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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 Coordination Proceeding
14 Special Title (Rule 1550(b))

) Judicial Council Coordination
) Proceeding No. 4408

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

) Santa Clara Case No. 1-05-CV-049053
) Assigned to the Honorable Jack Komar

17 Including Actions:

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co.
20 Superior Court of California, County of Los
21 Angeles, Case No. BC 325 201

) **REPLY TO 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**

22 Los Angeles County Waterworks District No.
23 40 v. Diamond Farming Co.
24 Superior Court of California, County of Kern,
25 Case No. S-1500-CV-254-348

) NOT. DATE: October 3, 2008
) CONT'D DATE: October 6, 2008
) TIME: 9:00 a.m.
) DEPT: 1 (LACSC)
) JUDGE: Hon. Jack Komar

26 Wm. Bolthouse Farms, Inc. v. City of
27 Lancaster
28 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353 840, RIC 344 436, RIC 344 668

) Phase II Trial: October 6, 2008

29 **AND RELATED CROSS-ACTIONS.**

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1 Sheep Creek Water Company ("Water Company") submits this *Reply to the Public Water*
2 *Suppliers' Memorandum of Points and Authorities in Opposition to Sheep Creek Water*
3 *Company, Inc.'s Motion to be Excluded from the Antelope Valley Groundwater Adjudication, or,*
4 *in the alternative, for Recognition of its Prior Rights to the Waters of Sheep Creek* ("Reply").
5

6 I. INTRODUCTION

7 The Water Company was made a party to this action solely because it is the owner of an
8 approximately one point zero nine (1.09) acre parcel of property that is bounded on the east by
9 the Los Angeles / San Bernardino County line (the "Property"), the court-established eastern
10 jurisdictional boundary for the Antelope Valley Groundwater Adjudication (the "Adjudication").

11 The Water Company filed its *Motion to be Excluded from the Antelope Valley*
12 *Groundwater Adjudication or, in the alternative, for Recognition of its Prior Rights to the*
13 *Waters of Sheep Creek* (the "Motion") based on two fundamental premises, the first of which is
14 **hydrologic**, i.e., that its Property is not in the Antelope Valley Groundwater Basin and water
15 extracted and exported from its Property to serve its customers in Phelan will not adversely
16 affect the other parties to the Adjudication; and the second of which is **jurisdictional**, i.e., that
17 the Division of Water Rights and the Superior Court of Riverside County have already found that
18 the Water Company has the right to take the waters it seeks to extract and export from the
19 Property.

20 Only a procedural opposition to the Motion was filed by the Public Water Suppliers. The
21 sole basis for their opposition is that the Motion should be denied because the issues are too
22 complex and important to be resolved at this time; and the Public Water Suppliers cannot
23 determine if the form of the Motion is correct. Neither of these reasons is sufficient for the Court
24 to deny the Water Company's Motion outright.

25 II. ARGUMENT

26
27 A. **Hydrologic Premise.** The Water Company filed the Motion because its Property
28 is not in the Antelope Valley Groundwater Basin and water extracted and exported from its

1 Property to serve its customers in Phelan will not adversely affect the other parties to the
2 Adjudication.

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

16 Accordingly, the Water Company filed its Motion, as authorized by the Court in its
17 Revised Order, because: (1) the Property is located in the El Mirage Basin, a separate and
18 distinct hydrologic basin that is situated to the east of the Antelope Valley Groundwater Basin,
19 and recognized as such in DWR Bulletin 118-2003 and by most, if not all designated
20 (hydrogeologist) experts; (2) the El Mirage Basin has no material hydrogeologic connectivity
21 with the Antelope Valley Groundwater Basin in the general vicinity of the Property; and (3) the
22 waters of Sheep Creek arise and remain in the El Mirage Basin, and the waters extracted from
23 the Property are derivative of the waters of Sheep Creek (in the El Mirage Basin). These are
24 precisely the issues that were addressed by the Court in its Revised Order.

25 The evidentiary support for the Motion includes the El Mirage Appendix to DWR
26 Bulletin 118-2003 [Exhibit “E”], DWR Bulletin 118-2003 [Exhibit “D”], and the January 2002
27 *Technical Memorandum – Ground-Water Basin and Subbasin Boundaries – Antelope Valley*
28 *Ground-Water Basin* [see map attached to Exhibit “H”] by Luhdorff and Scalmanini (Joseph

1 Scalmanini is the Public Water Purveyor's principal expert), which depicts the recognized
2 boundaries of the Antelope Valley Groundwater Basin, acknowledges that the Property is located
3 outside of the Antelope Valley Groundwater Basin [see Exhibits "H" and "O"] and that the
4 waters of Sheep Creek arise and remain in the El Mirage Basin. Additionally, the Declaration of
5 Dr. Ram Arora demonstrates and the waters extracted from the Property are derivative of the
6 waters of Sheep Creek (in the El Mirage Basin), and that the production and exportation of water
7 from the Property will not adversely affect the other parties to the Adjudication.

8 No party has filed a substantive opposition or presented any evidence contradicting that
9 the Water Company's Property is in the El Mirage Basin, a hydrologically separate and distinct
10 basin from the Antelope Valley Groundwater Basin; that there is any material hydrologic
11 connectivity between the El Mirage Basin and the Antelope Valley Groundwater Basin in the
12 general vicinity of the Property; or, that the waters of Sheep Creek arise and remain in the El
13 Mirage Basin, and that the waters extracted from the Property are derivative of the waters of
14 Sheep Creek, within the El Mirage Basin.

15 Since there is only uncontroverted evidence before this Court that the Water Company's
16 Property is located in the El Mirage Basin, a separate and distinct hydrologic basin that is
17 situated to the east of the Antelope Valley Groundwater Basin, and recognized as such in DWR
18 Bulletin 118-2003 and by most, if not all designated (hydrogeologist) experts; that the El Mirage
19 Basin has no material hydrogeologic connectivity with the Antelope Valley Groundwater Basin
20 in the general vicinity of the Property; and that the waters of Sheep Creek arise and remain in the
21 El Mirage Basin, and the waters extracted from the Property are derivative of the waters of
22 Sheep Creek (in the El Mirage Basin), this Court should grant the Motion as to those issues prior
23 to the Phase II Trial.

24 **B. Jurisdictional Premise.** In its Decision 5885 D 119 (1926), the Division of
25 Water Rights awarded the Water Company the right to annually take three thousand (3,000) acre
26 feet of the waters of Sheep Creek. That decision was challenged and resolved in the 1931
27 Stipulated Judgment in the *Pacific Southwest Trust and Savings Bank, et al. v. Sheep Creek*
28 *Water Company*, Riverside County Superior Court Case No. 15583, by which the Water

1 Company was confirmed the right to take the waters it seeks to extract and export from the
2 Property. In short, the Water Company has a historic, administratively and judicially
3 acknowledged right to take the waters of Sheep Creek, including from the Property.

4 However, in light of the objections of the Public Water Suppliers and the fact that this
5 issue is more novel and unrelated to the Phase II Trial issues, the Water Company is willing to
6 have the Court bifurcate the jurisdictional premise for determination, if necessary, following the
7 Phase II Trial.

8 **C. Procedural Objections.** There is no basis for the Public Water Suppliers'
9 procedural objections that the Motion needs to be in a different format. In fact, the Water
10 Company's Motion requests relief pursuant to the direction of this Court in the Revised Order
11 [Exhibit "O"]. Since the Court gave no specific guidance as to how such evidence should be
12 presented to the Court, a motion would be the usual method for presenting such evidence.

13 The Public Water Suppliers were served with the Water Company's Motion within the
14 statutory time for bringing such a Motion, and they have had sufficient time to prepare a
15 substantive opposition. The Public Water Suppliers' designated experts have stated that they are
16 familiar with the facts in this case, including the boundaries of the Antelope Valley Groundwater
17 Basin; yet none of them have filed anything to dispute that the Property is actually situated in the
18 El Mirage Basin, that the El Mirage Basin is a hydrogeologically separate and distinct basin from
19 the Antelope Valley Groundwater Basin, or that the waters of Sheep Creek arise and remain in
20 the El Mirage Basin.

21 The Water Company filed and set its Motion to be heard prior to the Phase II Trial
22 because it is seeking to be excluded from the Adjudication and does not have sufficient resources
23 to indefinitely participate in this Adjudication. When the Public Water Suppliers and other
24 parties requested that the hearing on the Motion be continued to a date after the Phase II Trial,
25 the Water Company did not object, providing that it would not be thereby prejudiced. However,
26 the Court apparently determined that the hydrologic issues raised were sufficiently related to
27 continue the hearing on the Motion to October 6th, concurrent with the commencement of the
28 Phase II Trial.

1 In light of the fact that the evidence that supports the hydrologic premise of the Motion is
2 uncontroverted, this Court should grant the Motion as to those issues prior to the Phase II Trial.
3 Otherwise, the Water Company will be required to present its evidence at the Phase II Trial
4 solely to establish those issues. The Water Company is agreeable to continuing the jurisdictional
5 issues raised in its Motion to a date following the Phase II Trial so that any party who wishes to
6 oppose those issues will have a sufficient opportunity to do so. That would allow the Water
7 Company to avoid having to incur the costs of participating in the Phase II Trial, including
8 having its expert come to California to testify, when no other parties have noticed their experts as
9 opining on any of the issues raised by the Motion.

10 The parties participating in the Phase II Trial will not be prejudiced in that the Water
11 Company does not intend to present any evidence at the Phase II Trial on the existence or non-
12 existence of sub-basins. The Water Company's sole hydrologic position is that its Property is
13 located in the El Mirage Basin, a DWR and SWRCB recognized, hydrogeologically separate and
14 distinct basin from the Antelope Valley Groundwater Basin, not in a separate sub-basin of the
15 Antelope Valley Groundwater Basin.

16 17 **III. CONCLUSION**

18 The uncontroverted evidence establishes that the Property is located in the El Mirage
19 Basin, which is a separate and distinct hydrologic basin situated to the east of the Antelope
20 Valley Groundwater Basin, recognized as such by the Department of Water Resources in
21 Bulletin 118-2003 and by most, if not all designated (hydrogeologist) experts; (2) the El Mirage
22 Basin has no material hydrogeologic connectivity with the Antelope Valley Groundwater Basin
23 in the general vicinity of the Property; and (3) the waters of Sheep Creek arise and remain in the
24 El Mirage Basin, and the waters extracted from the Property are derivative of the waters of
25 Sheep Creek (in the El Mirage Basin). As there is no substantive opposition to the hydrologic
26 evidence presented in support of the Motion, the Court should grant the Motion as to those
27 issues.

28 If the Court does not grant the Motion as to the hydrologic issues, the Water Company

1 will have to incur the substantial expense of being required to participate in the Phase II Trial.

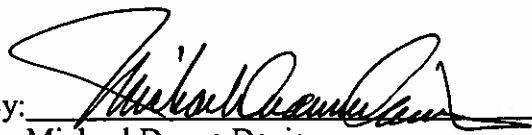
2 The Water Company is willing to have the Court bifurcate the jurisdictional premise for
3 determination, if necessary, following the Phase II Trial.

4 Accordingly, the Water Company respectfully requests that this Court grant its Motion as
5 to the hydrologic issues, alone, and determine the jurisdictional issues, if necessary following the
6 Phase II Trial, so that it can avoid the expense of participating in a lengthy Phase II Trial.

7
8 Respectfully Submitted,

9 Dated: September 26, 2008.

GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation

10
11 By: 
12 Michael Duane Davis
13 Marlene L. Allen-Hammarlund
14 Attorneys for Cross-Defendant,
15 SHEEP CREEK WATER COMPANY, INC.
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

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

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

On September 26, 2008, I served the foregoing document(s) described as **REPLY TO 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** on the interested parties in this action in the following manner:

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

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

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

Superior Court of California **[Original Documents to be filed at this location]**
County of Los Angeles
Stanley Mosk Courthouse, Dept. 1, Room 534
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 September 26, 2008, at Riverside, California.


TERI D. GALLAGHER