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EVERGREEN MUTUAL WATER COMPANY, INC.,
a member of the Antelope Valley United Mutual Group

**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 17

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

) **[PROPOSED] STIPULATION
REGARDING THE DEPOSITION AND
TRIAL TESTIMONY OF CROSS-
DEFENDANT EVERGREEN MUTUAL
WATER COMPANY, INC., A MEMBER
OF THE ANTELOPE VALLEY UNITED
MUTUAL GROUP**

**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.

1 This *Stipulation Regarding the Deposition and Trial Testimony of Cross-Defendant*
2 ***EVERGREEN MUTUAL WATER COMPANY, INC.***, a member of the Antelope Valley United
3 *Mutual Group*, is submitted pursuant to Paragraph 2 of the Court's January 17, 2013 *First*
4 *Amendment to Case Management Order for Phase Four Trial* and in connection with the
5 deposition and trial testimony therefore, which Trial which is currently scheduled to commence
6 on May 28, 2013, in the above-encaptioned matter.

7 Evergreen Mutual Water Company, Inc. ("Evergreen") has provided, under penalty of
8 perjury, the facts, information and documents submitted to the Court and posted on the Court's
9 website on December 21, 2012 (the "*Discovery Responses*") and on January 29, 2013 (the
10 "*Supplemental Discovery Responses*"), including, but not limited to, the following:

11 1. Evergreen is an active California mutual benefit non-profit corporation, with an
12 entity address of 4646 East Lumber Street, Lancaster, CA 93535. It was formed on November 9,
13 1954. Its membership is comprised of the owners of the 48 mostly 1½ acre lots that are situated
14 within its below-described service area. Evergreen's 46 active meters serve the improved real
15 properties within the Evergreen service area, and stand by to serve the unimproved properties
16 when improved.

17 Reference: *Cross-Defendant/Cross-Complainant, Antelope Valley United Mutual*
18 *Group's* (verified) *Information and Materials Responsive to December 12, 2012*
19 *Discovery Order for Phase 4 Trial* for Evergreen Mutual Water Company
20 ("*Discovery Responses*"), Paragraphs ("¶") I.1.b., I.3.c.ii.; California Secretary of
21 State, Business Entity Detail (December 14, 2012); *Cross-Defendant/Cross-*
22 *Complainant, Antelope Valley United Mutual Group, Specifically Evergreen*
23 *Mutual Water Company's*, (verified) *First Supplemental Response to December*
24 *12, 2012 Discovery Order for Phase 4 Trial* ("*Supplemental Discovery*
25 *Responses*") ¶ I.3.c.; Evergreen Mutual Water Company – Articles of
26 Incorporation; Evergreen Mutual Water Company – By-Laws; Evergreen Mutual
27 Water Company – Share Certificate (exemplar).
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1 2. Evergreen's service area consists of 120 acres, which are bounded by Ave I to the
2 North, Lancaster Blvd to the South, 47th St East to the East, 42nd St East to the West.
3 Evergreen is the owner of the water rights and the production, storage and distribution facilities.
4 Evergreen services its members / shareholders identified by the Assessor's Parcel Numbers
5 ("APN") listed in the *Discovery Responses*. The properties within the Evergreen service area are
6 single family residential parcels.

7 Reference: *Discovery Responses* ¶¶ I.1.a., I.1.h., I.1.j.; Evergreen Mutual Water
8 Company List of Shareholders – APNs.

9 3. Evergreen owned two (2) wells and boosters with Edison energy efficiency
10 calibrated motor driven pumps that were situated within its service area during the Base Period
11 years 2000 to 2004 and the recent years 2011 to 2012. Evergreen operated only one well and
12 booster at any given time, alternating between the two wells as necessary to provide continuous
13 pumping during those years. During the years 2000 to 2004 and 2011 to 2012, Evergreen used
14 the water produced from these wells for the provision of domestic water service to its residential
15 mutual members. All of the groundwater produced by Evergreen from its wells was used in its
16 service area by its members.

17 Reference: *Discovery Responses* ¶¶ I.1.c., I.1.d., I.1.f., I.1.g., I.1.h., I.3.a.i.,
18 I.3.a.ii., I.3.a.iii., I.3.a.iv.; Annual Notice of Groundwater Extraction for 2002;
19 Annual Notice of Groundwater Extraction for 2004; Southern California Edison
20 Electrical Billing History: Evergreen Mutual Water Company summary
21 spreadsheet for years 2000-2004 with charts; Southern California Edison
22 Electrical Billing History: Southern California Edison Monthly Billing
23 Summaries dated July 17, 2003; August 15, 2003; September 18, 2003; October
24 16, 2003; November 15, 2003; January 17, 2004; February 18, 2004; March 18,
25 2004; April 16, 2004; May 15, 2004; June 16, 2004; July 16, 2004; August 25,
26 2004; September 15, 2004; October 16, 2004; November 16, 2004; December 16,
27 2004; *Supplemental Discovery Responses* ¶¶ I.1.c., I.1.d., I.1.e., I.1.f., I.3.a.;

1 Evergreen Mutual Water Company lot meter usage 2002 through 2012; Evergreen
2 Mutual Water Company internal electricity vs. water pumping study worksheet;
3 Evergreen Mutual Water Company water usage (cubic feet) 2002 through 2012;
4 Evergreen Mutual Water Company Southern California Edison bills total for
5 2011; Evergreen Mutual Water Company 2012 Southern California Edison usage
6 data; Evergreen Mutual Water Company Annual Notices of Groundwater
7 Extraction 2004 through 2007 and 2011; Evergreen Mutual Water Company
8 Distribution system map; Evergreen Mutual Water Company Service Boundaries
9 aerial photographs; Evergreen Mutual Water Company service area boundaries
10 schematic.

11 4. Evergreen groundwater production during the years 2000 through 2012 was as
12 follows:

- 13 i. 2000: 72 acre feet
- 14 ii. 2001: 72 acre feet
- 15 iii. 2002: 89 acre feet
- 16 iv. 2003: 86 acre feet
- 17 v. 2004: 92 acre feet
- 18 vi. 2011: 66.4 acre feet
- 19 vii. 2012 [1/1 – 11/30]: 72.6 acre feet

20 Reference: *Discovery Responses* ¶¶ I.1.e., I.3.a.i., I.3.a.ii., I.3.a.iii., I.3.a.iv.;
21 Annual Notice of Groundwater Extraction for 2002; Annual Notice of
22 Groundwater Extraction for 2004; Southern California Edison Electrical Billing
23 History: Evergreen Mutual Water Company summary spreadsheet for years 2000-
24 2004 with charts; Southern California Edison Electrical Billing History: Southern
25 California Edison Monthly Billing Summaries dated July 17, 2003; August 15,
26 2003; September 18, 2003; October 16, 2003; November 15, 2003; January 17,
27 2004; February 18, 2004; March 18, 2004; April 16, 2004; May 15, 2004; June
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1 16, 2004; July 16, 2004; August 25, 2004; September 15, 2004; October 16, 2004;
2 November 16, 2004; December 16, 2004; *Supplemental Discovery Responses* ¶¶
3 I.1.c., I.1.d., I.1.e., I.1.f., I.3.a.; Evergreen Mutual Water Company lot meter
4 usage 2002 through 2012; Evergreen Mutual Water Company internal electricity
5 vs. water pumping study worksheet; Evergreen Mutual Water Company water
6 usage (cubic feet) 2002 through 2012; Evergreen Mutual Water Company
7 Southern California Edison bills total for 2011; Evergreen Mutual Water
8 Company 2012 Southern California Edison usage data; Evergreen Mutual Water
9 Company Annual Notices of Groundwater Extraction 2004 through 2007 and
10 2011; Evergreen Mutual Water Company Distribution system map; Evergreen
11 Mutual Water Company Service Boundaries aerial photographs; Evergreen
12 Mutual Water Company service area boundaries schematic.

13 5. Upon the formation of the mutual benefit, non-profit corporation, the overlying
14 groundwater rights of the owners of the properties within the service area (who became the
15 initial shareholders) became the rights of the mutual water company and have, ever since, been
16 exercised by the mutual water company and not by the individual property owners /
17 shareholders. There was no known express reservation of the overlying groundwater rights by
18 the individual property owners at the time of formation. The property owners / shareholders
19 simply pooled their collective water and (through the mutual water company) constructed,
20 operated and maintained the production, storage and distribution system by which they all
21 receive water for their domestic purposes. Simply stated, the property owners / shareholders
22 exchanged their overlying water rights for the right to have water delivered to their individual
23 properties. See *Erwin v. Gage Canal Company* (1964) 226 Cal.App.2d 189; see also *Hildreth v.*
24 *Montecito Creek Water Co.* (1903) 139 Cal. 22, 29; see also *City of Glendale v. Crescenta etc.*
25 *Water Co.* (1955) 135 Cal.App.2d 784, 801. As such, each shareholder has an interest in the
26 water rights, production, storage and distribution facilities of the mutual water company and has
27 the right to receive water upon development and demand.

Reference: *Discovery Responses* ¶ I.1.j.; *Supplemental Discovery Responses* ¶ I.3.c.; Evergreen Mutual Water Company – Articles of Incorporation; Evergreen Mutual Water Company – By-Laws; Evergreen Mutual Water Company – Share Certificate (exemplar).

6. Evergreen did not lease any property to anyone during the Base Period years of 2000 to 2004 or the recent years of 2011 to 2012.

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

7. Evergreen did not import or acquire any imported water from the Antelope Valley – East Kern Water Agency, Palmdale Water District, Littlerock Creek Irrigation District or any other entity having rights to State Water Project water, during the Base Period years of 2000 to 2004 or the recent years of 2011 to 2012, and claims no return flows.

Reference: *Discovery Responses* ¶¶ III.1.a., III.1.b., III.1.d..

8. As stated above, the groundwater claimed by Evergreen is an overlying water right. The historic production upon which this claim is based, however, does not include water produced for the undeveloped properties within Evergreen’s service areas, whose owners, as members of Evergreen, have the right to receive water service to their properties when built out. Evergreen also claims an amount of water sufficient to provide water to these presently unserved properties when water service thereto has been demanded. Other than as set forth herein, Evergreen does not claim any other groundwater rights that are the subject of this Adjudication for purposes of the Phase 4 Trial.

Reference: *Discovery Responses* ¶¶ I.1.g., I.1.j., II.1.a., III.1.a., III.1.b., III.1.d.

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STIPULATION

The parties hereto stipulate and agree that the facts, information and documents provided herein and in the verified *Discovery Responses* posted on the Court's website on December 21, 2012 and on the verified *Supplemental Discovery Responses* that were posted on the Court's website on January ~~29~~³⁰, 2013, will not be contested, and are therefore deemed accepted, for purposes of the Phase 4 Trial which is currently scheduled for May 28, 2013.

The parties further stipulate and agree that neither deposition testimony nor trial testimony will be required of Evergreen for purposes of the Phase 4 Trial.

IT IS SO STIPULATED.

Dated: January 30, 2013.

GRESHAM SAVAGE NOLAN & TILDEN, PC

By: 

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Derek R. Hoffman
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Mutual Water Company, a member of the
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Dated: January __, 2013.

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By: _____

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Dated: January __, 2013.

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1 Dated: January ___, 2013.

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3 By: _____
4 Steven Orr
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6 Attorneys for Cross-Complainant, City of
7 Palmdale

8 Dated: January ___, 2013.

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11 Attorneys for Cross-Complainant, City of
12 Lancaster and Rosamond Community
13 Services District

14 Dated: January ___, 2013.

CALIFORNIA WATER SERVICE COMPANY

15 By: _____
16 John Tootle
17 Attorneys for Cross-Complainant, California
18 Water Service Company

19 Dated: January ___, 2013.

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20 By: _____
21 Wayne Lemieux
22 Attorneys for Cross-Complainant, Littlerock
23 Creek Irrigation District, Palm Ranch
24 Irrigation District, et al.

25 Dated: January ___, 2013.

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26 By: _____
27 Thomas Bunn III
28 Attorneys for Cross-Complainant, Palmdale
Water District

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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.

(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,

Executed on March 15, 2013 at Riverside, California.

Dina M. Snider
DINA M. SNIDER