

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

Attorneys for Cross-Defendant, ADAMS  
BENNETT INVESTMENTS, LLC; Cross-  
Defendants and Cross-Complainants, ANTELOPE  
VALLEY UNITED MUTUALS 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,  
MIRACLE IMPROVEMENT CORPORATION  
DBA GOLDEN SANDS MOBILE HOME PARK,  
AKA GOLDEN SANDS TRAILER PARK,  
NAMED AS ROE 1121; SAINT ANDREW'S  
ABBNEY, INC., NAMED AS ROE 623; SERVICE  
ROCK PRODUCTS, L.P.; and SHEEP CREEK  
WATER COMPANY

**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

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

**CAPTION CONTINUED ON NEXT PAGE**

|    |                                                                                                                          |                                  |
|----|--------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 1  | Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.                                                     | ) PROVE-UP                       |
| 2  | Superior Court of California, County of Kern, Case No. S-1500-CV-254-348                                                 | ) Trial Date: September 28, 2015 |
| 3  |                                                                                                                          | ) Time: 10:00 A.M.               |
| 4  | Wm. Bolthouse Farms, Inc. v. City of Lancaster                                                                           | ) Dept.: Dept. 1, Los Angeles    |
| 5  | Diamond Farming Co. v. City of Lancaster                                                                                 | ) Judge: Hon. Jack Komar         |
| 6  | Diamond Farming Co. v. Palmdale Water Dist.                                                                              | )                                |
| 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 |                                                                                                                          | )                                |

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

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

**1. PARTY:** Averydale MWC 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. Averydale MWC's 293 active services serve the properties within Averydale MWC's service area that have been improved with a residence, and stand by to serve the unimproved properties when improved. Upon the formation of Averydale MWC 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.

1 There was no known express reservation of the overlying groundwater rights by the individual  
2 property owners at the time of formation. The property owners/shareholders simply pooled their  
3 collective water and (through the mutual water company) constructed, operated and maintained  
4 the production, storage and distribution system by which they all receive water for their domestic  
5 purposes. Accordingly, the property owners/ shareholders exchanged their overlying water  
6 rights for the right to have water delivered to their individual properties. [See *Erwin v. Gage*  
7 *Canal Company* (1964) 226 Cal.App.2d 189; see also *Hildreth v. Montecito Creek Water Co.*  
8 (1903) 139 Cal. 22, 29; see also *City of Glendale v. Crescenta etc. Water Co.* (1955) 135  
9 Cal.App.2d 784, 801]. As such, though each shareholder has an interest in the Averydale MWC  
10 which owns the water rights, production, storage and distribution facilities, and has the right to  
11 receive water upon development and demand, the Averydale MWC is the owner of those certain  
12 rights, titles and interests in properties that overlie the Antelope Valley Area of Adjudication as  
13 determined by the Court.

14       **2. PROPERTY [Service Area]:** Averydale MWC's service area  
15 ("Property"), which is comprised of four hundred ten (410) acres including the production,  
16 storage and distribution facilities thereto appertaining, is located in the County of Los Angeles,  
17 and is described as follows: North Boundary: Ave H East to 37th St East and Ave H 37th St East  
18 South to Ave H-4 West to 36th St East South to Ave H-8 West to 35th East and Ave H-8 South on  
19 35th St East to Ave I West to 30th St East South to Kettering West to 27th St East turn North on  
20 27th St East to Ave H-8 ("Service Area").

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

- 26           a. 2000: 316.9
- 27           b. 2001: 312.1
- 28           c. 2002: 346

- 1 d. 2003: 333.9  
2 e. 2004: 365.5  
3 f. 2011: 247.9  
4 g. 2012 [January through November]: 268.0

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

10 **4. DETERMINATION OF PRODUCTION:** Averydale MWC determined the  
11 amount of groundwater produced from the Property from pump tests and SCE electric power  
12 records.

13 **5. USE:** The use(s) to which the groundwater produced from the Property for the  
14 calendar years listed above was for the provision of domestic water service to its mutual  
15 members, all of which, with the exception of two commercial properties, are either single-family  
16 residential properties, multi-unit residential properties or units located within mobile home parks.  
17 As such, the domestic purposes to which Averydale MWC puts its water is the highest use under  
18 *Water Code* § 106.

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

20 a. Responses to December 12, 2012 Discovery Order for Phase 4 Trial,  
21 submitted under penalty of perjury, and filed by posting on December 21, 2012  
22 [Court Website, Document Nos. 5573 and 5576]; and

23 b. First Supplemental Responses to December 12, 2012 Discovery Order for  
24 Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January  
25 30, 2013 [Court Website, Document Nos. 5888 through 5897].

26 **7. OFFER OF PROOF:** On September 16, 2015, Averydale MWC posted its  
27 *Declaration of Averydale Mutual Water Company In Support of Prove-Up Trial* [Court Website,  
28 Document No. 10462], which details its existence as a California corporate mutual water

1 company; describes its Property [Service Area] boundaries; states the [above-stated] amount of  
2 groundwater that it produced from 2000 through 2004 and from 2011 through 2012 [the 2011  
3 and 2012 production having been established by the Court in the Phase 4 Trial] and how it was  
4 determined; and describes the uses to which the produced water has been put.

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

10 Should the Court require Averydale MWC to call its designated witness(es), it requests  
11 that the Court give it time to arrange for the designated witness(es) to appear in Court and submit  
12 their testimony, to the extent required.

13 Dated: September 22, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

14  
15 By: 


16 MICHAEL DUANE DAVIS, ESQ.  
17 MARLENE L. ALLEN-HAMMARLUND, ESQ.  
18 DEREK R. HOFFMAN, ESQ.  
19 Attorneys for CROSS-DEFENDANT / CROSS-  
20 COMPLAINANT, A. V. UNITED MUTUAL  
21 GROUP [comprised of Antelope Park Mutual  
22 Water Co., Aqua-J Mutual Water Co., Averydale  
23 Mutual Water Co., Baxter Mutual Water Co.,  
24 Bleich Flat Mutual Water Co., Colorado Mutual  
25 Water Co., Eldorado Mutual Water Co.,  
26 Evergreen Mutual Water Co., Land Projects  
27 Mutual Water Co., Landale Mutual Water Co.,  
28 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.

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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