| 1 2 3 4 5 6 7 8 9 | 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, A.V. 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; WHITE FENCE FARMS PRODUCTS, L.P.; and | | | | | |
|---|---|--|--|--|--|--|
| 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 |)) Santa Clara Case No. 1-05-CV-049053 | | | | |
| 15 | CASES CASES | Assigned to the Honorable Jack Komar Department 17C | | | | |
| 16 | Including Consolidated Actions: |) | | | | |
| 17 18 | Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Los Angeles, Case No. BC 325 201 | DECLARATION OF JOHN UKKESTAD IN SUPPORT OF CROSS-DEFENDANT / CROSS-COMPLAINANT ANTELOPE VALLEY UNITED MUTUALS GROUP'S OFFER OF PROOF FOR PHASE 5 | | | | |
| 19 | Angeles, Case No. De 323 201 | TRIAL ON THE ISSUE OF RETURN | | | | |
| 20 | Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, | FLOWS FROM IMPORTED WATER | | | | |
| 21 | Case No. S-1500-CV-254-348 |) Phase 5 Trial Date: February 10, 2014) Time 9:00 A.M. | | | | |
| 22 | Wm. Bolthouse Farms, Inc. v. City of Lancaster |) Dept.: Dept. 1) Judge: Hon. Jack Komar | | | | |
| 23 | Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water |) | | | | |
| 24 | Dist. Superior Court of California, County of |)) | | | | |
| 25 | Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 | ()) | | | | |
| 26 | | | | | | |
| 27 | AND RELATED ACTIONS. |)) | | | | |
| 28 | -1 | , - | | | | |

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

DECLARATION OF JOHN UKKESTAD

I, John Ukkestad, declare as follows:

- 1. I am the General Manager of White Fence Farms Water Company, Inc. ("White Fence Farms") and have personal knowledge of the facts set forth herein. If called to do so, I could and would competently testify to these facts under oath.
- 2. White Fence Farms has purchased imported State Water Project ("SWP") water for distribution to its customers, who are the stockholders in White Fence Farms, since 1983, in the aggregate approximate amount of 5,917.95 feet. A summary of the quantities purchased is marked as Exhibit 5-White Fence Farms-12 in this action.
- 3. White Fence Farms is within the Antelope Valley East Kern Water Agency's ("AVEK") service area and has purchased its water directly from AVEK out of AVEK'S SWP allotment. White Fence Farms entered into an agreement with AVEK regarding the purchase, delivery and storage of SWP water. White Fence Farms has a contractual right to store imported water with AVEK for later use. White Fence Farms has contracted to bring the imported SWP water into the Basin, to store it until needed, call for its delivery, and after the water has been partially used, the unused component percolates back into the ground to be recovered at a later time. A true and correct copy of the agreement between AVEK and White Fence Farms, dated March 4, 2013 is marked as Exhibit 5-White Fence Farms-17 in this action.
- 4. I am not aware of any agreement, written or oral, by which AVEK reserved any rights to return flows from the SWP water acquired for the benefit of White Fence Farms. It has always been the intent of White Fence Farms to have a complete and undivided interest in the SWP water it purchases from AVEK, including any return flows from that imported water. I had discussions at meetings of the Technical Committee of the Antelope Valley Water Resource Study, in 1992 1993, with Wally Spinarski, then the General Manager of AVEK, during which conversations I was assured that AVEK would not claim what was described as "in lieu water" that was imported SWP water that was being brought into the basin by AVEK for White Fence

Farms. White Fence Farms believes that it has the right to the return flows from imported water based, in part, on those conversations with Wally Spinarski that AVEK would not claim rights to the SWP water that was being sold to White Fence Farms.

- 5. White Fence Farms believes that the average return flow percentage of thirty-nine percent (39%) is reasonable as the percentage right to return flows from the water that it imports.
- 6. White Fence Farms and its stockholders have paid a significant amount of money toward the infrastructure that is used to deliver the SWP water. There are numerous documents that reflect these payments, including the following documents, which are marked as exhibits in this action as follows:
 - (a) Correspondence and itemization of expenses for the cost of the infrastructure from AVEK. [Exhibits 5-White Fence Farms-18; 5-El Dorado-7; 5-El Dorado-14; 5-El Dorado-15.]
 - (b) Newsletter distributed to stockholders of mutual water company explaining that the cost to the mutual water companies and the stockholders for the infrastructure will be "considerable." [Exhibit 5-El Dorado-13.]
 - (c) Evidence of capacity charges paid by the mutual water companies and their stockholders for infrastructure, including summaries of charges and AVEK's receipts for capacity charges paid. [Exhibits 5-White Fence Farms-13; 5-White Fence Farms-14; 5-White Fence Farms-15, as exemplars.]
 - (d) Evidence of payments to AVEK for banking State Water Project water in the Water Supply Stabilization Project No. 2 ("WSSP2") for later withdrawal. [Exhibit 5-White Fence Farms-17, as exemplars.]
 - (e) Property tax bills showing amounts paid for "special water" taxes and other assessments. [Exhibits 5-Landale-2; 5-West Side Park-5; 5-White Fence Farms-11; 5-White Fence Farms-16, as exemplars.]

-3

(951) 684-2171

26

27

| | Fence Farms-18, as an exemplar.] | | | |
|------------|----------------------------------|---------------------------|--------------------|----------------------|
| | connecting to AVEK to a | scquire the State Water F | Project water. [Ex | hibit 5-White |
| (f) | Minutes of the mutual v | vater companies' board | meetings regardin | g the cost of |

- 7. White Fence Farms stores imported SWP water in the groundwater basin. White Fence Farms' service area is located in the Amargosa Creek wash area of the Basin. Most, if not all, of the customers of White Fence Farms are on septic (rather than on sewer) systems, which means that the unconsumed imported water goes back into the Amargosa Creek Wash area of the Basin through the septic systems within White Fence Farms' service area boundary.
- 8. In my capacity as the General Manager of White Fence Farms, I am responsible for the operations and infrastructure by which White Fence Farms produces, stores, distributes and recovers water for the use of its customers, the stockholders of White Fence Farms.
- 9. White Fence Farms (and four of the other five Mutual Water Companies which claim return flows) is partially situated within the sphere of influence of the City of Palmdale [which was a participant in the development of and in 2007 adopted the Antelope Valley Integrated Regional Water Management Plan; and is a member agency of the Upper Amargosa Creek Flood Control, Recharge, and Habit Restoration Project ("Project") with Palmdale Water District, Los Angeles County Waterworks District No. 40 and the Antelope Valley-East Kern Water Agency]. I am familiar with the Project and the Project Specific Objective of "use[ing] untreated State Water Project (SWP) water and stormwater to recharge the ... area of the largest underlying groundwater aquifer of the Antelope Valley."

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

IOUN UKKESTAL

PROOF OF SERVICE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

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 February 7, 2014, I served the foregoing document(s) described as DECLARATION OF JOHN UKKESTAD IN SUPPORT OF CROSS-DEFENDANT/CROSS-COMPLAINANT ANTELOPE VALLEY UNITED MUTUALS GROUP'S OFFER OF PROOF 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.scefiling.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 February 7, 2014, at Riverside, California.

DINA M SNIDER

28 GRESHAM SAVAGE

ATTORNEYS AT LAW 3750 UNIVERSITY AVE. STE. 250 RIVERSIDE, CA 92501-3335 (951) 684-2171 -5-