

Michael Duane Davis, SBN 093678
Marlene L. Allen-Hammarlund, SBN 126418
Derek R. Hoffman, SBN 285784
GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation
3750 University Avenue, Suite 250
Riverside, CA 92501-3335
Telephone: (951) 684-2171
Facsimile: (951) 684-2150

Attorneys for Cross-Defendant/Cross-Complainant,
ANTELOPE VALLEY UNITED MUTUALS GROUP;
and Cross-Defendants, ADAMS BENNETT
INVESTMENTS, LLC; MIRACLE IMPROVEMENT
CORPORATION dba GOLDEN SANDS MOBILE HOME
PARK, aka GOLDEN SANDS TRAILER PARK, named
as ROE 1121; ST. ANDREW'S ABBEY, INC., named as
ROE 623; SERVICE ROCK PRODUCTS, L.P.; and
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))

) Judicial Council Coordination
) Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

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

Including Consolidated 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

) **CROSS-DEFENDANTS/CROSS-
COMPLAINANTS, MEMBERS OF THE
ANTELOPE VALLEY UNITED
MUTUALS GROUP, SPECIFICALLY
ANTELOPE PARK MUTUAL WATER
COMPANY'S AND TIERRA BONITA
MUTUAL WATER COMPANY'S,
REQUEST FOR CORRECTION OF
MINUTE ORDERS RE: EVIDENCE
ADMITTED AT PHASE 4 TRIAL;
DECLARATION IN SUPPORT.**

**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.**

) For Court's Use Only:
) Santa Clara County
) Case No. 1-05-CV-049053
) (For E-Posting/E-Service Purposes Only)

Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353 840, RIC 344 436, RIC 344 668

) Date: July 10, 2015
) Time: 10:00 a.m.
) Dept. San Jose, Dept. 17C, by CourtCall

AND RELATED ACTIONS.

) Prove-Up Trial Date: September 28, 2015

GRESHAM | SAVAGE
ATTORNEYS AT LAW
3750 UNIVERSITY AVE.
STE. 250
RIVERSIDE, CA 92501-3335
(951) 684-2171

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 10, 2015, at 10:00 a.m. or as soon thereafter as
3 the matter may be heard by CourtCall, in Department 17C of the Santa Clara Superior Court, San
4 Jose, CA, Cross-Defendants / Cross-Complainants, ANTELOPE PARK MUTUAL WATER
5 COMPANY ("Antelope Park") and TIERRA BONITA MUTUAL WATER COMPANY
6 ("Tierra Bonita") (collectively, the "Requesting Parties"), who are members of the ANTELOPE
7 VALLEY UNITED MUTUALS GROUP [comprised of Antelope Park Mutual Water Co.,
8 Aqua-J Mutual Water Co., Averydale Mutual Water Co., Baxter Mutual Water Co., Bleich Flat
9 Mutual Water Co., Colorado Mutual Water Co., El Dorado Mutual Water Co., Evergreen Mutual
10 Water Co., Land Projects Mutual Water Co., Landale Mutual Water Co., Shadow Acres Mutual
11 Water Co., Sundale Mutual Water Co., Sunnyside Farms Mutual Water Co., Tierra Bonita
12 Mutual Water Co., West Side Park Mutual Water Co., and White Fence Farms Mutual Water
13 Co., Inc.], by and through their attorneys of record, Gresham Savage Nolan & Tilden, PC, will
14 request that Court correct, *nunc pro tunc*, clerical errors in the Court's "Minute Order from May
15 29, 2013", which was posted to the Court's website on July 17, 2013 as Document No. 6989
16 ("May 29, 2013 Minute Order"), and a clerical error in the Court's "Minute Order from May 30,
17 2013", which was posted to the Court's website on July 17, 2013 as Document No. 6990 ("May
18 30, 2013 Minute Order"), as follows:

19 **Requested Corrections to the May 29, 2013 Minute Order:**

- 20 1. **On page 1, delete "4-ANTELOPEPARK-1 Well efficiency test results" and, in its**
21 **place, insert "4-ANTELOPEPARK-1 Responses to December 12, 2012 Discovery**
22 **Order."**
- 23 2. **On Page 1, delete "4-ANTELOPEPARK-2 Summary of water pumped for years**
24 **2011 and 2012" and, in its place, insert "4-ANTELOPEPARK-2 First Supplemental**
25 **Response to December 12, 2012 Discovery Order."**
- 26 3. **On Page 8, insert "4-TIERRABONITA-2 First Supplemental Response."**

1 **Correction to the May 30, 2013 Minute Order:**

- 2 4. **On Page 1, delete** “4-ANTELOPEPARK-3 Second supplemental response.” Note,
3 on Page 1 of the May 29, 2013 Minute Order, leave unchanged “4-
4 ANTELOPEPARK-3 Second Supplemental Response.”

5
6 **AUTHORITY FOR REQUEST**

7 “The court may, upon motion of the injured party, or its own motion, correct clerical
8 mistakes in its judgment or orders as entered, so as to conform to the judgment or order
9 directed...” Code Civ. Proc., § 473 (d). Additionally, the court has the inherent power and duty
10 to ensure that its proceedings are correctly set forth the record, and it retains the authority to
11 amend or alter its own rulings. *Phipps v. Superior Court in and for Alameda County* (1939) 32
12 Cal.App.2d 371, 373-376; *Culligan v. Leider* (1944) 65 Cal.App.2d 51, 57. Where a clerk’s
13 entry is not consistent with the judge’s actual order, the error is clerical rather than judicial. *Id.* at
14 56. Unlike judicial error, a clerical error may be corrected at any time. *Id.* at 57. The court may
15 order the correction of a clerical error to be entered *nunc pro tunc* as of the date of the original
16 order. *Wexler v. Goldstein* (1956) 146 Cal.App.2d 410, 412; *Culligan*, 65 Cal.App.2d at 56-57;
17 *Phipps*, 32 Cal.App.2d at 375-376. The error does not need to appear on the face of the record to
18 allow the court to correct the entry *nunc pro tunc*, and the recollection of the court may be
19 sufficient. See *People v. Wilson* (1936) 15 Cal.App.2d 172, 175; *St. Clair v. Joos* (1924) 66
20 Cal.App.398, 402; *Kaufman v. Shain* (1896) 111 Cal. 16, 21-22. The court’s order should
21 correct the clerical error by placing on the record what was actually decided by the court but was
22 incorrectly recorded in order to make the record conform to the truth. *In re Marriage of Padgett*
23 (2009) 172 Cal.App.4th 830, 852.

24 As reflected in the Court’s Minute Order for the June 15, 2015 Case Management
25 Conference hearing, the Court invited these Requesting Parties to file and serve this request as
26 soon as possible, and ordered that this request be heard during the above-captioned July 15, 2015
27 Case Management Conference hearing, via telephonic appearance. The May 29, 2013 Minute

1 Order and the May 30, 2013 Minute Order must be corrected in order to accurately reflect the
2 Requesting Parties' evidence that was actually admitted at the Phase 4 Trial, to which no party
3 has raised any objections.
4

5 **DECLARATION OF MICHAEL DUANE DAVIS**

6 I, Michael Duane Davis, declare as follows:

7 1. I am an attorney-at-law duly admitted to practice before this Court. I am a
8 shareholder of Gresham Savage Nolan & Tilden, PC, attorneys of record for Cross-Defendants /
9 Cross-Complainants, ANTELOPE VALLEY UNITED MUTUALS GROUP [which is
10 comprised of Antelope Park Mutual Water Co., Aqua-J Mutual Water Co., Averydale Mutual
11 Water Co., Baxter Mutual Water Co., Bleich Flat Mutual Water Co., Colorado Mutual Water
12 Co., El Dorado Mutual Water Co., Evergreen Mutual Water Co., Land Projects Mutual Water
13 Co., Landale Mutual Water Co., Shadow Acres Mutual Water Co., Sundale Mutual Water Co.,
14 Sunnyside Farms Mutual Water Co., Tierra Bonita Mutual Water Co., West Side Park Mutual
15 Water Co., and White Fence Farms Mutual Water Co., Inc.], and Cross-Defendants, ADAMS
16 BENNETT INVESTMENTS, LLC; MIRACLE IMPROVEMENT CORPORATION dba
17 GOLDEN SANDS MOBILE HOME PARK, aka GOLDEN SANDS TRAILER PARK, named
18 as ROE 1121; ST. ANDREW'S ABBEY, INC., named as ROE 623; Service Rock Products,
19 L.P.; and SHEEP CREEK WATER COMPANY, INC. I make this declaration in support of
20 Cross-Defendants/Cross-Complainants, Members of the Antelope Valley United Mutuals Group,
21 Specifically Antelope Park Mutual Water Company's And Tierra Bonita Mutual Water
22 Company's, Request for Correction of Minute Orders Re: Evidence Admitted at Phase 4 Trial.

23 2. I have personal knowledge of the facts set forth in this declaration, except as to
24 those facts stated on information and belief and, as to those, I am informed and believe them to
25 be true. If called as a witness, I could and would competently testify to the matters stated herein.

26 3. Attached hereto as **Exhibit "A"** is a true and correct copy of the Court's May 28,
27 2013 Minutes for the Phase 4 Trial, which was posted to the Court's website on July 17, 2013 as

1 Document No. 6988, entitled "Other: Minute Order from May 28, 2013" ("May 28, 2013 Minute
2 Order"). The May 28, 2013 Minute Order reflects the commencement of the Phase 4 Trial.

3 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the Court's May 29,
4 2013 Minutes for the Phase IV Trial, which was posted to the Court's website on July 17, 2013
5 as Document No. 6989, entitled "Other: Minute Order from May 29, 2013" ("May 29, 2013
6 Minute Order").

7 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the Court's May 30,
8 2013 Minutes for the Phase IV Trial, which was posted to the Court's website on July 17, 2013
9 as Document No. 6990, entitled "Other: Minute Order from May 30, 2013" ("May 30, 2013
10 Minute Order").

11 6. On May 29, 2013, the second day of the Phase 4 Trial proceedings, the Court
12 received evidence in support of claims of groundwater production. Proceeding in alphabetical
13 order, the Court began with Adams Bennett Investments, LLC ("Adams Bennett"), one of the
14 parties that is also represented by this law firm. Since Adams Bennett had no historical or then
15 current groundwater production, I offered, and the Court admitted into evidence, Adams
16 Bennett's complete set of responses (both initial and first supplemental, including documents) to
17 the Court's *December 12, 2012 Discovery Order for Phase 4 Trial* ("Discovery Order"). The
18 Discovery Order required all parties to produce evidence pertaining to organizational status,
19 service area, groundwater production, wells and infrastructure, imported water purchases, and
20 the capture and pumping of return flows. As reflected on page 1 of the May 29, 2013 Minute
21 Order, the Court admitted into evidence "4-ADAMS-1 Information and Materials Responsive to
22 December 12, 2012 Discovery Order" and "4-ADAMS-2 First Supplemental Response to
23 December 12, 2012 Discovery Order."

24 7. Continuing in alphabetical order, the Court called upon Antelope Park, which this
25 firm also represents, to present its evidence. Unlike Adams Bennett, Antelope Park did then and
26 still does have historical and current groundwater production. As such, I began to offer specific
27 documents as evidence in support of Antelope Park's groundwater production, including certain

1 well efficiency test results and various pumping records. In order to more efficiently and
2 expeditiously proceed with the Phase 4 Trial, the Court suggested that I instead offer the binders
3 containing the entirety of Antelope Park's responses to the Discovery Order, as I had done for
4 Adams Bennett. In response to the Court's suggestion, I corrected my offer and requested that
5 the court admit into evidence 4-ANTELOPEPARK-1, which comprised Antelope Park's initial
6 responses to the Discovery Order that were included within *Cross-Defendant/Cross-*
7 *Complainant, Antelope Valley United Mutual Group's Information and Materials Responsive to*
8 *December 12, 2012 Discovery Order For Phase 4 Trial*, which had been posted to the Court's
9 website as Document No. [5574]. I then corrected my offer and requested that the court admit
10 into evidence 4-ANTELOPEPARK-2, which comprised *Cross-Defendant/Cross-Complainant,*
11 *Antelope Valley United Mutual Group, Specifically ANTELOPE PARK Mutual Water*
12 *Company's First Supplemental Response to December 12, 2012 Discovery Order for Phase 4*
13 *Trial [Parts 1 and 2]*, which had been posted to the Court's website as Document Nos. [5882
14 and 5883]. Finally, I offered and the Court admitted into evidence 4-ANTELOPEPARK-3,
15 which comprised *Cross-Defendant/Cross-Complainant, Antelope Valley United Mutual Group,*
16 *Specifically ANTELOPE PARK Mutual Water Company's Second Supplemental Response to*
17 *December 12, 2012 Discovery Order for Phase 4 Trial*, which had been posted to the Court's
18 website as Document No. [6798]. The following morning (May 30, 2013), I asked the Court to
19 confirm that Antelope Park's Second Supplemental Response had been admitted as 4-
20 ANTELOPEPARK-3. When the Court confirmed that it had, it was reflected in the May 30,
21 2013 Minute Order as having been "re-admitted".

22 8. The May 29, 2013 Minute Order currently contains the following entries
23 regarding the exhibits that were marked for identification and admitted into evidence at the Phase
24 4 Trial: "ANTELOPEPARK-1 Well efficiency test results"; "4-ANTELOPEPARK-2 Summary
25 of water pumped for years 2011 and 2012"; and "4-ANTELOPEPARK-3 Second Supplemental
26 Response". In order to accurately reflect the evidence that was actually admitted at the Phase 4
27 Trial, the May 29, 2013 Minute Order should be corrected to reflect the following exhibit

1 numbers and names for Antelope Park: "4-ANTELOPEPARK-1 Responses to December 12,
2 2012 Discovery Order"; and "4-ANTELOPEPARK-2 First Supplemental Response to December
3 12, 2012 Discovery Order". These changes are also generally consistent with the numbering and
4 naming protocol for all of the evidence that was admitted at the Phase 4 Trial by the other twenty
5 parties represented by this firm. The May 30, 2013 Minute Order contains an entry that reads "4-
6 ANTELOPEPARK-3 Second Supplemental Response", which actually duplicates the entry
7 contained in the May 29, 2013 Minute Order and should be deleted from the May 30, 2013
8 Minute Order.

9 9. Also at the Phase 4 Trial, Tierra Bonita marked for identification and offered, and
10 the Court admitted into evidence, 4-TIERRABONITA-1, which comprised Tierra Bonita's initial
11 responses to the Discovery Order that were included within *Cross-Defendant/Cross-*
12 *Complainant, Antelope Valley United Mutual Group's Information and Materials Responsive to*
13 *December 12, 2012 Discovery Order For Phase 4 Trial*, which had been posted to the Court's
14 website as Document No. [5590]; and 4-TIERRABONITA-2, which comprised *Cross-*
15 *Defendant/Cross-Complainant, Antelope Valley United Mutual Group, Specifically TIERRA*
16 *BONITA Mutual Water Company's First Supplemental Response to December 12, 2012*
17 *Discovery Order for Phase 4 Trial*, which had been posted to the Court's website as Document
18 No. [5902]. The May 29, 2013 Minute Order, however, only reflects the admission of "4-
19 TIERRABONITA-1 Responses to December 12, 2012 discovery order". In order to accurately
20 reflect the evidence that was admitted at the Phase 4 Trial, the May 29, 2013 Minute Order
21 should be corrected to include "4-TIERRABONITA-2 First Supplemental Responses".

22 10. No objections were made at the Phase 4 Trial to any of the evidence offered and
23 admitted on behalf of Antelope Park, Tierra Bonita, or any other party jointly represented by this
24 firm.

25 11. Attached hereto as **Exhibit "D"** is a true and correct copy of the Court's May 29,
26 2013 Minute Order, with annotations reflecting the Requesting Parties' requested revisions.

27 ///

1 12. Attached hereto as **Exhibit "E"** is a true and correct copy of the Court's May 30,
2 2013 Minute Order, with annotations reflecting the Requesting Parties' requested revisions.

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

5 Executed on this 17th day of June, 2015, at San Bernardino, California.

6
7 

8 MICHAEL DUANE DAVIS, ESQ.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27