

1 Michael Duane Davis, SBN 093678
Marlene L. Allen-Hammarlund, SBN 126418
2 Derek R. Hoffman, SBN 285784
GRESHAM SAVAGE NOLAN & TILDEN, PC
3 3750 University Avenue, Suite 250
Riverside, CA 92501-3335
4 Telephone: (951) 684-2171
Facsimile: (951) 684-2150

5 Attorneys for Cross-Defendant, ADAMS
6 BENNETT INVESTMENTS, LLC; Cross-
Defendants and Cross-Complainants, 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 Mutual
9 Water Co., Colorado Mutual Water Co., Eldorado
Mutual Water Co., Evergreen Mutual Water Co.,
10 Land Projects Mutual Water Co., Landale Mutual
Water Co., Shadow Acres Mutual Water Co.,
11 Sundale Mutual Water Co., Sunnyside Farms
Mutual Water Co., Tierra Bonita Mutual Water Co.,
12 Westside Park Mutual Water Co. and White Fence
Farms Mutual Water Co.]; and Cross-Defendants,
13 MIRACLE IMPROVEMENT CORPORATION
DBA GOLDEN SANDS MOBILE HOME PARK,
14 AKA GOLDEN SANDS TRAILER PARK,
NAMED AS ROE 1121; SAINT ANDREW'S
15 ABBEY, INC., NAMED AS ROE 623; SERVICE
ROCK PRODUCTS, L.P.; and SHEEP CREEK
16 WATER COMPANY

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF LOS ANGELES**

19 Coordination Proceeding
20 Special Title (Rule 1550(b))

21 **ANTELOPE VALLEY GROUNDWATER
CASES**

22 Including Consolidated Actions:

23 Los Angeles County Waterworks District No.
24 40 v. Diamond Farming Co.
25 Superior Court of California, County of Los
Angeles, Case No. BC 325 201

26
27 **CAPTION CONTINUED ON NEXT PAGE**
28

) Judicial Council Coordination
) Proceeding No. 4408

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

) **DECLARATION OF A MEMBER OF**
) **CROSS-DEFENDANTS / CROSS-**
) **COMPLAINANTS, ANTELOPE**
) **VALLEY UNITED MUTUALS GROUP,**
) **SPECIFICALLY, AVERYDALE**
) **MUTUAL WATER COMPANY, IN**
) **SUPPORT OF PROVE-UP TRIAL**

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.

PROVE-UP

Trial Date: September 28, 2015
Time: 10:00 A.M.
Dept.: Dept. 1, Los Angeles
Judge: Hon. Jack Komar

1. This declaration is made in support of the [Proposed] Judgment and Physical Solution filed with the court on March 4, 2015 on behalf of Cross-Defendants / Cross-Complainants, Antelope Valley United Mutuals Group, specifically AVERYDALE MUTUAL WATER COMPANY ("Declarant").

2. The signatory to this Declaration has personal knowledge of each fact herein and would testify competently thereto under oath.

3. The signatory to this Declaration is Declarant's President.

4. Declarant is an active California mutual benefit non-profit corporation, with an entity address of Post Office Box 191, Lancaster, CA 93584. It was formed on August 6, 1948. Its membership is comprised of the owners of the 367 mostly 1¼ acre lots that are situated within its hereafter-described service area. Declarant's 293 active services serve the properties within Declarant's service area that have been improved with a residence, and stand by to serve the unimproved properties when improved. Upon the formation of Declarant as a mutual benefit, non-profit corporation, the overlying groundwater rights of the owners of the properties within the service area (who became the initial shareholders) became the rights of the mutual water company and have, ever since, been exercised by the mutual water company and not by the individual property owners/shareholders. There was no known express reservation of the

1 overlying groundwater rights by the individual property owners at the time of formation. The
2 property owners/shareholders simply pooled their collective water and (through the mutual water
3 company) constructed, operated and maintained the production, storage and distribution system
4 by which they all receive water for their domestic purposes. Accordingly, the property owners/
5 shareholders exchanged their overlying water rights for the right to have water delivered to their
6 individual properties. [See *Erwin v. Gage Canal Company* (1964) 226 Cal.App.2d 189; see also
7 *Hildreth v. Montecito Creek Water Co.* (1903) 139 Cal. 22, 29; see also *City of Glendale v.*
8 *Crescenta etc. Water Co.* (1955) 135 Cal.App.2d 784, 801]. As such, though each shareholder
9 has an interest in the Declarant which owns the water rights, production, storage and distribution
10 facilities, and has the right to receive water upon development and demand, the Declarant is the
11 owner of those certain rights, titles and interests in properties that overlie the Antelope Valley
12 Area of Adjudication as determined by the Court. [From Declarant's Responses to December
13 12, 2012 Discovery Order for Phase 4 Trial, Responses I.1.a., I.1.b. and I.1.j.; and
14 supporting documents at Attachment I.1.a. and I.3.c.i. thereto; Declarant's First
15 Supplemental Response to December 12, 2012 Discovery Order for Phase 4 Trial,
16 Responses I.3.b. and I.3.c. and supporting documents at Attachments I.3.b.i. and I.3.c.i.
17 thereto.]

18 5. Declarant's service area ("Property"), including the production, storage and
19 distribution facilities thereto appertaining, is located in the County of Los Angeles, and is
20 described as follows: North Boundary: Ave H East to 37th St East and Ave H 37th St East South
21 to Ave H-4 West to 36th St East South to Ave H-8 West to 35th East and Ave H-8 South on 35th
22 St East to Ave I West to 30th St East South to Kettering West to 27th St East turn North on 27th
23 St East to Ave H-8. [From Declarant's Responses to December 12, 2012 Discovery Order
24 for Phase 4 Trial, Response I.1.a.; and supporting documents at Attachment I.1.a. thereto;
25 Declarant's First Supplemental Response to December 12, 2012 Discovery Order for Phase
26 4 Trial, Response I.3.b. and supporting documents at Attachment I.3.b.i. thereto.]

1 6. Based on Los Angeles County Assessor's Map information, Declarant's service
2 area is comprised of four hundred ten (410) acres. [From Declarant's Responses to December
3 12, 2012 Discovery Order for Phase 4 Trial, Response I.1.a.; and supporting documents at
4 Attachment I.1.a. thereto; Declarant's First Supplemental Response to December 12, 2012
5 Discovery Order for Phase 4 Trial, Response I.3.b. and supporting documents at
6 Attachment I.3.b. thereto.]

7 7. Declarant claims the right to produce and use groundwater to serve its
8 shareholders / customers within its service area(s), as described in Paragraph 5, above. [From
9 Declarant's Responses to December 12, 2012 Discovery Order for Phase 4 Trial, Responses
10 I.1., I.1.g., I.2. and I.3.; and supporting documents at Attachments I.1.a. and I.3. thereto;
11 Declarant's First Supplemental Response to December 12, 2012 Discovery Order for Phase
12 4 Trial, Responses I.3.a, I.3.b. and I.3.c.; and supporting documents at Attachments I.3.a.i.,
13 I.3.b.i. and I.3.c.i. thereto].

14 8. The maximum amount of groundwater produced from the Property, measured in
15 acre feet, for the following calendar years is as follows:

- 16 a. 2000: 316.9
17 b. 2001: 312.1
18 c. 2002: 346
19 d. 2003: 333.9
20 e. 2004: 365.5
21 f. 2011: 247.9
22 g. 2012 [January through November]: 268.0

23 The maximum amount of groundwater produced from the Property for the members of the
24 Antelope Valley United Mutuals Group (which was allocated by and amongst them), including
25 that supplemented by the In-Lieu Water purchased from AVEK by some of the members, is
26 collectively greater than both the Pre-Rampdown Production and Overlying Production Right
27 stated in the Proposed Judgment and Physical Solution. [From Declarant's Responses to
28

1 December 12, 2012 Discovery Order for Phase 4 Trial, Responses I.1.e. and III.1.d.; and
2 supporting documents at Attachment I.3.a.i. thereto; Declarant's First Supplemental
3 Response to December 12, 2012 Discovery Order for Phase 4 Trial, Response I.3.a.; and
4 supporting documents at Attachment I.3.a.i. thereto; Exhibit 4 to [Proposed] Judgment and
5 Physical Solution].

6 9. The use(s) to which the groundwater produced from the Property for the calendar
7 years listed in Paragraph 8 was for the provision of domestic water service to its mutual
8 members, all of which, with the exception of two commercial properties, are either single-family
9 residential properties, multi-unit residential properties or units located within mobile home parks.
10 [From Declarant's Responses to December 12, 2012 Discovery Order for Phase 4 Trial,
11 Responses I.1.f., I.1.g., I.1.h. and III.1.h.; and supporting documents at Attachment I.1.
12 thereto; Declarant's First Supplemental Response to December 12, 2012 Discovery Order
13 for Phase 4 Trial, Response I.3.b.; and supporting documents at Attachment I.3.b.i.
14 thereto].

15 10. The manner and method for determining the amount of groundwater produced
16 from the Property included pump tests and SCE electric power records. [From Declarant's
17 Responses to December 12, 2012 Discovery Order for Phase 4 Trial, Responses I.3.; and
18 supporting documents at Attachment I.3.a.i. thereto; Declarant's First Supplemental
19 Response to December 12, 2012 Discovery Order for Phase 4 Trial, Response I.3.a.; and
20 supporting documents at Attachment I.3.a.i. thereto].

21 11. All the information contained in the evidence introduced at the Phase 4 Trial is
22 expressly incorporated herein and made a part of this Declaration for the benefit of the Declarant,
23 as if stated verbatim as follows:

24 a. Declarant's Responses to December 12, 2012 Discovery Order for Phase 4
25 Trial, dated December 21, 2012, which was marked for identification and admitted into evidence
26 as 4-AVERYDALE-1.

1 b. Declarant's First Supplemental Responses to December 12, 2012
2 Discovery Order for Phase 4 Trial, dated January 29, 2013, which was marked for identification
3 and admitted into evidence as 4-AVERYDALE-2.

4 The undersigned declare under penalty of perjury under the laws of the State of
5 California that the foregoing is true and correct.

6 Executed this 21 of April, 2015, at PAUL DALE, California.

7
8 By: 

9 MATTHEW HIMLIN

10 ITS: President
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 San Bernardino, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 550 East Hospitality Lane, Suite 300, San Bernardino, CA 92408-4205.

On Sept. 16, 2015, I served the foregoing document(s) described as **DECLARATION OF A MEMBER OF CROSS-DEFENDANTS / CROSS-COMPLAINANTS, ANTELOPE VALLEY UNITED MUTUALS GROUP, SPECIFICALLY, AVERYDALE MUTUAL WATER COMPANY, IN SUPPORT OF PROVE-UP TRIAL** 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 Sept. 16, 2015, at San Bernardino, California.

Dina Sneider

DINA M. SNIDER