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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

**PUBLIC WATER SUPPLIERS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
SHEEP CREEK WATER
COMPANY, INC.'S MOTION TO BE
EXCLUDED FROM THE
ANTELOPE VALLEY
GROUNDWATER ADJUDICATION,
ETC.**

DATE: October 3, 2008
TIME: 9:00 a.m.
DEPT: 17

Phase 2 Trial: October 6, 2008
(Hon. Jack Komar)

The City of Palmdale, City of Lancaster, Los Angeles County Waterworks District
No. 40, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch
Irrigation District, North Edwards Water District, Desert Lakes Community Services
District, Rosamond Community Services District, California Water Service Company

(collectively “Public Water Suppliers”) hereby oppose Sheep Creek Water Company, Inc.’s (“Sheep Creek”) 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.

**I.
SHEEP CREEK’S MOTION TO BE EXCLUDED
SHOULD BE SUMMARILY DENIED**

Through its motion, Sheep Creek seeks an order excluding it from this general groundwater adjudication, or for an order recognizing its alleged prior rights to the waters of Sheep Creek. While styled as a “motion to be excluded,” Sheep Creek’s motion is actually a motion for summary adjudication that none of the affirmative claims stated against it by various parties have merit, or a motion that one of its affirmative defenses bars all claims stated against, or a motion for judgment on the pleadings, or a motion for reconsideration of the Phase 1 boundary determination, or a motion for summary adjudication of some unpleaded cause of action for declaratory relief. In so doing, Sheep Creek fails to comply with the mandatory requirements of Code of Civil Procedure (“CCP”) sections 437c, 438, 1008 or 1060 for bringing any such motion.

If a motion for summary adjudication, for example, Sheep Creek fails to identify the particular causes of action that it contends lacks merit (CCP § 437c(f)(1)), fails to identify the affirmative defense that it contends bars all claims (CCP § 437c(f)(1)), does not include a separate statement of undisputed material facts (CCP § 437c(b)(1); CRC 3.1350), and does not give the requisite 75 days notice of the motion (CCP § 437c(a)).¹

¹ Indeed, the motion is brought during the parties’ final preparation for the Phase 2 trial, and, in effect, deprives the Public Water Suppliers, and all other parties of the opportunity to conduct discovery on the issues raised in the motion and the voluminous evidence submitted in support thereof. Such an opportunity should be afforded to those who intend to oppose the motion on the merits.

1 If a motion for judgment on the pleadings, Sheep Creek fails to identify the
2 pleading that is the subject of its motion, or the grounds that “appear on the face of the
3 challenged pleading” (CCP § 438(d)), and brings such a motion less than 30 days before
4 trial of the issue of separate sub-basins (CCP § 438(e)). Sheep Creek further violates
5 CCP § 438 by submitting declarations and evidence of which the Court may not take
6 judicial notice in support of its motion, or which is inadmissible. The motion is little
7 more than a veiled attempt to obtain a Phase 2 determination that Sheep Creek is its own
8 groundwater basin – a veritable Liechtenstein between the Antelope Valley and Mojave
9 basins.

10 If a motion for reconsideration, Sheep Creek does so untimely (CCP § 1008(a)),
11 and fails to identify what “new or different facts, circumstances, or law are claimed to be
12 shown” (*id.*), and otherwise fails to conform to the requirements of a motion for
13 reconsideration. Since the Court’s jurisdiction is controlled by Sheep Creek’s
14 compliance with the requirements of the statute (CCP § 1008(e)), the defective motion is
15 not properly before the Court.

16 If seeking declaratory relief that it holds superior and paramount rights to the
17 waters of Sheep Creek, there is no cause of action presently before the Court on such a
18 claim.

19 Sheep Creek’s motion should be denied for non-compliance with the governing
20 statutes and Rules of Court. It claims in this regard should be considered at a later point
21 in these proceedings.

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II.

SHEEP CREEK CANNOT AVOID ITS OBLIGATION TO COMPLY WITH THE STATUTES GOVERNING DISPOSITIVE MOTIONS

The label a party chooses to place on a motion is not determinative. As the Court of Appeal explained in *City & County of S.F. v. Muller* (1960) 177 Cal.App.2d 600, 603:

“The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words.”

Consistent with the court’s inherent authority to manage and control its docket, the court may treat a motion bearing one label as a different type of motion. *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 192-193 (post-judgment motion for reconsideration treated as a motion for new trial).

Sheep Creek has not filed a complaint or cross-complaint in these proceedings.² It did, however, file an answer to the Public Water Suppliers cross-complaint.

The relief sought by Sheep Creek through its “motion to be excluded,” is (a) in the nature of summary adjudication of the causes of action stated against it by the Public Water Suppliers, (b) that one of its affirmative defenses thereto completely bars the relief sought by the Public Suppliers, (c) that it is entitled to judgment on those pleadings, (d) that the Court should reconsider its Phase 1 boundary determination, or (e) an attempt to obtain declaratory relief on an unpleaded cause of action. Sheep Creek, at bottom, seeks a final judgment in its favor without having to comply with any of the governing statutes, or affording the parties a meaningful opportunity to oppose Sheep Creek’s efforts to export enough Antelope Valley groundwater to supply its 1,270 service connections (Cummings Decl., ¶ 2).

The motion should be denied.

² It thus may not seek declaratory relief that it is entitled to the waters of Sheep Creek (CCP § 1060).

III.
THE COURT SHOULD NOT EXCLUDE THE SHEEP CREEK AREA BASED
ON THE INADMISSIBLE EVIDENCE SUBMITTED IN SUPPORT OF THE
MOTION

As demonstrated in the evidentiary objections filed prior to the hearing, Sheep Creek’s motion is based on evidence that constitutes hearsay, lacks foundation and is otherwise inadmissible. Long before groundwater in amounts sufficient to supply 1,270 connections should be allowed to be exported from the area of adjudication, the parties should be afforded the statutorily-mandated time to conduct discovery and to prepare an opposition on the merits. Sheep Creek seeks to sidestep these requirements, and create its own independent groundwater basin between the Mojave and Antelope Valley areas of adjudication.

The issues involved are far too complex and important to be resolved on the papers submitted by Sheep Creek, and set to be heard the day before the Phase 2 trial begins.

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IV.

CONCLUSION

For these reasons, Sheep Creek's motion should be denied.

Dated: September 22, 2008

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