

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

) Judicial Council Coordination
) Proceeding No. 4408

21 **ANTELOPE VALLEY GROUNDWATER**
22 **CASES**

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

23 Including Consolidated Actions:

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

) **PROVE-UP TRIAL BRIEF OF CROSS-**
) **DEFENDANT/CROSS-COMPLAINANT,**
) **AQUA-J MUTUAL WATER COMPANY,**
) **A MEMBER OF THE ANTELOPE**
) **VALLEY UNITED MUTUALS GROUP**

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

1	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.	) PROVE-UP Trial Date: September 28, 2015 Time: 10:00 A.M. Dept.: Dept. 1, Los Angeles Judge: Hon. Jack Komar
2	Superior Court of California, County of Kern, Case No. S-1500-CV-254-348	
3	Wm. Bolthouse Farms, Inc. v. City of Lancaster	
4	Diamond Farming Co. v. City of Lancaster	
5	Diamond Farming Co. v. Palmdale Water Dist.	
6		
7	Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668	
8		
9	AND RELATED ACTIONS	
10		

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

12 Cross-Defendant, **AQUA-J MUTUAL WATER COMPANY, A MEMBER OF THE**
 13 **ANTELOPE VALLEY UNITED MUTUAL GROUP** ("Aqua-J MWC") by and through its
 14 attorneys of record, Michael Duane Davis, Esq., Marlene L. Allen-Hammarlund, Esq. and Derek
 15 R. Hoffman, Esq. of Gresham Savage Nolan & Tilden, PC, hereby submits the following Trial
 16 Brief for the Phase 6 [Prove-Up] Trial proceedings. Aqua-J MWC's Witness List, Exhibit List
 17 and Declaration in Support of Phase 6 [Prove-Up] Trial have been separately submitted.

18 1. **PARTY:** Aqua-J MWC is an active California mutual benefit non-profit
 19 corporation, with an entity address of 44503 N 92nd St East, Lancaster, CA 93535. It was
 20 formed on January 7, 1953. Its membership is comprised of the owners of the 98 mostly 1¼ acre
 21 lots that are situated within its hereafter-described service area. Aqua-J MWC's 48 active
 22 services serve the properties within Aqua-J MWC's service area that have been improved with a
 23 residence, and stand by to serve the unimproved properties when improved. Upon the formation
 24 of Aqua-J MWC as a mutual benefit, non-profit corporation, the overlying groundwater rights of
 25 the owners of the properties within the service area (who became the initial shareholders)
 26 became the rights of the mutual water company and have, ever since, been exercised by the
 27 mutual water company and not by the individual property owners/shareholders. There was no
 28 known express reservation of the overlying groundwater rights by the individual property owners

1 at the time of formation. The property owners/shareholders simply pooled their collective water
2 and (through the mutual water company) constructed, operated and maintained the production,
3 storage and distribution system by which they all receive water for their domestic purposes.
4 Accordingly, the property owners/ shareholders exchanged their overlying water rights for the
5 right to have water delivered to their individual properties. [See *Erwin v. Gage Canal Company*
6 (1964) 226 Cal.App.2d 189; see also *Hildreth v. Montecito Creek Water Co.* (1903) 139 Cal. 22,
7 29; see also *City of Glendale v. Crescenta etc. Water Co.* (1955) 135 Cal.App.2d 784, 801]. As
8 such, though each shareholder has an interest in the Aqua-J MWC which owns the water rights,
9 production, storage and distribution facilities, and has the right to receive water upon
10 development and demand, the Aqua-J MWC is the owner of those certain rights, titles and
11 interests in properties that overlie the Antelope Valley Area of Adjudication as determined by the
12 Court.

13 **2. PROPERTY [Service Area]:** Aqua-J MWC's service area ("Property"),
14 which is comprised of one hundred sixty (160) acres including the production, storage and
15 distribution facilities thereto appertaining, is located in the County of Los Angeles, and is
16 described as follows: North Boundary: Ave I-8; South Boundary: Ave J; East Boundary: 95th St
17 East; and West Boundary: 90th St. East ("Service Area").

18 **3. CLAIMS TO GROUNDWATER PRODUCTION WITHIN THE**
19 **ADJUDICATION AREA:** Aqua-J MWC claims the right to produce and use groundwater to
20 serve its shareholders / customers within its Service Area. The maximum amount of
21 groundwater produced from the Property, measured in acre feet, for the following calendar years
22 is as follows:

- 23 a. 2000: 80.7
- 24 b. 2001: 66.4
- 25 c. 2002: 58.7
- 26 d. 2003: 63.4
- 27 e. 2004: 66.1
- 28 f. 2011: 42.5

1 g. 2012 [January through November]: 47.3

2 The maximum amount of groundwater produced from the Property for the members of
3 the Antelope Valley United Mutuals Group (which was allocated by and amongst the members of
4 the Group), including that supplemented by the In-Lieu Water purchased from AVEK by some of
5 the members of the Group, is collectively greater than both the Pre-Rampdown Production and
6 Overlying Production Right stated in the Proposed Judgment and Physical Solution.

7 **4. DETERMINATION OF PRODUCTION:** Aqua-J MWC determined the
8 amount of groundwater produced from the Property from meter records, pump tests and SCE
9 electric power records.

10 **5. USE:** The use(s) to which the groundwater produced from the Property for the
11 calendar years listed above was for the provision of domestic water service to its mutual
12 members, all of which are single family residential properties. As such, the domestic purposes to
13 which Aqua-J MWC puts its water is the highest use under *Water Code* § 106.

14 **6. SUPPORTING INFORMATION AND DATA:**

15 a. Responses to December 12, 2012 Discovery Order for Phase 4 Trial,
16 submitted under penalty of perjury, and filed by posting on December 21, 2012
17 [Court Website, Document Nos. 5573 and 5575]; and

18 b. First Supplemental Responses to December 12, 2012 Discovery Order for
19 Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January
20 30, 2013 [Court Website, Document No. 5884].

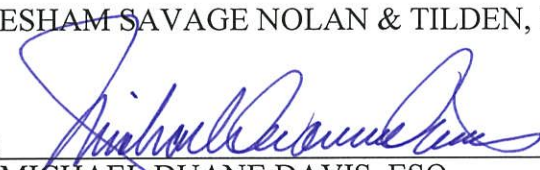
21 **7. OFFER OF PROOF:** On September 16, 2015, Aqua-J MWC posted its
22 *Declaration of Aqua-J Mutual Water Company In Support of Prove-Up Trial* [Court Website,
23 Document No. 10461], which details its existence as a California corporate mutual water
24 company; describes its Property [Service Area] boundaries; states the [above-stated] amount of
25 groundwater that it produced from 2000 through 2004 and from 2011 through 2012 [the 2011
26 and 2012 production having been established by the Court in the Phase 4 Trial] and how it was
27 determined; and describes the uses to which the produced water has been put.

1 Aqua-J MWC will offer the *Declaration of Aqua-J Mutual Water Company In Support of*
2 *Prove-Up Trial* to establish the facts declared therein and ask the Court, subject to proper
3 objection(s) and cross-examination(s), to admit the facts therein declared into evidence to
4 establish Aqua-J MWC's claims and rights under the [Proposed] Judgment and Physical
5 Solution.

6 Should the Court require Aqua-J MWC to call its designated witness(es), it requests that
7 the Court give it time to arrange for the designated witness(es) to appear in Court and submit
8 their testimony, to the extent required.

9 Dated: September 22, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

10
11 By: 

MICHAEL DUANE DAVIS, ESQ.
MARLENE L. ALLEN-HAMMARLUND, ESQ.
DEREK R. HOFFMAN, ESQ.
Attorneys for CROSS-DEFENDANT / CROSS-
COMPLAINANT, A. V. UNITED MUTUAL
GROUP [comprised of Antelope Park Mutual
Water Co., Aqua-J Mutual Water Co., Averydale
Mutual Water Co., Baxter Mutual Water Co.,
Bleich Flat Mutual Water Co., Colorado Mutual
Water Co., Eldorado Mutual Water Co.,
Evergreen Mutual Water Co., Land Projects
Mutual Water Co., Landale Mutual Water Co.,
Shadow Acres Mutual Water Co., Sundale
Mutual Water Co., Sunnyside Farms Mutual
Water Co., Tierra Bonita Mutual Water Co.,
Westside Park Mutual Water Co. and White
Fence Farms Mutual Water Co.]; and 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], WHITE FENCE FARMS PRODUCTS,
L.P., and SHEEP CREEK WATER COMPANY,
INC.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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.

(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 September 22, 2015, at San Bernardino, California.

DINA M. SNIDER