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A.V. UNITED MUTUALS GROUP; and Cross-
7 Defendants, ADAMS BENNETT INVESTMENTS,
LLC; MIRACLE IMPROVEMENT CORPORATION
8 dba GOLDEN SANDS MOBILE HOME PARK, aka
GOLDEN SANDS TRAILER PARK, named as ROE
9 1121; ST. ANDREW'S ABBEY, INC., named as ROE
623; WHITE FENCE FARMS PRODUCTS, L.P.; and
10 SHEEP CREEK WATER COMPANY, INC.

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

13 Coordination Proceeding
Special Title (Rule 1550(b))

) Judicial Council Coordination
) Proceeding No. 4408

14 **ANTELOPE VALLEY GROUNDWATER**
15 **CASES**

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

16 Including Consolidated Actions:

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

) **CROSS-DEFENDANT/CROSS-**
) **COMPLAINANT ANTELOPE VALLEY**
) **UNITED MUTUALS GROUP'S TRIAL**
) **BRIEF FOR PHASE 5 TRIAL ON THE**
) **ISSUE OF RETURN FLOWS FROM**
) **IMPORTED WATER**

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

) Phase 5 Trial Date: February 10, 2014
) Time: 9:00 A.M.
) Dept.: Dept. 1
) Judge: Hon. Jack Komar

22 **Wm. Bolthouse Farms, Inc. v. City of**
Lancaster
23 **Diamond Farming Co. v. City of Lancaster**
Diamond Farming Co. v. Palmdale Water
24 **Dist.**
25 Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353 840, RIC 344 436, RIC 344 668

26 AND RELATED ACTIONS.
27

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Cross-Defendants / Cross-Complainants, El Dorado Mutual Water Co. ("El Dorado"),
3 Landale Mutual Water Co. ("Landale"), Shadow Acres Mutual Water Co. ("Shadow Acres"),
4 Sunnyside Farms Mutual Water Co. ("Sunnyside Farms"), West Side Park Mutual Water Co.
5 ("West Side Park"), and White Fence Farms Mutual Water Co., Inc. ("White Fence Farms")
6 [which are six of the 16 mutual water companies that comprise the **A. V. UNITED MUTUALS**
7 **GROUP**], by and through their attorneys of record, Gresham Savage Nolan & Tilden, PC, by
8 Michael Duane Davis, Marlene L. Allen-Hammarlund, and Derek R. Hoffman submit the
9 following Trial Brief for the Phase 5 Trial proceedings. These six (6) members of the A. V.
10 United Mutuals Group are making a claim to return flows from imported water and will be
11 participating in the Phase 5 Trial on that issue. Any other mutual water company members of the
12 A. V. United Mutuals Group, or any other parties represented herein, who purchase imported
13 water in the future, should also have the right to returns flows from their imported water.

14
15 **I.**

16 **INTRODUCTION.**

17 El Dorado, Landale, Shadow Acres, Sunnyside Farms, West Side Park and White Fence
18 Farms have purchased State Water Project ("SWP") imported water for decades for distribution
19 to their customers, who are the stockholders in the respective mutual water companies.

20 Landale, Shadow Acres, Sunnyside Farms and White Fence Farms are within the
21 Antelope Valley – East Kern Water Agency's ("AVEK") service area and have purchased their
22 water directly from AVEK out of its SWP allotment. El Dorado and West Side Park are within
23 Palmdale Water District's ("PWD") service area and have purchased their water from AVEK out
24 of PWD's allotment under three-way agreements with AVEK and PWD.

25 It is anticipated that, in the future, at least eight (and possibly more of the other members
26 of the A.V. United Mutuals Group, and potentially other parties represented herein, will also be
27 purchasing SWP imported water, and thus will be entitled to their return flows as well.

II.

**THE MUTUAL WATER COMPANIES PURCHASE IMPORTED
WATER AND ARE THEREFORE ENTITLED TO RETURN FLOWS.**

El Dorado, Landale, Shadow Acres, Sunnyside Farms, West Side Park, and White Fence Farms have various agreements with AVEK and/or PWD regarding the purchase, delivery and storage of SWP water.¹ Neither AVEK nor PWD have retained any interest in the water sold to these mutual water companies. Accordingly, they are entitled to their return flows from this imported water.

As articulated in the Court's Order After Hearing on January 27, 2014, regarding the denial of AVEK's Motion for Summary Adjudication, the use of imported SWP water results in a certain percentage of return flows, which enter the basin through recycling pools, septic systems, or other percolation. "When that water is reintroduced into the aquifer, it becomes part of the ground water in the basin and to the extent it is separate because there is storage room, the [mutual water company] may be entitled to store that return flow. To the extent that there is no storage, and it merges, there may still be value in drought or overdraft conditions."²

Water Code § 7075 provides that water that has been appropriated "may be turned into the channel of another stream, mingled, with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished." Accordingly, the "one who brings water into a watershed may retain a prior right to it even after it is used." *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 301 (citing *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77). "To preserve its right to return flows, an importer must manifest its intent to recapture or otherwise use return flows."³ As set forth herein, these mutual water

¹ See, for example: (1) Agreement between PWD, AVEK and El Dorado dated April 1981 [marked as Exhibit 5-El Dorado-6]; and (2) Agreement between AVEK and White Fence Farms, dated March 4, 2013 [marked as Exhibit 5-White Fence Farms-17].

² See, Order After Hearing on January 27, 2014, 1. Motion by Cross-Complainant Antelope Valley-East Kern Water Agency ("AVEK") for Summary Judgment/Summary Adjudication," which was posted to the Santa Clara County Superior Court website on January 30, 2014, which these mutual water companies ask that this Court take judicial notice of pursuant to California *Evidence Code* § 452(d).

³ See, Order After Hearing on January 27, 2014, 1. Motion by Cross-Complainant Antelope Valley-East Kern Water Agency ("AVEK") for Summary Judgment/Summary Adjudication," which was posted to the Santa Clara

1 companies deliver the imported water to their customers (the stockholders in the mutual water
2 company), who use the water (some of which percolates into the aquifer, thereby augmenting the
3 groundwater in the basin), which is stored by the mutual water company in the basin. The
4 mutual water companies therefore have the right to their return flows from this imported water.

5 As set forth in Los Angeles County Waterworks District No. 40's Opposition to AVEK's
6 Motion for Summary Adjudication, pp. 6 to 7, it is well established that a selling party
7 relinquishes all rights and interests in the sold property unless the seller expressly reserves an
8 interest. (California *Civil Code* § 1105 ["A fee simple title is presumed to be intended to pass by
9 a grant of real property, unless it appears from the grant that a lesser estate was intended."]; and §
10 1084 ["The transfer of a thing transfers also all of its incidents, unless expressly excepted."];
11 *American Enterprise, Inc. v. Van Winkle* (1952) 39 Cal.2d 210, 220 ["In the absence of some
12 exception, limitation or reservation, a grant deed is presumed to convey the grantor's entire
13 interest."]; *Long Beach v. Marshall* (1938) 11 Cal.2d 609, 613-14 [a transfer of real property is
14 presumed to be a grant of fee simple title]; California *Comm. Code* § 2401 ["Any retention or
15 reservation by the seller of the title (property) in goods shipped or delivered to the buyer is
16 limited in effect to a reservation of a security interest . . . Unless otherwise explicitly agreed,
17 title passes to the buyer at the time and place at which the seller contemplates his performance
18 with reference to the physical delivery of the goods, despite any reservation of a security interest
19 and even though a document of title is to be delivered at a different time or place; and in
20 particular and despite any reservation of a security interest buy the bill of lading . . . [i]f the
21 contract requires delivery at destination, title passes on tender there."].)⁴

22 There is no agreement, written or oral, by which AVEK or PWD reserved their rights to
23 return flows. Therefore, the mutual water companies that import water have a complete and
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25 County Superior Court website on January 30, 2014 , which these mutual water companies ask that this Court
26 take judicial notice of pursuant to California *Evidence Code* § 452(d).

27 ⁴ The A.V. United Mutual Water Companies incorporate herein by reference the Opposition to AVEK's Motion for
28 Summary Adjudication which was filed by Los Angeles County Waterworks District No. 40, which was posted
to the Santa Clara County Superior Court website on December 27, 2013, and ask that this Court take judicial
notice of that document pursuant to California *Evidence Code* § 452(d).

-4-

**CROSS-DEFENDANT/CROSS-COMPLAINANT ANTELOPE VALLEY UNITED
MUTUALS GROUP'S TRIAL BRIEF FOR PHASE 5 TRIAL ON THE ISSUE OF RETURN
FLOWS FROM IMPORTED WATER**

undivided interest in the SWP water they purchase from AVEK or PWD, including any return flows from that imported water.

The California Supreme Court, in *City of San Fernando* (1975) 14 Cal.3d 199, held that, with respect to water that the importer sells and delivers to a local water district, which the local district then delivers to the ultimate user – the local water district has the right to return flows. Therefore, since these mutual water companies (the functional equivalent of the local water district) delivers the imported water it purchases to its customers (i.e., the stockholders of the mutual water companies), the mutual water companies have the right to their return flows. The Court of Appeal has also ruled in *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 301-303, that retail purchasers of SWP water are entitled to return flows attributed to their respective water purchases. Since the mutual water companies are the retail purchasers of the SWP water acquired through AVEK and/or PWD, they are entitled to the return flows attributed to the imported water they purchase.

The mutual water companies that import water will present evidence at the Phase 5 Trial showing the quantities of SWP water that have been purchased historically, most for over 30 years. A summary of the approximate amounts purchased by the six mutual water companies is as follows⁵:

A. V. UNITED MUTUALS WATER COMPANY	YEARS THAT IMPORTED WATER HAS BEEN PURCHASED	AMOUNT OF IMPORTED WATER PURCHASED DURING THAT PERIOD
El Dorado	1982 to 2010	3,958.78 acre feet
Landale	1991 to 2013	313.37 acre feet
Shadow Acres	1988 to 2102	4,384.93 acre feet
Sunnyside Farms	1977 to 2012	7,233.64 acre feet
West Side Park	1982 to 2009	923.7 acre feet
White Fence Farms	1983 to 2013	5,917.95 acre feet

⁵ These figures are subject to revision upon the receipt and review of delivery records to be received from AVEK pursuant to a subpoena issued by these water mutual companies on January 30, 2014.

1 AVEK does not deny that these mutual water companies purchase imported water. In
2 fact, AVEK lists in its 2008 Urban Water Management Plan⁶ the fact and amounts of imported
3 water that these mutual water companies have been purchasing. Some of the information
4 contained in the above table regarding the amount of imported water purchased was verified
5 against that Plan. There are also numerous agreements between AVEK and these mutual water
6 companies regarding the imported water that they purchase.

7 As stated above, it is anticipated that additional mutual water companies (that comprise
8 A.V. United Mutuals Group) and other parties represented herein will be purchasing imported
9 SWP water in the future. Those entities will also have the right to their return flows. The
10 members of the A.V. United Mutuals Group agree to accept the average return flow percentage
11 discussed at the Phase 3 Trial of thirty-nine percent (39%).⁷ This percentage appears to be a fair
12 average for the overall Antelope Valley basin.

13 III.

14 THE MUTUAL WATER COMPANIES PARTIALLY PAID FOR THE 15 INFRASTRUCTURE THAT AVEK USES TO DELIVER THE STATE WATER 16 PROJECT WATER.

17 In addition to case law supporting that the mutual water companies have the right to the
18 return flows from water they import, it is also important to note that each of these mutual water
19 companies, as well as their stockholders, have paid a significant amount of money toward the
20 infrastructure that is used to deliver the SWP water. There is voluminous evidence that they
21 have paid at least part of the costs of the additional facilities needed to deliver the water
22 purchased from AVEK and/or PWD into the mutual water companies' distribution systems.
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25 ⁶ See, AVEK 2008 Urban Water Management Plan, dated January 13, 2009, page 15 of 39.

26 ⁷ See, p. 17 of Court's Transcript from Phase 3 Trial proceedings on October 16, 2013, which is attached as Exhibit
27 LL to L.A. District No. 40's Supplemental Request for Judicial Notice of Phase Three Trial Testimonies and
28 Exhibits, which was posted to the Santa Clara County Superior Court website on January 24, 2014, which these
mutual water companies ask that this Court take judicial notice of pursuant to California *Evidence Code* §
452(d).

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2 These documents include, but are not limited to:

- 3 1) Correspondence and itemization of expenses for the cost of the infrastructure from
4 AVEK.
5 2) Newsletter distributed to stockholders of mutual water company explaining that the
6 cost to the mutual water companies and the stockholders for the infrastructure will be
7 “considerable.”
8 3) Evidence of capacity charges paid by the mutual water companies and their
9 stockholders for infrastructure, including summaries of charges and AVEK’s receipts
10 for capacity charges paid.
11 4) Evidence of payments to AVEK for banking State Water Project water in the Water
12 Supply Stabilization Project No. 2 (“WSSP2”) for later withdrawal.
13 5) Property tax bills showing amounts paid for “special water” taxes and other
14 assessments.
15 6) Minutes of the mutual water companies’ board meetings regarding the cost of
16 connecting to AVEK to acquire the State Water Project water.

17 Since the mutual water companies and their stockholders have paid part of the costs for
18 the infrastructure used to deliver the SWP water from AVEK to their service area, they should
19 have the right to the return flows from the imported SWP water delivered to their service areas.
20 They have paid for the water, have paid for the infrastructure to deliver the water, and their
21 stockholders have used the water, which have collectively resulted in the unused water being
22 introduced into the groundwater basin.

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1 IV.

2 **THE MUTUAL WATER COMPANIES STORE IMPORTED**
3 **WATER IN THE GROUNDWATER BASIN.**

4 El Dorado, Landale, Shadow Acres, Sunnyside Farms, West Side Park and White Fence
5 Farms store imported water in the groundwater basin, whose service areas are located in the
6 Amargosa Creek wash area of the Basin. This portion of the Basin not only collects runoff from
7 the Sierra Pelona Mountains and the San Andreas rift zone, but also the surface runoff as it
8 makes its way through the Antelope Valley toward the City of Lancaster.⁸ Some of this water is
9 from unused imported SWP water. Most of the customers of these mutual water companies are
10 on septic (rather than on sewer) systems, which means that the unconsumed water goes back into
11 the Amargosa Creek wash area of the Basin, through the septic systems within their service area
12 boundaries. As reflected in well data for these mutual water companies, which is contained in
13 the California Department of Resources ("DWR") Bulletin No. 91-12, the soil composition of
14 the underground strata beneath the surface of the service areas of these mutual water companies
15 indicates a significant amount of storage capacity.⁹ This data indicates that, on average, several
16 hundred feet of porous unsaturated alluvial material exists above the water table through which
17 unused water in their septic systems may percolate into and be stored in the Basin for subsequent
18 use. Accordingly, they have the legal right to their return flows pursuant to established case law
19 as set forth herein.

20 The A.V. United Mutuals Group water companies also have a contractual right to store
21 imported water with AVEK for later use. These mutual water companies have contracted to
22 bring the imported SWP water into the Basin, to store it until needed, call for its delivery, and
23 after the water has been partially used, the unused component percolates back into the ground to

24 _____
25 ⁸ "Lancaster, CA's Amargosa Creek Detention Basin De-sedimentation and Habitat Preservation Project,"
http://transformgov.org/en/Article/11428/Lancaster_CAs_Amargosa_Creek_Detention_Basin. February 29,
2008.

26 ⁹ See Department of Water Resources, Bulletin No. 91-12 "Water Wells in the Eastern Part of the Antelope Valley
27 Area Los Angeles County, California" prepared by the U.S. Department of the Interior Geological Survey,
December 1966, pp. D-44 to D-46, D-49 to D-50, and D-116. These mutual water companies ask that this
28 Court take judicial notice of Bulletin 91-12 pursuant to California *Evidence Code* § 452(d).

1 be recovered at a later time. For example, White Fence Farms Mutual Water Company has a
2 contract based “storage account” with AVEK where imported SWP water may be banked in the
3 Water Supply Stabilization Project No. 2 (“WSSP2”) for later withdrawal by White Fence
4 Farms, which AVEK has contracted to deliver to White Fence Farms, upon request. The
5 imported SWP water in White Fence Farm’s storage account is contractually required to be
6 retained for the sole use and benefit of White Fence Farms, and cannot be withdrawn for the
7 benefit of any other person or entity, including AVEK, and cannot be commingled with that of
8 any other person or entity.¹⁰ Other members of the A.V. United Mutuals Group have similar
9 “storage accounts” and agreements with AVEK.

10
11 **V.**

12 **CONCLUSION.**

13 For purposes of the Return Flows portion of the Phase 5 Trial, El Dorado, Landale,
14 Shadow Acres, Sunnyside Farms, West Side Park and White Fence Farms propose to enter into a
15 Stipulation to establish evidentiary facts regarding: (1) the quantities of State Water Project
16 water purchased through AVEK and PWD over the past three decades; (2) the agreements made
17 with AVEK and PWD regarding the purchase, delivery and storage of SWP water; (3) the fees
18 paid for the infrastructure needed to deliver the SWP water to these mutual water companies’
19 customers; and (4) the fact that these mutual water companies store the imported water that they
20 have purchased in the groundwater basin for reproduction and reuse. These mutual water
21 companies are also prepared to present such further testimony or documentary evidence that this
22 Court deems relevant to the issues being tried in the Phase 5 Trial

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27 ¹⁰ See, for example, paragraphs (1)(e) and (f), page 2, of the Agreement Between AVEK and White Fence Farms, to
Store Water at the Water Supply Stabilization Project No. 2, dated March 4, 2013 [marked as Exhibit 5-White
Fence Farms-17.]

1 In summary, El Dorado, Landale, Shadow Acres, Sunnyside Farms, West Side Park and
2 White Fence Farms have been purchasing imported SWP water, for which they have the right to
3 the return flows. In addition, any other mutual water companies comprising the A. V. United
4 Mutuals Group, or any other entities represented herein, that purchase imported water in the
5 future should also have the right to those return flows.

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7 Dated: January 31, 2014

Respectfully submitted,

8 GRESHAM SAVAGE NOLAN & TILDEN, PC

9
10 By: 

Michael Duane Davis, Esq.

Marlene L. Allen-Hammarlund, Esq.

Derek R. Hoffman, Esq.

11 Attorneys for CROSS-DEFENDANT / CROSS-
12 COMPLAINANT, A. V. UNITED MUTUALS GROUP;
13 and CROSS-DEFENDANTS, ADAMS BENNETT
14 INVESTMENTS, LLC, MIRACLE IMPROVEMENT
15 CORPORATION dba GOLDEN SANDS MOBILE
16 HOME PARK, aka GOLDEN SANDS TRAILER PARK
17 [ROE 1121], ST. ANDREW'S ABBEY, INC. [ROE
18 623], WHITE FENCE FARMS PRODUCTS, L.P., and
19 SHEEP CREEK WATER COMPANY, INC.
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**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

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

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.

On January 31, 2014, I served the foregoing document(s) described as **CROSS-DEFENDANT/CROSS-COMPLAINANT ANTELOPE VALLEY UNITED MUTUALS GROUP'S TRIAL BRIEF FOR PHASE 5 TRIAL ON THE ISSUE OF RETURN FLOWS FROM IMPORTED WATER** on the interested parties in this action in the following manner:

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

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

Executed on January 31, 2014, at Riverside, California.



DINA M. SNIDER