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 SHEEP CREEK WATER COMPANY, INC.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

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| Coordination Proceeding |) | Judicial Council Coordination |
| Special Title (Rule 1550(b)) |) | Proceeding No. 4408 |
| ANTELOPE VALLEY GROUNDWATER |) | Santa Clara Case No. 1-05-CV-049053 |
| CASES |) | Assigned to the Honorable Jack Komar |
| Including Actions: |) | MEMORANDUM OF POINTS AND |
| Los Angeles County Waterworks District No. |) | AUTHORITIES IN SUPPORT OF |
| 40 v. Diamond Farming Co. |) | SHEEP CREEK WATER COMPANY'S |
| Superior Court of California, County of Los |) | MOTION TO BE EXCLUDED FROM |
| Angeles, Case No. BC 325 201 |) | THE ANTELOPE VALLEY |
| Los Angeles County Waterworks District No. |) | GROUNDWATER ADJUDICATION, |
| 40 v. Diamond Farming Co. |) | OR, IN THE ALTERNATIVE, FOR |
| Superior Court of California, County of Kern, |) | RECOGNITION OF ITS PRIOR |
| Case No. S-1500-CV-254-348 |) | RIGHTS TO THE WATERS OF SHEEP |
| Wm. Bolthouse Farms, Inc. v. City of |) | CREEK |
| Lancaster |) | DATE: October 3, 2008 |
| Diamond Farming Co. v. City of Lancaster |) | TIME: 9:00 a.m. |
| Diamond Farming Co. v. Palmdale Water Dist. |) | DEPT: 17 |
| Superior Court of California, County of |) | [Filed concurrently with Notice of Motion, |
| Riverside, consolidated actions, Case Nos. RIC |) | Request for Judicial Notice, Declarations of |
| 353 840, RIC 344 436, RIC 344 668 |) | Michael Duane Davis, Chris Cummings and |
| <u>AND RELATED CROSS-ACTIONS.</u> |) | Dr. Ram Arora, Hydrogeologist, and |
| | | Proposed Order] |

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1 I. INTRODUCTION

2 The purpose of this Motion is to request that the court exclude Sheep Creek Water
3 Company (hereafter "Water Company") from the Antelope Valley Groundwater Adjudication
4 (the "Adjudication") or, in the alternative, to recognize the Water Company's prior judicially
5 recognized rights to produce water from Sheep Creek Canyon and below the confluence of
6 Sheep Creek and Swarthout Creek, so that it can continue to provide domestic water service to
7 its customers in the community of Phelan in San Bernardino County. If this Motion is not
8 granted, the Water Company will be unnecessarily required to participate in this Adjudication
9 when the water it seeks to transport to its customers originates outside of the groundwater basin
10 area that is the subject of this Adjudication. The jurisdictional boundary of this Adjudication
11 was established solely for purposes of this litigation, and it includes some areas which are not
12 within the Antelope Valley Groundwater Basin. The Water Company is located in one of these
13 areas, to the east of the eastern boundary of the Antelope Valley Groundwater Basin (just inside
14 the Los Angeles County line), such that its use of the water it seeks to transport to its customers
15 will not affect the supply of water that is the subject of this Adjudication. If the Water Company
16 is prevented from transporting water to its customers, it is likely that the Water Company's
17 service area will not have sufficient water to meet the domestic needs of its customers.

18 Sheep Creek Water Company is a small mutual water company that has been the sole
19 water provider to its members for over one hundred (100) years. In 1924, the Water Company
20 applied to the Division of Water Rights to secure the rights to water in order to serve its
21 customers' domestic needs. On August 24, 1926, Decision No. 3883-D-119 was issued in favor
22 of the Water Company, approving its right to three thousand (3,000) acre feet per annum (the
23 "1926 Decision"). Thereafter, certain parties, including the County of Los Angeles, filed an
24 action challenging the 1926 Decision. In 1931, the Water Company, the County of Los Angeles
25 and the other parties entered into a Stipulated Judgment that transferred the location of the Water
26 Company's production of water from the point at the mouth of Sheep Creek to the area down
27 gradient from the confluence of Sheep Creek and Swarthout Creek (the "1931 Judgment").
28 Since that time, the Water Company has produced water from these locations.

1 In 2004, the Water Company was compelled to place severe conservation restrictions on
2 its users and to initiate a plan for additional water production. As part of this plan, it purchased a
3 parcel of real property on the Los Angeles / San Bernardino County line, to be used as a water
4 production site from which to transport water, by means of a pipeline, to the Water Company's
5 service area. The Water Company was forced to transport water from outside of its service area,
6 because it was excluded from the Mojave Basin Area adjudication. The Water Company
7 selected the property that is situated just inside the Los Angeles County line and directly west of
8 Mojave Basin adjudicated boundary, because it is the recipient of the waters of Sheep Creek.
9 However, as the Water Company was closing escrow, it became aware of this Adjudication. The
10 Water Company requests that the rights it obtained in the 1931 Judgment be recognized by this
11 Court, and that it be continually permitted to transport water to serve its domestic customers.
12 Otherwise, it will not be able to provide adequate water to thousands of people who are
13 dependent on the Water Company for its domestic water needs.

14 As set forth herein, the Water Company should be excluded from this Adjudication. If
15 the Court determines not to exclude the Water Company from this Adjudication, the Water
16 Company requests that this Court take judicial notice of the 1931 Judgment and pleadings in the
17 case of *Pacific Southwest Trust and Savings Bank v. Sheep Creek Water Company*¹, in addition
18 to the 1926 Decision, and that this Court permit the Water Company to transport water from its
19 property to its service area in Phelan, to meet the domestic needs of its members.

20 II. RELEVANT FACTUAL BACKGROUND

21 A. HISTORY OF SHEEP CREEK WATER COMPANY.

22 Sheep Creek Water Company is a private mutual water company, formed in 1914 to
23 provide water to the people in the community of Phelan, in San Bernardino County. Los
24 Angeles County, and the others opposing the Water Company's 1924 application to extract
25 water, sought the court's assistance to determine the parties' water rights and to enjoin the Water
26

27
28 ¹ See *Request for Judicial Notice* (hereafter "RJN"), *Doc. 2*, Complaint. Document is attached to the Request for
Judicial Notice, filed concurrently herewith.

1 Company from drilling a tunnel. [RJN Doc. 2]² In 1931, the parties entered into a Stipulated
2 Judgment regarding the rights of Sheep Creek and Swarthout Creek. The Water Company
3 exchanged its rights to extract water from the mouth of Sheep Creek for other water rights that
4 ensured it would be able to continue to provide adequate water to its Service Area.³

5 The Stipulated Judgment specifies that the Water Company is to have rights to the waters
6 of Sheep Creek, including those that: (1) feed into the creek; (2) compose the surface waters of
7 the creek; and, (3) exist as sub-surface waters hydrologically connected to the creek.

8 The waters of Sheep Creek and Swarthout Creek reside in a hydrogeologically separate
9 and distinct basin from the waters of the Antelope Valley Basin.⁴ Both the Department of Water
10 Resources (hereafter "DWR") and the State Water Resources Control Board (hereafter
11 "SWRCB") have recognized that there is a separate basin⁵ and watershed⁶ between the Antelope
12 Valley Basin and the Mojave River Basin, known as the El Mirage Valley Basin. [Exhs. C &
13 D]⁷ The source of natural recharge water to the aquifer beneath the Sheep Creek Water
14 Company properties include precipitation, Sheep Creek and the Sheep Creek Wash, alluvial fans,
15 and other surface and subsurface sources.⁸ Both the Water Company's property in Los Angeles
16 County (hereafter "Property") and its Service Area are located within a single hydrogeologic
17 area or basin.⁹ The waters from Sheep Creek in El Mirage Basin are not integral to the Antelope
18 Valley Basin.¹⁰ There is no evidence to indicate that extraction of these waters would adversely

20 ² See RJN Doc. 2, Complaint, p. 11, lines 14-21. Document is attached to the Request for Judicial Notice, filed
21 concurrently herewith.

22 ³ See Cummings Decl. ¶ 4.

23 ⁴ See Declaration of Ram Arora, PhD, Hydrogeologist (hereafter "Dr. Arora, Hydrogeologist, Decl.") ¶ 8.c. and h.
24 ⁵ DWR defines a groundwater basin to be "an area underlain by permeable materials capable of furnishing a
25 supply of groundwater to wells or storing a significant amount of water." See
26 http://www.groundwater.water.ca.gov/bulletin118/basin_maps/definition.cfm

27 ⁶ The State Water Resources Control Board defines a watershed to be "the land area extending from the
28 topographic high points where water collects, such as ridges, down to the topographic low point where the area
drains into a creek, river, bay, ocean, or other waterbody." See
<http://www.swrcb.ca.gov/rwqcb2/watershedmanagement.htm>

⁷ See Exhibit C, Dep't of Water Res., Bulletin 118 California's Groundwater, pp. 192-193 fig. 41 (2003); Exhibit
D, Cal.Reg'l Water Quality Control Bd., Water Quality Control Plan for the Lahontan Region, fig. Plate 1B, all
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶¶ 5 & 6.

⁸ See Dr. Arora, Hydrogeologist, Decl. ¶ 8.a., c., f., g. and h.

⁹ See Dr. Arora, Hydrogeologist, Decl. ¶ 8.c., d., h. and j.

¹⁰ See Dr. Arora, Hydrogeologist, Decl. ¶ 8.d.

1 impact the water supply in the Antelope Valley Groundwater Basin in any material way.¹¹

2 **B. THE JURISDICTIONAL BOUNDARY IS NOT BASED ON THE HYDROLOGY**
3 **OF THE ANTELOPE VALLEY BASIN.**

4 The Antelope Valley Basin's jurisdictional boundary was established for practical, rather
5 than hydrological reasons; i.e., to ensure that there was not a gap between the Antelope Valley
6 Basin jurisdictional boundary and the Mojave Basin jurisdictional boundary. [Exh. M]¹² The
7 Water Company's Property is literally bounded on the east by the court selected jurisdictional
8 boundary of the Antelope Valley adjudication area, but it is not within the commonly recognized
9 hydrogeologic basin boundary. [Exhs. H, N & O]¹³ The Property is located in the northeast
10 quarter of Section 24, of Township 5 North, Range 8 West of the San Bernardino Meridian,
11 [Exh. P]¹⁴ which location has been plotted on a map containing the USGS basin boundaries.
12 [Exhs. H and O]¹⁵ The map shows that the Water Company's Property is not within the
13 hydrogeologic boundary of Antelope Valley Basin. [Exhs. H and O]¹⁶

14
15
16 ¹¹ See Dr. Arora, Hydrogeologist, Decl. ¶ 8.c. and j.

17 ¹² See *Exhibit M*, Revised Order After Hearing on Jurisdictional Boundaries, signed by Judge Jack Komar, March
18 12, 2007, p. 4, lines 17-22, attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 9.

19 ¹³ See *Exhibit H*, composite of six (6) USGS / National Geographic 1:30,750 scale maps of the El Mirage Basin
20 and southeastern Antelope Valley Groundwater Basin, overlain with Bloyd, Carlson et al, Carlson & Phillips
21 and Scalmanini Basin boundaries; *Exhibit N*, Map of Antelope Valley Jurisdictional Boundary with Property
22 location; *Exhibit O*, Joseph C. Scalmanini et al., Technical Memorandum Ground-Water Basin and Subbasin
23 Boundaries Antelope Valley Ground-Water Basin (2002), fig. Plate 1 [Antelope Valley court document, parties:
24 Bunn, Thomas, Filing date 5/3/06], attached hereto and incorporated herein by this reference. See also Davis
25 Decl. ¶¶ 10 & 11 respectively.

26 ¹⁴ See *Exhibit P*, County of Los Angeles Assessor's Map, bk. 3089, p. 12, attached hereto and incorporated herein
27 by this reference. See also Cummings Decl. ¶ 5; and Davis Decl. ¶ 12.

28 ¹⁵ See *Exhibit H*, composite of six (6) USGS / National Geographic 1:30,750 scale maps of the El Mirage Basin
and southeastern Antelope Valley Groundwater Basin, overlain with Bloyd, Carlson et al, Carlson & Phillips
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Boundaries Antelope Valley Ground-Water Basin (2002), fig. Plate 1 [Antelope Valley court document, parties:
Bunn, Thomas, Filing date 5/3/06], attached hereto and incorporated herein by this reference. See also Davis
Decl. ¶ 11.

1 **C. SHEEP CREEK WATER COMPANY WAS EXCLUDED FROM THE MOJAVE**
2 **Basin Adjudication and cannot receive water allocations**
3 **from it.**

4 The Water Company's Property also borders the western jurisdictional boundary of the
5 Mojave Basin Area Adjudication (the "Mojave"), as adjudicated in 1996.¹⁷ The Los
6 Angeles/San Bernardino County Line was selected as the western boundary instead of Mojave's
7 natural hydrologic boundary. [Exh. Q]¹⁸ This jurisdictional area includes Sheep Creek and a
8 portion of the El Mirage Basin. [Exh. Q]¹⁹

9 Even though the Water Company's Service Area is within the jurisdictional boundary of
10 the Mojave, it was excluded from the Mojave because its water production facilities are located
11 south of that jurisdictional boundary. [Exh. Q]²⁰ Because the Water Company was excluded
12 from the Mojave, it cannot extract any water from the Mojave; [Exh. R]²¹ and, currently, the
13 only way for the Water Company to provide additional water to its customers is by importing
14 water from outside of the Mojave.²²

15 **D. SHEEP CREEK WATER COMPANY HAS OPERATED FOR 75 YEARS UNDER**
16 **its rights established in the 1931 Judgment.**

17 After the 1931 Judgment, the Water Company continued to produce water from the
18 tunnel and began pumping water out of a well field in the Sheep Creek Valley. [Exh. S]²³ For
19 decades, the Water Company transported the water from that location to its Service Area.²⁴

20 In 2004, due to a shortage of water, the shareholders were notified that there would be a
21 moratorium on all building permits and their annual draw would also be reduced from 4,000

22 ¹⁷ See Davis Decl. ¶ 13.

23 ¹⁸ See *Exhibit Q*, Mojave Basin Adjudication Appendix A with Service Area and Production Area overlaid,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 14.

24 ¹⁹ See *Exhibit Q*, Mojave Basin Adjudication Appendix A with Service Area and Production Area overlaid,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 14.

25 ²⁰ See *Exhibit Q*, Mojave Basin Adjudication Appendix A with Service Area and Production Area overlaid,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 14; and Cummings Decl. ¶ 6.

26 ²¹ See *Exhibit R*, County of San Bernardino, Phelan/Pinon Hills Community Plan, February 2007, p. 35, ¶ 3,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 15; and Cummings Decl. ¶ 6.

27 ²² See Cummings Decl. ¶ 7.

28 ²³ See *Exhibit S*, Map of the Water Company's Well Field, attached hereto and incorporated herein by this
reference. See also Cummings Decl. ¶ 8.

²⁴ See Cummings Decl. ¶ 9.

1 cubic feet per share to only 1,000 cubic feet per share. [Exh. R]²⁵ The Water Company's
2 shareholders and Board Members approved a three-part project to provide an adequate water
3 supply to its Service Area. [Exh. R]²⁶ The first part of the project was to develop another well
4 in the Sheep Creek Valley of San Bernardino County; the second part was to develop a new well
5 in Los Angeles County; and, the third part was to construct a nine and one-half (9½) mile
6 pipeline to transport that water from the Los Angeles County well to its Service Area. [Exh.
7 R]²⁷

8 Sheep Creek has determined that it is not feasible to develop additional wells at the Sheep
9 Creek well field site. Additionally, the Water Company could not extract water underlying its
10 Service Area because it was excluded from the Mojave.²⁸ Therefore, the closest place to pump
11 water was directly west of Mojave's adjudicated boundary. The Water Company purchased a
12 piece of property, located just inside the Los Angeles County line, but still within the flow of
13 Sheep Creek waters.²⁹ It was purchased as a water production site for its Service Area.³⁰ The
14 Water Company was closing escrow when this Adjudication proceeding was beginning.³¹ Now
15 that the Court has indicated that the parties will not be allowed to transport water outside of the
16 basin, the sole reason for the Water Company acquiring that Property is being defeated -- which
17 is to provide domestic water for its customers.

18 III. ARGUMENTS

19 A. EQUITY REQUIRES THAT SHEEP CREEK WATER COMPANY BE ABLE TO 20 TRANSPORT WATER TO ITS SERVICE AREA.

21 Courts possess broad equitable powers and should exercise them so as to do substantial
22 justice. *Tulare Irrigation District v. Lindsay-Strathmore Wright*, 3 Cal. 2d 489, 574 (1935). In
23

24 ²⁵ See *Exhibit R*, County of San Bernardino, Phelan/Pinon Hills Community Plan, February 2007, p. 35, ¶ 3,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 15; and Cummings Decl. ¶ 10.

25 ²⁶ See *Exhibit R*, County of San Bernardino, Phelan/Pinon Hills Community Plan, February 2007, p. 35, ¶ 3,
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26 ²⁷ See *Exhibit R*, County of San Bernardino, Phelan/Pinon Hills Community Plan, February 2007, p. 35, ¶ 3,
attached hereto and incorporated herein by this reference. See also Davis Decl. ¶ 15; and Cummings Decl. ¶ 11.

27 ²⁸ See Cummings Decl. ¶ 6.

27 ²⁹ See Cummings Decl. ¶ 12; and Dr. Arora, Hydrogeologist, Decl. ¶ 8.a., c., f., g and h.

28 ³⁰ See Cummings Decl. ¶ 13.

28 ³¹ See Cummings Decl. ¶ 14.

1 water cases, the courts often work out physical solutions using suggestions to the problems as
2 suggested by the parties. *Id.* In this case, the Water Company is asking the Court to allow it to
3 transport water to its customers outside the jurisdictional boundary, for the following reasons:

4 **1. The Water Company Exchanged Its Production Point for the Right of**
5 **Guaranteed Water for Its Service Area in Reliance on the 1931 Judgment.**

6 In the 1931 Judgment, the Water Company exchanged its right to extract water at
7 the mouth of Sheep Creek for the right to extract and divert Sheep Creek waters below the
8 confluence of Swarthout Creek and Sheep Creek. The provisions of the 1931 Judgment clearly
9 demonstrate that the Water Company was to have rights to the waters of Sheep Creek, including
10 those that feed into the creek, compose the surface waters of the creek, and exist as sub-surface
11 waters that are hydrologically connected to Sheep Creek.³²

12 Most of the Sheep Creek waters are within San Bernardino County, and the 1931
13 Judgment recognizes this. However, the hydrogeology of the area also shows that those waters
14 also slightly cross the San Bernardino County line. The Water Company's Property is still
15 overlying Sheep Creek waters, and therefore, the Water Company's right to extract and divert
16 them should continue to be honored. The Water Company relied on the promises made in the
17 1931 Judgment that ensured that it would have the ability to extract and divert the waters of
18 Sheep Creek.

19 **2. Denying the Motion would deprive the Water Company of the Principal**
20 **Benefit of Its Purchase pursuant to the 1931 Judgment.**

21 In reliance on its rights from the 1931 Judgment, the Water Company purchased
22 the Property in Los Angeles County.³³ The court has previously stated that if a piece of property
23 is purchased for the use of its water supply, "it does not seem reasonable or just to adopt a rule
24 that would deprive the buyer of such land of the principal benefit of his purchase and the land of
25 its chief element of value." *Burr v. Maclay Rancho Water Co.*, 154 Cal. 428, 436 (1908). The
26 Water Company purchased its Property for the sole purpose of extracting water and transporting
27

28 ³² See Section II above for supporting facts.

³³ See Cummings Decl. ¶ 15.

1 it to for domestic use to the thousands of people in its Service Area. [Exh. R]³⁴ In accordance
2 with its rights and the restrictions existing at the time of purchase, it selected that Property
3 because it was: (1) located within the flow of Sheep Creek waters; (2) *not* within the Mojave;
4 and, (3) the closest location to the Service Area outside of the adjudicated Mojave Basin.³⁵ If the
5 Water Company is not allowed to transfer water from its Property, it will be deprived of the
6 principal benefit of its purchase.

7 **3. The Water Company Cannot Supply Enough Water to Meet the Domestic**
8 **Needs of the People in Its Service Area without the Water from Its Los**
9 **Angeles County Property.**

10 **a. No More Water can be Pumped from Its Well Field.**

11 The Water Company's main water production area has historically been in
12 a well field near the mouth of Sheep Creek. [Exh. S]³⁶ However, the Water Company has now
13 maximized the amount of water that can be extracted in that small area; and, additional wells in
14 that well field would not yield sufficient additional water.

15 **b. It is Impractical to Now Seek Water from the Mojave Basin**
16 **Adjudication.**

17 Since the Water Company was excluded from the Mojave adjudication, it
18 cannot obtain water from the land where its Service Area is located.³⁷ To get water from the
19 Mojave Basin, the Water Company would have to go back and request to become a stipulating
20 party to the Mojave adjudication. This could require a reconfiguration of the Mojave physical
21 solution that took years to develop and involves hundreds of parties. It would be impractical for
22 the Court to reallocate the waters of the Mojave, when the waters of Sheep Creek can be
23 allocated to the Water Company, either by excluding it from this Adjudication, or by honoring
24 the prior 1931 Judgment and granting it permission to transport the water from its Property to its
25 Service Area.

26 ³⁴ Sheep Creek Water Company currently provides one thousand two hundred and seventy (1,270) connections.
27 *See Exhibit R*, County of San Bernardino, Phelan/Pinon Hills Community Plan, February 2007, p. 35, ¶ 3,
28 attached hereto and incorporated herein by this reference. *See also* Davis Decl. ¶ 15; and Cummings Decl. ¶ 13.

³⁵ *See* Cummings Decl. ¶ 16.

³⁶ *See Exhibit S*, Map of the Water Company's Well Field, attached hereto and incorporated herein by this
reference. *See also* Cummings Decl. ¶ 8.

³⁷ *See* Cummings Decl. ¶ 6.

1 If the Water Company is restricted from transporting water across the Los
2 Angeles – San Bernardino County line, it will essentially be deprived of taking any more water
3 to serve the thousands of people in Phelan that depend on the Water Company for their domestic
4 water uses.³⁸ The Water Company's customers will remain under severe conservation
5 restrictions until the water from the Property in Los Angeles County can be supplied to them.³⁹
6 The Water Company must be able to produce and transport water from its Property, or it will
7 simply not be able to provide enough water for its customers' domestic needs.

8 **4. The Water Company Would Be Able To Transfer The Water If The**
9 **Jurisdictional Boundary Was The Hydrogeological Boundary**

10 The jurisdictional boundary of the Basin is the only legal bar to the Water
11 Company's ability to transport water to its Service Area. The Court's jurisdictional boundary
12 places the Water Company's Property within the Antelope Valley Basin for purposes of the
13 Adjudication, but the hydrogeologic evidence shows that it is not within that hydrogeologic unit.
14 [Exhs. H, N & O]⁴⁰

15 The 1931 Judgment allows the Water Company to extract and divert waters of
16 Sheep Creek. The Property overlies the El Mirage Basin, which is connected to the Sheep Creek
17 waters. Furthermore, the 1931 Judgment allows the Water Company to transport water across
18 the Los Angeles/San Bernardino County line for use within the same watershed. Since
19 Swarthout Valley and Sheep Creek Valley comprise the same basin, the Water Company should
20 continue to be able to transport the water across the County line, despite the artificial
21 jurisdictional boundary established in this Adjudication which divides this hydrogeologic area.

22 In summary, even if the Water Company were to be allocated water from the
23 Antelope Valley Basin, such a ruling would essentially be useless to the Water Company unless

24 ³⁸ See Cummings Decl. ¶ 2.

25 ³⁹ See Cummings Decl. ¶ 17.

26 ⁴⁰ See *Exhibit H*, composite of six (6) USGS / National Geographic 1:30,750 scale maps of the El Mirage Basin
27 and southeastern Antelope Valley Groundwater Basin, overlain with Bloyd, Carlson et al, Carlson & Phillips
28 and Scalmanini Basin boundaries; *Exhibit N*, Map of Antelope Valley Jurisdictional Boundary with Property
location; *Exhibit O*, Joseph C. Scalmanini et al., Technical Memorandum Ground-Water Basin and Subbasin
Boundaries Antelope Valley Ground-Water Basin (2002), fig. Plate 1 [Antelope Valley court document, parties:
Bunn, Thomas, Filing date 5/3/06], attached hereto and incorporated herein by this reference. See also Davis
Decl. ¶¶ 10 & 11 respectively; and Dr. Arora, Hydrogeologist, Decl. ¶ 8.a., c., f. and h.

1 that water can be delivered to its Service Area. The Water Company's right to transfer water is
2 impaired solely because of the jurisdictional boundary for the Adjudication. First, the Water
3 Company was prevented from producing water in the Mojave Basin area due to the Mojave
4 adjudication. Now, years later, despite its acquisition of property which will enable it to produce
5 water for its customers, it is now being told it cannot have water due to this Adjudication.

6 The principles of equity mandate that this Court exercise its discretion to ensure the
7 Water Company is able to continue to provide water to its Service Area by allowing it to transfer
8 the water it pumps on its Property to its Service Area, across the County line.

9 **B. SHEEP CREEK WATER COMPANY HAS PRIMARY RIGHTS AS AN**
10 **OVERLYING OWNER.**

11 **1. The Production Point and the Area of Use are Within the Same Basin.**

12 An overlying owner has the right to take water from the ground underneath his
13 land for use on his land which lies within the watershed or basin. *Orchard v. Cecil F. White*
14 *Ranches*, 97 Cal. App. 2d 35, 42 (1950). Watersheds represent the surface water drainage, and
15 basins represent groundwater flow and storage.⁴¹ Since groundwater and surface water are
16 inextricably linked in the hydrologic cycle, it is essential that those resources are managed
17 together. [Exh. C]⁴² In linking the terms "watershed and basin," the law seeks to designate a
18 hydrological connection between surface and groundwater in a particular area.

19 The Sheep Creek fan of sediments in the geologic record shows the historic
20 patterns in the Sheep Creek Wash, which is a source of natural recharge water to the aquifer
21 beneath the Property. The waters of Swarthout Creek and Sheep Creek flow north, northeast
22 [USGS Water Resources Investigations Report 03-43-4314; Flow Path 3 includes Sheep Creek's
23 Service Area], and northwest (in the direction of the Property); and, are contained within the El
24 Mirage Valley Basin (6-43) which is a hydrogeologically distinct and separate basin from the
25 Antelope Valley Groundwater Basin. [Exhs. T and H]⁴³

26 ⁴¹ See Dr. Arora, Hydrogeologist, Decl. ¶ 7.a.

27 ⁴² See *Exhibit C*, Dep't of Water Res., Bulletin 118 California's Groundwater, p. 3, ¶ 5, attached hereto and
incorporated herein by this reference. See also Davis Decl. ¶ 5.

28 ⁴³ See *Exhibit T*, USGS Geological map Data for El Mirage Area, San Bernardino and Los Angeles Counties,
California, attached hereto and incorporated herein by this reference; and *Exhibit H*, composite of six (6) USGS

1 Moreover, the use of water by an overlying owner is superior and paramount to
2 that being taken for use on non-overlying lands. *City of Pasadena v. City of Alhambra*, 33 Cal.
3 2d 908, 926 (1949). The Water Company's Property is located in the El Mirage Basin, a
4 separate basin from the Antelope Valley Basin. As an overlying owner of the waters in that
5 Basin, it has a primary right to those waters. By extracting water out of a distinct and separate
6 basin and using that water on its Service Area within that same basin, it is exercising its primary
7 rights as an overlying owner.

8 Additionally, overlying owners are entitled to the protection of the courts against
9 any substantial infringement of their rights in water which they reasonably and beneficially need.
10 *City of Pasadena v. City of Alhambra*, 33 Cal. 2d 908, 926 (1949). Allowing the waters of this
11 basin to be used by others in the Antelope Valley Basin, who are not overlying owners, violates
12 established water law. The Court has indicated that the Water Company will not be able to
13 export water out of the adjudicated basin under general basin adjudication rules. For established
14 water law principles to be upheld, either the Water Company must be excluded from the
15 Adjudication, or the area of the Water Company's Property must be treated as a sub-basin with
16 the Water Company being given permission to transport the water it produces on its Property to
17 its Service Area.

18 **2. The Water Company Provides Water For Domestic Use.**

19 As an overlying owner, the Water Company is only entitled to water that is being
20 put to a reasonable and beneficial use. *Peabody v. City of Vallejo*, 2 Cal. 2d. 351, 383 (1935);
21 *California Constitution*, Art. X, § 2. The Water Company provides water to its customers in
22 Phelan for domestic use, which is deemed to be the most important reasonable and beneficial
23 use. *California Water Code* §106.

24 Therefore, the Water Company, as an overlying owner in that basin, has a primary
25 right to extract water from the ground underneath its Property for domestic use in its Service
26

27 / National Geographic 1:30,750 scale maps of the El Mirage Basin and southeastern Antelope Valley
28 Groundwater Basin, overlain with Bloyd, Carlson et al, Carlson & Phillips and Scalmanini Basin boundaries;
 See also Davis Decl. ¶¶ 3 and 16; and Dr. Arora, Hydrogeologist, Decl. ¶ 7.a., b., c. d. and j. and 8.a., c., e and f.
 and g.

1 Area.

2 **C. SHEEP CREEK WATER COMPANY IS ENTITLED TO THE SHEEP CREEK**
3 **WATERS PURSUANT TO THE 1931 JUDGMENT ON THE BASIS OF RES**
4 **JUDICATA.**

5 Res judicata applies when: (1) the issues decided in the prior adjudication are identical
6 with those presented in the later action; (2) there was a final judgment on the merits in the prior
7 action; and (3) the party against whom the plea is raised was a party or was in privity with a
8 party to the prior adjudication. *Lyons v. Security Pacific National Bank*, 40 Cal. App. 4th 1001,
9 1015 (1995).

10 **1. The Issues Decided In The Prior Adjudication Are Identical To The Issues In**
11 **This Action.**

12 The issue decided in the 1931 case is the same issue in the current action. In the
13 1931 case, "the nature of the action [wa]s to determine rights in certain waters." [RJN Doc. 5]⁴⁴
14 Those certain waters included those hydrologically connected to Sheep Creek. The current
15 action is also to determine the water rights to produce waters from property (now within the
16 jurisdictional boundary of the Antelope Valley adjudication), which receives waters from Sheep
17 Creek. [Exh. N]⁴⁵ Therefore, the issue to be decided in both cases is the right to the Sheep
18 Creek waters.

19 **2. There Was a Final Judgment on the Merits in the Previous Action.**

20 There was a final judgment on the merits in the 1931 action. A settlement
21 agreement has been deemed a final judgment on the merits by the Court. *Citizens for Open*
22 *Access Etc. Tide v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1066 (1998). The parties to the 1931
23 action ended the litigation with a Stipulated Judgment. [RJN Docs. 7-9]⁴⁶ Therefore, the
24 previous action is deemed to have ended with a final judgment on the merits.

25 ⁴⁴ See RJN Doc. 5, Memorandum of Motion to Set Cause for Trial, lines 7-8. Document is attached to the Request
26 for Judicial Notice, filed concurrently herewith.

27 ⁴⁵ See Exhibit N, Map of Antelope Valley Jurisdictional Boundary with Property location, attached hereto and
28 incorporated herein by this reference. See also Davis Decl. ¶ 10.

⁴⁶ See RJN Doc. 7, Agreement of Parties In Connection With Stipulation For Judgment; RJN Doc. 8, Stipulation
for Permanent Injunction; RJN Doc 9, Judgment. Documents are attached to the Request for Judicial Notice,
filed concurrently herewith.

1 **3. The Party against Whom the Plea is Raised was a Party or was in Privity**
2 **with a Party to the Prior Action.**

3 In the current action, the parties against whom res judicata is being raised were a
4 party or were in privity with a party to the 1931 action. The plaintiff in the previous action was
5 the County of Los Angeles; and, plaintiffs in the current action include the County of Los
6 Angeles, cities within the County of Los Angeles, and special districts that provide community
7 services on behalf of the County of Los Angeles. [Exh. U]⁴⁷ The general rule is that a prior
8 judgment will bar the parties to the earlier lawsuit and those in privity with them. *Nevada v.*
9 *United States*, 463 U.S. 110, 135 (1983). Since the doctrine of res judicata is being raised
10 against plaintiffs that were a party or are in privity with a party to the prior adjudication, the
11 1931 Judgment is res judicata not only Los Angeles County, but also against the other related
12 parties.

13 **4. Binding Authority Compels This Court To Apply The Doctrine Of Res**
14 **Judicata To This Case.**

15 The facts surrounding the 1931 Judgment and the present Antelope Valley
16 Adjudication action are nearly identical to the facts in *Nevada v. United States*, 463 U.S. 110
17 (1983). In *Nevada v. United States*, two parties entered into a settlement agreement that
18 apportioned their water rights to the Truckee River and Watershed. Years later, both of the
19 parties, in addition to a number of other parties, were again in a lawsuit regarding the rights to
20 the water of the Truckee River. In its decision, the Court found that in the first lawsuit, the
21 parties intended to adjudicate all rights and claims in and to the waters of Truckee River.
22 Therefore, the cause of action of both lawsuits sought to establish a water right from a single
23 source of water supply. Because the first action ended in a settlement agreement, and the parties
24 in the second action were the same as, or were in privity with, the parties from the first action, all
25 the elements of res judicata were satisfied and the complaint was dismissed.

26 Similarly here, the facts of this lawsuit satisfy the elements for the doctrine of res
27 judicata to apply. In the 1931 case, Sheep Creek and the County of Los Angeles entered into a

28 ⁴⁷ See *Exhibit U*, Cross Complaint, attached hereto and incorporated herein by this reference. See also Davis
Decl. ¶ 17.

1 settlement agreement that apportioned their water rights to Sheep Creek and its Watershed.
2 Decades later, Sheep Creek and the County of Los Angeles, along with a number of additional
3 parties, are again in a lawsuit regarding the rights to a portion of the waters of Sheep Creek
4 included within the Antelope Valley Basin jurisdictional boundary.

5 The parties in the 1931 action sought to establish their rights and claims in and to
6 the waters of Sheep Creek. The parties in the 1931 action declared that their settlement
7 agreement "disposed of all matters of dispute between the parties as to their respective [water]
8 rights." [RJN Doc. 8]⁴⁸ Additionally, the parties stated in the Stipulated Judgment that "the
9 water rights and water interests of the parties hereto shall be for all time settled and determined
10 for themselves and for their successors." [RJN Doc. 7]⁴⁹ By the clear language of the parties,
11 they intended to establish all rights of and claims in and to the waters of Sheep Creek.

12 Therefore, the causes of action in the 1931 case and in the current case seek to
13 establish a water right from a single source of water supply, i.e., the waters of Sheep Creek. The
14 1931 action ended in a Stipulated Judgment regarding the rights to these waters. The County of
15 Los Angeles, and those entities which are in privity with the County of Los Angeles, and the
16 Water Company are the same parties in the 1931 case and in this case. [RJN Doc. 2; Exh. U]⁵⁰

17 Because our facts are indistinguishable from *Nevada v. United States*, 463 U.S.
18 110 (1983), the Court should similarly hold that all the elements of res judicata are satisfied and,
19 thus, bar the relitigation of the rights to the waters of Sheep Creek.

20 **D. COLLATERAL ESTOPPEL BARS THE CLAIM OF WATER RIGHTS ON**
21 **SHEEP CREEK WATER COMPANY'S PROPERTY.**

22 If the Court does not find that res judicata applies to this case, then the doctrine of
23 collateral estoppel still precludes relitigation on the issue of rights to the waters of Sheep Creek.
24 An issue has been previously adjudicated when the following requirements are satisfied: (1) The

25 ⁴⁸ See RJN Doc. 8, Stipulation for Permanent Injunction, lines 16-17. Document is attached to the Request for
26 Judicial Notice, filed concurrently herewith.

27 ⁴⁹ See RJN Doc. 7, Agreement of Parties In Connection with Stipulation for Judgment, p. 2, lines 2-3. Document
28 is attached to the Request for Judicial Notice, filed concurrently herewith.

⁵⁰ See RJN Doc. 2, Complaint. Document is attached to the Request for Judicial Notice, filed concurrently
herewith; *Exhibit U*, Cross Complaint, attached hereto and incorporated herein by this reference. See also
Davis Decl. ¶ 17.

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

6 A settlement agreement (i.e., Stipulated Judgment) constitutes collateral estoppel when it
7 is clear that the parties intend their agreement to have such an effect. *State of Arizona v. State of*
8 *California*, 530 U.S. 392, 414 (2000).

9 **1. The Issue Sought To Be Precluded Is Identical To That Decided In The Prior**
10 **Proceeding.**

11 In the 1931 case, the issue was what rights each party had to the surface water and
12 groundwater of a certain waters, including those of Sheep Creek and Swarthout Creek. [RJN
13 Doc. 5]⁵¹ In the current case, the issue of those same water rights is again in question. In this
14 Adjudication, some of the parties allege that the Antelope Valley Basin is divided into sub-
15 basins, which are “sufficiently hydrologically connected to justify treating them as a single
16 source of water for purposes of adjudicating the parties’ water rights.” [Exh. U]⁵² However, the
17 El Mirage Basin which contains the waters of Sheep Creek has been identified as a
18 hydrologically separate basin from the Antelope Valley Basin. [Exhs. C, D & H]⁵³ The rights
19 to the waters from that Basin, with regard to the waters of Sheep Creek and Swarthout Creek,
20 were already determined by the 1931 Judgment.

21 **2. The Issue was Actually Litigated in the Prior Proceeding.**

22 The parties negotiated the terms regarding the use of the waters of Sheep Creek
23

24 ⁵¹ See *RJN Doc. 5*, Memorandum of Motion to Set Cause for Trial, lines 7-8. Document is attached to the Request
for Judicial Notice, filed concurrently herewith.

25 ⁵² See *Exhibit U*, Cross Complaint, ¶ 20, attached hereto and incorporated herein by this reference. See also Davis
Decl. ¶ 17.

26 ⁵³ See *Exhibit C*, Dep’t of Water Res., Bulletin 118 California’s Groundwater, pp. 192-193 fig. 41 (2003); *Exhibit*
D, Cal.Reg’l Water Quality Control Bd., Water Quality Control Plan for the Lahontan Region, fig. Plate 1B, all
27 attached hereto and incorporated herein by this reference; *Exhibit H*, composite of six (6) USGS / National
28 Geographic 1:30,750 scale maps of the El Mirage Basin and southeastern Antelope Valley Groundwater Basin,
overlain with Bloyd, Carlson et al, Carlson & Phillips and Scalmanini Basin boundaries; See also Davis Decl.
¶¶ 5 & 6; and Dr. Arora, Hydrogeologist, Decl. ¶¶ 8.c. and h.

1 and Swarthout Creek, and documented those terms in the provisions of the Stipulated Judgment.
2 [RJN Doc. 7]⁵⁴ Each party agreed to the water rights that each party would have; each party
3 agreed to refrain from certain activities that would interfere with the water rights of the other
4 party; and, each agreed to the ways the parties could access the water and utilize those rights.
5 [RJN Doc. 7]⁵⁵ Thus, the issue of water rights was actually litigated through these negotiations.

6 **3. The Issue Regarding the Parties' Water Rights was Necessarily Decided in**
7 **the Prior Proceeding.**

8 The issue regarding each party's rights to the waters of Sheep Creek were
9 determined in the Stipulated Judgment. [RJN Doc. 9]⁵⁶ The parties declared that their
10 agreement "disposed of all matters of dispute between the parties as to their respective [water]
11 rights." [RJN Doc. 8]⁵⁷ Thus, the issue of their respective water rights was necessarily decided
12 by that proceeding.

13 **4. The Decision in the Prior Proceeding was Final and On The Merits.**

14 The judgment in the previous action was a Stipulated Judgment. A stipulated
15 judgment is a final judgment on the merits of the case. *Citizens for Open Access Etc. Tide v.*
16 *Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1066 (1998). For collateral estoppel to apply to a
17 stipulated judgment, the parties must intend to be bound by it. *Cal. State Auto. Ass'n Inter-Ins.*
18 *Bureau v. Superior Court*, 50 Cal. 3d 658, 664 (1990). In the Stipulated Judgment, the parties
19 stated that "the water rights and water interests of the parties hereto shall be for all time settled
20 and determined for themselves and for their successors." [RJN Doc. 7]⁵⁸ The selected language
21 shows the parties' clear intention to be permanently bound by the Stipulated Judgment.

22
23
24 ⁵⁴ See RJN Doc. 7, Agreement of Parties In Connection With Stipulation For Judgment. Document is attached to
the Request for Judicial Notice, filed concurrently herewith.

25 ⁵⁵ See RJN Doc. 7, Agreement of Parties In Connection With Stipulation For Judgment. Document is attached to
the Request for Judicial Notice, filed concurrently herewith.

26 ⁵⁶ See RJN Doc. 9, Judgment. Document is attached to the Request for Judicial Notice, filed concurrently
herewith.

27 ⁵⁷ See RJN Doc. 8, Stipulation for Permanent Injunction, lines 16-17. Document is attached to the Request for
Judicial Notice, filed concurrently herewith.

28 ⁵⁸ See RJN Doc. 7, Agreement of Parties In Connection with Stipulation for Judgment, p. 2, lines 2-3. Document
is attached to the Request for Judicial Notice, filed concurrently herewith.

1 Company in San Bernardino County based on: (1) the rights allotted in the 1931 Judgment,
2 pursuant to res judicata and/or collateral estoppel; (2) the seventy-five (75) years of reliance and
3 operation in accordance with the 1931 Judgment; (3) the fact that the Water Company's property
4 and the Service Area are in the El Mirage Basin, a hydrogeologically separate and distinct basin
5 from the Antelope Valley Basin; (4) the principles of equity and the lack of alternative water
6 sources; and, (5) the Water Company's primary rights to the water as overlying owners.

7 Thus, the Water Company should be excluded from the Antelope Valley Groundwater
8 Adjudication and relieved of any restriction to transport water across the Los Angeles and San
9 Bernardino County line. This Court should uphold the previously established water law rights
10 and recognize that the area of the Water Company's Property should be excluded from this
11 Adjudication.

12 Dated: September 9, 2008.

GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation

13
14
15 By: 

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