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SHEEP CREEK WATER COMPANY, INC.

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

Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY GROUNDWATER
CASES**

Including Actions:

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

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

**Wm. Bolthouse Farms, Inc. v. City of
Lancaster**
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

AND RELATED ACTIONS.

) Judicial Council Coordination
) Proceeding No. 4408

) Santa Clara Case No. 1-05-CV-049053
) Assigned to the Honorable Jack Komar
) Department 17

) **[PROPOSED, REVISED] STIPULATION**
) **REGARDING THE DEPOSITION AND**
) **TRIAL TESTIMONY OF CROSS-**
) **DEFENDANT SHEEP CREEK WATER**
) **COMPANY, INC.**

1 This *Stipulation Regarding the Deposition and Trial Testimony of Cross-Defendant*
2 **SHEEP CREEK WATER COMPANY, INC.** ("Sheep Creek") is submitted pursuant to
3 Paragraph 2 of the Court's January 17, 2013 *First Amendment to Case Management Order for*
4 *Phase Four Trial* and in connection with the Phase 4 Trial which is currently scheduled for
5 Tuesday, May 28, 2013, in the above-encaptioned matter.

6 Sheep Creek has provided, under penalty of perjury, the facts, information and
7 documents submitted to the Court and posted on the Court's website on December 21, 2012,
8 including, but not limited to, the following:

9 1. Sheep Creek holds fee title to two parcels of real property totaling approximately
10 2.35 acres located in the extreme eastern portion of the Area of Adjudication on the Los Angeles
11 / San Bernardino County line (the "Los Angeles County Properties") and which are identified by
12 Assessor's Identification Number ("AIN") as follows:

13 a. AIN 3089-012-004, acquired by grant deed on December 14, 2005.

14 b. AIN 3089-012-008, acquired by grant deed on December 15, 2005.

15 The Sheep Creek service area is located entirely outside of the Area of Adjudication in a nine (9)
16 square mile area of the unincorporated Community of Phelan, County of San Bernardino.

17 Reference: *Cross-Defendant, Sheep Creek Water Company's* (verified)
18 *Information and Materials Responsive to December 12, 2012 Discovery Order for*
19 *Phase 4 Trial* (the "*Discovery Responses*"), Paragraphs ("¶") I.1.a., I.1.a.i.,
20 I.1.a.ii., I.1.j.iii., I.3.b.i., I.3.b.ii., I.3.b.iii., I.3.b.iv., I.3.b.v.; Grant Deed from
21 Gloria M. Henry, Surviving Trustee of the Henry Revocable Trust, to Sheep
22 Creek Water Company, a Mutual Corporation, dated December 14, 2005, Los
23 Angeles County Recordation No. 060224419, conveying **AIN 3089-012-004**;
24 Grant Deed from Melvin W. Wingler and Margie Wingler, Husband and Wife as
25 Joint Tenants, dated December 15, 2005, Los Angeles County Recordation No.
26 060101045, conveying **AIN 3089-012-008**.

27 2. Sheep Creek is an active California mutual benefit non-profit corporation, with an
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1 entity address of Post Office Box 291820, Phelan, CA 92329. It was formed on January 7, 1914.
2 Its membership is comprised of the owners of lots of varying sizes that are situated within its
3 above-described service area outside of the Area of Adjudication. Sheep Creek's 1,380 service
4 connections within the Community of Phelan served an approximate population of 3,175.

5 Reference: *Discovery Responses* ¶¶ I.1.b., I.3.c.i., I.3.c.ii., I.3.c.iii., I.3.c.iv.,
6 I.3.c.v.; California Secretary of State, Business Entity Detail (December 14,
7 2012); Articles of Incorporation of the Sheep Creek Water Company, with
8 Amendments dated December 5, 1913, October 11, 1956, March 25, 1969,
9 July 10, 1969, and August 3, 1978, and February 26, 1980; State of California
10 Department of Health Water Supply Permit No. 78-007 to furnish or supply water
11 for domestic purposes to Phelan, California and vicinity (February 6, 1978); By-
12 Laws of Sheep Creek Water Company.

13 3. In December 2005, prior to being joined in the present adjudication, Sheep Creek
14 purchased the Los Angeles County Properties described above with the intent of drilling a well
15 for the purpose of exporting groundwater to its service area in San Bernardino County pursuant
16 to an entitlement of 3,000 AF/yr (explained below). Sheep Creek was later joined in the present
17 groundwater adjudication when it was served with the *Cross-Complaint of Municipal Purveyors*
18 *For Declaratory and Injunctive Relief and Adjudication of Water Rights*. Though Sheep Creek
19 drilled a well in April 2007 on one of its Los Angeles County parcels (AIN 3089-012-004)
20 located within the Area of Adjudication (the "Los Angeles County Well"), it has not produced
21 groundwater from the Los Angeles County Well for any purpose other than testing, including
22 exportation to its service area in San Bernardino County, due to an earlier order of this court
23 prohibiting exportation of groundwater out of the Area of Adjudication.

24 Reference: *Discovery Responses* ¶¶ I.1.c., I.1.d., I.1.e., I.1.g., I.1.h, I.3.a.iv,
25 I.3.a.v., I.3.a.vi., I.3.a.vii., I.3.a.viii.; March 7, 2007 Well Permit Application for
26 production well on Los Angeles County AIN 3089-012-004; April 28, 2007 Well
27 Completion Report No. e052356; May 2007 Well Development materials
28

provided by Farm Pump and Irrigation, Co., Inc.; April 4, 2007 and April 9, 2007 invoices from H2-0 To Go for delivery of well development water used on AIN 3089-012-004; April 12, 2007 invoice from Desert Design General Engineering Contractor for delivery of well development water used on AIN 3089-012-004.

4. Sheep Creek did not operate the Los Angeles County Well, or produce groundwater from within the Area of Adjudication, during the years 2000 to 2004 and 2011 to 2012.

Reference: *Discovery Responses* ¶¶ I.1.c., I.1.d., I.1.e., I.1.g., I.1.h.

5. Sheep Creek did not produce groundwater from within the Area of Adjudication during the years 2000 to 2004 and 2011 to 2012.

Reference: *Discovery Responses* ¶¶ I.1.c., I.1.d., I.1.e., I.1.g., I.1.h.

6. Sheep Creek does not intend to produce groundwater originating within the Area of Adjudication from the Los Angeles County Well or from any other source within the Area of Adjudication. However, Sheep Creek seeks to use the parcels of real property located within the Area of Adjudication to receive water from outside the Area of Adjudication, inject or spread and store that water imported from its Sheep Creek Canyon Well Field in an amount of up to 2,000 AF/yr (the "Imported Water") pursuant Sheep Creek's remaining annual entitlement under a 1926 order of the California Department of Public Works (explained below), and return that imported and stored water to its service area in Phelan, County of San Bernardino, in order to mitigate the effects of severe seasonal water shortages and provide a steady water supply to its members.

Reference: *Discovery Responses* ¶ I.1.h.ii.

7. Basis for Claim of Groundwater Rights:

a. **Sheep Creek's 3,000 AFY Entitlement Pursuant to 1926 Order of California Department of Public Works:** Sheep Creek was awarded an entitlement to pump up to 3,000 AF/yr pursuant to the State of California, Division of Water Rights, Department of Public Works Decision No. 3883 D-119, decided on August 24, 1926, which reads in pertinent

1 part: "IT IS HEREBY ORDERED that said application No. 3883 be approved for 3,000 acre feet
2 per annum only and a permit be granted to the applicant subject to such of the usual terms and
3 conditions as may be appropriate." The Order is signed by Edward Hyatt, Jr., who was the Chief
4 of Division of Water Works, on August 24, 1926 (the "1926 Order"). Sheep Creek intends to
5 exercise this right outside the Area of Adjudication.

6 Reference: *Discovery Responses ¶¶ I.1.j.i., I.1.k.; In the Matter of Application No.*
7 *3883 of the Sheep Creek Water Company to Appropriate From Surface and Sub-*
8 *Surface Flow of Sheep Creek, Tributary to the Mojave Desert Drainage Area in*
9 *San Bernardino County for Irrigation and Domestic Purposes*, dated August 24,
10 1926 (the "1926 Order") .

11 **b. The 1931 Stipulation for Judgment:** Subsequent to the entry of the 1926
12 *Order*, the County of Los Angeles and other plaintiffs filed suit against Sheep Creek concerning
13 an old shaft that had been constructed by Sheep Creek. The parties to that lawsuit, which was
14 filed in Riverside County Superior Court as Case No. 15585, entered into an Agreement of
15 Parties in Connection with Stipulation for Judgment (the "Stipulation for Judgment"), which was
16 signed on September 24, 1931. That Judgment resulted in a line being drawn extending east and
17 west across Sheep Creek, with Sheep Creek being restricted to taking water that flows out of
18 Sheep Creek Canyon to the north of the line, and Los Angeles County being restricted to taking
19 water that flows to the south of the line. Despite this change to Sheep Creek's pumping location,
20 Sheep Creek maintained its 3,000 AF/yr entitlement under the 1926 *Order*. Sheep Creek intends
21 to exercise this right outside the Area of Adjudication.

22 Reference: *Discovery Responses ¶¶ I.1.j.ii.; Agreement of Parties in Connection*
23 *with Stipulation for Judgment (the "1931 Stipulation for Judgment"), Engineer's*
24 *Report, Judgment, Stipulation, and Order of Temporary Injunction.*

25 **c. Sheep Creek's Current Production Outside the Area of Adjudication**
26 **Pursuant to Entitlement:** Sheep Creek currently produces water from its Sheep Creek Canyon
27 Well Field which is located outside of the Area of Adjudication in San Bernardino County.
28

1 Sheep Creek's production from this facility ranges between 1,000 and 1,200 AF/yr.

2 Reference: *Discovery Responses* ¶¶ I.1.a., I.1.b., I.1.j.iii.; State of California
3 Department of Health Water Supply Permit No. 78-007 to furnish or supply water
4 for domestic purposes to Phelan, California and vicinity (February 6, 1978).

5 **8. Amount of Groundwater Claim:** Pursuant to the *1926 Order*, Sheep Creek is
6 entitled to produce an additional amount of between 1,800 and 2,000 AF/yr over its current
7 production level. Sheep Creek intends to exercise this right outside the Area of Adjudication.

8 Reference: *Discovery Responses* ¶ I.1.k.

9 **9.** Sheep Creek did not lease property to anyone during the Base Period years of
10 2000 to 2004 or the recent years of 2011 to 2012.

11 Reference: *Discovery Responses* ¶ I.2.a.

12 **10.** Sheep Creek did not import or acquire any imported water from the Antelope
13 valley – East Kern Water Agency, Palmdale Water District, Littlerock Creek Irrigation District
14 or any other entity having rights to State Water Project water, during the Base Period years of
15 2000 to 2004 or the recent years of 2011 to 2012.

16 Reference: *Discovery Responses* ¶ III.1.d.

17 **11.** Sheep Creek claims an unexercised overlying water right, in addition to the
18 riparian rights set forth above. Sheep Creek claims no other groundwater rights that are the
19 subject of this Adjudication for purposes of the Phase 4 Trial, and claims no return flows.

20 Reference: *Discovery Responses* ¶¶ I.1.a.i., I.1.k., III.1.a.

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The parties hereto further stipulate and agree that neither deposition testimony nor trial testimony will be required of Sheep Creek or any of its designated witnesses, including any designated experts, for purposes of the Phase 4 Trial.

Dated: March 15, 2013.

By:

Dated: March____, 2013.

By:

Dated: March , 2013.

By:

-7-

1 Dated: March____, 2013.

RICHARDS, WATSON & GERSHON

2
3 By:_____

4 Steven Orr
5 James L. Markman
6 Attorneys for Cross-Complainant, City of
7 Palmdale

8
9 Dated: March____, 2013.

MURPHY & EVERTZ

10
11 By:_____

12 Douglas J. Evertz
13 Attorneys for Cross-Complainant, City of
14 Lancaster and Rosamond Community
15 Services District

16
17 Dated: March____, 2013.

18
19 By:_____

20 John Tootle
21 Attorneys for Cross-Complainant, California
22 Water Service Company

23
24 Dated: March____, 2013.

LEMIEUX & O'NEILL

25
26 By:_____

27 Wayne Lemieux
28 Attorneys for Cross-Complainant, Littlerock
Creek Irrigation District, Palm Ranch Irrigation
District, et al.

29
30 Dated: March____, 2013.

LAGERLOF SENEAL GOSNEY & KRUSE

31
32 By:_____

33 Thomas Bunn III
34 Attorneys for Cross-Complainant, Palmdale
35 Water District

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37 -8-

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2
3 **PROOF OF SERVICE**
4 **STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

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


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

11 On March 15, 2013, I served the foregoing document(s) described as **[PROPOSED,**
12 **REVISED] STIPULATION REGARDING THE DEPOSITION AND TRIAL**
13 **TESTIMONY OF CROSS-DEFENDANT SHEEP CREEK WATER COMPANY, INC.**
14 on 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

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

21 Executed on March 15, 2013 at Riverside, California.

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DINA M. SNIDER