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A.V. UNITED MUTUAL 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

) **MEMORANDUM OF POINTS AND
AUTHORITIES OF CROSS-DEFENDANTS,
ADAMS BENNETT INVESTMENTS, LLC;
MIRACLE IMPROVEMENT
CORPORATION dba GOLDEN SANDS
MOBILE HOME PARK, aka GOLDEN
SANDS TRAILER PARK [ROE 1121]; ST.
ANDREW'S ABBEY, INC. [ROE 623];
SERVICE ROCK PRODUCTS, L.P.; AND
SHEEP CREEK WATER COMPANY, INC.
IN SUPPORT OF OPPOSITION TO
RICHARD WOOD'S PETITION FOR
INCLUSION OF ADD-ON CASE IN
ANTELOPE VALLEY GROUNDWATER
CASES**

**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

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

AND RELATED ACTIONS.

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

2 Cross-Defendants, **ADAMS BENNETT INVESTMENTS, LLC; MIRACLE**
3 **IMPROVEMENT CORPORATION dba Golden Sands Mobile Home Park, aka Golden**
4 **Sands Trailer Park**, named as ROE 1121; **ST. ANDREW'S ABBEY, INC.**, named as ROE
5 623; **SERVICE ROCK PRODUCTS, L.P.**; and, **SHEEP CREEK WATER COMPANY,**
6 **INC.**, ("Opposing Parties") by and through their attorneys of record, Gresham Savage Nolan &
7 Tilden, PC, by Michael Duane Davis, Marlene L. Allen-Hammarlund and Derek R. Hoffman,
8 submit this *Memorandum of Points and Authorities in Support of Opposition to Richard Wood's*
9 *Petition for Inclusion of Add-On Case in Antelope Valley Groundwater Cases* ("Memorandum")
10 in connection with the Joinder filed on June 19, 2013 to the Opposition by the Antelope Valley--
11 East Kern Water Agency, which was filed on June 18, 2013.

12 Cross-Defendant Sheep Creek Water Company, a mutual water company, is included in
13 this Opposition, even though that entity should be excluded as a named party to the [proposed]
14 Complaint, pursuant to language on page 8, paragraph 17, lines 2-3, which states ... "The Class
15 also excludes all persons and entities to the extent their properties are connected to a municipal
16 water system, public utility, or **mutual water company**...."

17 DATED: July 1, 2013.

Respectfully submitted,

18 GRESHAM SAVAGE NOLAN & TIDEN, PC

19
20
21 By: 

MICHAEL DUANE DAVIS, ESQ.

MARLENE L. ALLEN-HAMMARLUND, ESQ.

DEREK R. HOFFMAN, ESQ.

22 Attorneys for CROSS-DEFENDANT / CROSS-
23 COMPLAINANT, A. V. UNITED MUTUAL GROUP;
24 and CROSS-DEFENDANTS, ADAMS BENNETT
25 INVESTMENTS, LLC, MIRACLE IMPROVEMENT
26 CORPORATION dba GOLDEN SANDS MOBILE
27 HOME PARK, aka GOLDEN SANDS TRAILER PARK
[ROE 1121], ST. ANDREW'S ABBEY, INC. [ROE
623], SERVICE ROCK PRODUCTS, L.P., and SHEEP
CREEK WATER COMPANY, INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 Although these Opposing Parties do not object to the Honorable Jack Komar hearing the
4 motion regarding Richard Wood's Petition for Inclusion of Add-On Case, there are legitimate
5 concerns about the matter being heard before Petitioner has complied with the requirements for
6 bringing such a motion. These concerns are set forth below.

7 **A. Petitioner Has Not Complied with the Requirements of the California Rules**
8 **of Court Regarding the Coordination of Actions.**

9 In order to petition the Court for coordination of an action pursuant to California *Rules of*
10 *Court*, Rule 3.544, the petitioner must comply with the specific requirements found in Rules
11 3.520 through 3.523¹. Those Rules state that the petitioner must file a noticed motion supported
12 by a memorandum of points and authorities and provide the following information:

13 1) The name of each petitioner or the name of each real party in interest, and
14 the name and address of each party's attorney of record, if any;

15 2) The names of the parties to all included actions, and the name and address
16 of each party's attorney of record, if any;

17 3) If the party seeking to submit a petition for coordination is a plaintiff,
18 whether the party's attorney has served the summons and complaint on all parties in all included
19 actions in which the attorney has appeared;

20 4) For each included action, the complete title and case number, the date the
21 complaint was filed, and the title of the court in which the action is pending;

22 5) The complete title and case number of any other action known to the
23 petitioner to be pending in a court of this state that shares a common question of fact or law with
24 the included actions, and a statement of the reasons for not including the other action in the
25 petition for coordination or a statement that the petitioner knows of no other actions sharing a
26 common question of fact or law;

27
28 ¹ All references to "Rules" are to California *Rules of Court*.

1 6) The status of each included action, including the status of any pretrial or
2 discovery motions or orders in that action, if known to petitioner;

3 7) The facts relied on to show that each included action meets the
4 coordination standards specified in *Code of Civil Procedure* section 404.1; and

5 8) The facts relied on in support of a request that a particular site or sites be
6 selected for a hearing on the petition for coordination.

7 Petitioner has not complied with these requirements. Petitioner has not provided the
8 names of the individual plaintiffs; he has not provided the names of the parties to the included
9 actions; he has not served the summons and complaint on any of the defendants; he has not
10 provided the required information regarding other pending actions that share a common question
11 of fact or law, or the reasons for not including any other actions in the petition for coordination
12 or a statement that the petitioner knows of no other actions sharing a common question of fact or
13 law; he has not provided the status of each included action; he has not provided the facts relied
14 on to show that each included action meets the coordination standards specified in *Code of Civil*
15 *Procedure* 404.1 (discussed below). Additional requirements are found in Rule 3.522 regarding
16 the notice, which requirements have also not been met.

17 Providing the required information is critical to any analysis of whether it is appropriate
18 to add on the case as requested. For example, it is not known who the purported plaintiffs will
19 be. The only statement provided by Petitioner Wood is that it includes “all others similarly
20 situated.” This phrase begs the question – all others similarly situated in what way? If the
21 petitioners are the same parties that are already included in the other “Wood Class,” which has
22 already been coordinated with the Antelope Valley Water Adjudication cases, several concerns
23 arise, such as: How would this new class action accomplish anything that the prior class action
24 cannot accomplish for this group of “similarly situated” parties. What is the purpose of this new
25 class action and why it is necessary?

26 In Petitioner’s short (less than one page) Petition, counsel only states that the purpose for
27 the new Complaint is that it “seeks, among other things, adjudication of certain groundwater

rights in the Antelope Valley.” This is exactly the same purpose that should be accomplished by the consolidated General Groundwater Adjudication and the other Wood Class action.

Although this Court may not now be determining whether the class should be certified or not, or whether the Complaint has been filed for a proper purpose, it is mandated that the Petitioner comply with the *Rules of Court* and provide the requisite information. Without that information, it will be impossible to determine whether this new action should be added on to the already complex coordinated/consolidated matters presently before this Court, or whether the motive behind this newly filed action is such that this Court should not allow the case to become part of this General Groundwater Adjudication. For example, if the only reason that this new class action has been filed is so that plaintiff’s counsel can seek additional attorney’s fees from numerous overlying parties, the case should not be added on. If there is already another action pending that will decide the same issues contemplated in this new class action, then a demurrer, motion to strike, or other challenge to the pleading may be appropriate. These questions cannot be answered without Petitioner providing the information required by the *Rules of Court*.

B. Petitioner Has Not Complied with Code of Civil Procedure Section 404.1.

Rule of Court 3.521 requires, in subsection (a)(7), that Petitioner comply with *Code of Civil Procedure* Section 404.1. That section provides:

Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.

With the limited information that has been provided, one can only speculate whether this new action shares common questions of fact or law; whether coordination will promote the ends of justice; whether coordination will result in an efficient utilization of judicial facilities and manpower; or whether duplicative or inconsistent rulings, orders or judgments might result.

1 In fact, it is difficult to conceive what issues will be presented that are not already before
2 the Court as part of the General Groundwater Adjudication. Certainly the issues relative to
3 *Water Code* section 106, which appear to be the bulk of what is proposed to be presented by the
4 Complaint, are already before this Court.

5 The parties to this coordinated, consolidated and complex case have already completed
6 four phases of trial. One wonders why counsel for the Petitioner has waited until now to file a
7 new class action. It is not known whether the rulings already made in this action will be binding
8 on this newly filed case or what other effects adding this case on will have on the already filed
9 actions and parties.

10 It became apparent, during the course of the Status Conference held in this case on June
11 27, 2013, that the current Wood Class is possibly foundering and may have to be de-certified.
12 Counsel for the Wood Class, Attorney Mike McLachlan, stated that only ten (10) individuals out
13 of the class of roughly four thousand (4,000) members have responded to requests for
14 information from the Court appointed expert, and stated that it might even become appropriate
15 for the class to be de-certified. It was also suggested that, should this lack of response and
16 participation continue numerous individuals might have to be extricated from the class.
17 “California courts have long ‘held that two requirements must be met in order to sustain any
18 class action: (1) there must be an ascertainable class [citations]; and (2) there must be a well
19 defined community of interest in the questions of law and fact involved affecting the parties to be
20 represented.’ [citations] While the requirement of an ascertainable class normally requires little
21 elaboration, the community of interest requirement has been held to embody three factors: “(1)
22 predominant common questions of law or fact; (2) class representatives with claims or defenses
23 typical of the class; and (3) class representatives who can adequately represent the class.” *Bell v.*
24 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 740; see *Code of Civil Procedure* § 382.

25 These recent revelations present serious questions of whether the existing Wood Class
26 complies with, or in fact, can comply with these factors. If the current Wood Class is failing to
27

1 function properly or if there is no common interest in pursuing the class action, then this Court
2 should not consider adding on yet another "Wood Class" action.

3 Under the present circumstances, there are way too many unknowns for anyone to be able
4 to properly evaluate the Petition and determine whether this newly filed action should be added
5 on to the existing General Groundwater Adjudication. Unless and until Petitioner provides the
6 information required, the parties cannot properly evaluate Petitioner's request, and neither can
7 this Court.

8 **C. Conclusion.**

9 For the reasons stated herein, Petitioner Wood should be required to comply with the
10 applicable California *Rules of Court* and the *Code of Civil Procedure* sections discussed herein
11 before the Petition for Inclusion can be properly considered by this Court.

12 DATED: July 1, 2013

Respectfully submitted,

13 GRESHAM SAVAGE NOLAN & TIDEN, PC

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15
16 By: 

MICHAEL DUANE DAVIS, ESQ.
MARLENE L. ALLEN-HAMMARLUND, ESQ.
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SANDS TRAILER PARK [ROE 1121], ST.
ANDREW'S ABBEY, INC. [ROE 623], SERVICE
ROCK PRODUCTS, L.P., and SHEEP CREEK WATER
COMPANY, INC.

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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

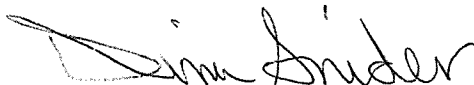
8 I am employed in the County of Riverside, State of California. I am over the age of 18
9 years and not a party to the within action; my business address is: 3750 University Avenue,
10 Suite 250, Riverside, CA 92501-3335.

11 On July 1, 2013, I served the foregoing document(s) described **MEMORANDUM OF
12 POINTS AND AUTHORITIES OF CROSS-DEFENDANTS, ADAMS BENNETT
13 INVESTMENTS, LLC; MIRACLE IMPROVEMENT CORPORATION dba GOLDEN
14 SANDS MOBILE HOME PARK, aka GOLDEN SANDS TRAILER PARK [ROE 1121];
15 ST. ANDREW'S ABBEY, INC. [ROE 623]; SERVICE ROCK PRODUCTS, L.P.; AND
16 SHEEP CREEK WATER COMPANY, INC. IN SUPPORT OF OPPOSITION TO
17 RICHARD WOOD'S PETITION FOR INCLUSION OF ADD-ON CASE IN ANTELOPE
18 VALLEY GROUNDWATER CASES** on the interested parties in this action in the following
19 manner:

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

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

25 Executed on July 1, 2013 at Riverside, California.

26
27 
28 DINA M. SNIDER