policy Militates Against Applying *Res Judicata* Or Collateral  
8 Estoppel**

9 Even if the threshold requirements for *res judicata* or collateral estoppel are met, neither  
10 of these doctrines will be applied “if injustice would result or if the public interest requires that  
11 relitigation not be foreclosed.” (*Citizens for Open Access, supra*, 60 Cal.App.4th at p. 1065  
12 [quoting *Consumers Lobby, supra*, 25 Cal.3d at p. 902; *Rodgers, supra*, 136 Cal.App.4th at p. 90  
13 [quoting *Consumers Lobby, supra*, 25 Cal.3d at p. 902].) Applying those doctrines here would  
14 work an obvious injustice on all the parties, given that, due to the overdraft conditions within the  
15 Adjudication Area since the 1931 judgment. To bind the District and all other parties to these  
16 proceedings, based on the outcome of a 1931 judgment involving only a few parties, which itself  
17 was a stipulated or agreed upon judgment, would deprive all parties of their opportunity to fully  
18 present their case and would result in an injustice upon all parties. The District, together with  
19 other parties, has a right to seek a physical solution to groundwater overdraft conditions which  
20 pose serious risks to the public benefit and welfare within the Adjudication Area. To allow Sheep  
21 Creek to export water outside the Adjudication Area, with no return flows to the Adjudication  
22 Area, and without a court determination involving all parties who have an interest in the  
23 groundwater yield of the Adjudication Area, would result in an injustice and would be against the  
24 public interest. (*E.g., In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339,  
25 347 [judgment upon a water rights dispute between a few parties is disfavored and can be  
26 nullified by a comprehensive adjudication of all parties’ rights].)

27 //  
28 //

1 IV. CONCLUSION

2 For all the reasons set forth herein, Sheep Creek Water Company does not establish that it  
3 takes water from a separate basin; public policy prevents the application of *res judicata* or  
4 collateral estoppel, and the Court should deny the motion.

5

6

7 Dated: May 16, 2009

BEST BEST & KRIEGER LLP

8

9 By: Jeffrey V. Dunn  
10 JEFFREY V. DUNN  
11 Attorneys for Rosamond Community  
12 Services District and Los Angeles County  
13 Waterworks District No. 40

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On May 15, 2009, I served the within document(s):

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO SHEEP CREEK WATER COMPANY'S MOTION TO BE EXCLUDED FROM THE ANTELOPE VALLEY GROUNDWATER ADJUDICATION, OR, IN THE ALTERNATIVE, FOR RECOGNITION OF ITS PRIOR RIGHTS TO THE WATERS OF SHEEP CREEK**

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on May 15, 2009, at Irvine, California.

  
Kerry V. Keefe