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9 Attorneys for Cross-Defendant, ADAMS
10 BENNETT INVESTMENTS, LLC; Cross-
11 Defendants and Cross-Complainants, ANTELOPE
12 VALLEY UNITED MUTUALS GROUP
13 [comprised of Antelope Park Mutual Water Co.,
14 Aqua-J Mutual Water Co., Averydale Mutual Water
15 Co., Baxter Mutual Water Co., Bleich Flat Mutual
16 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
ABBEY, INC., NAMED AS ROE 623; SERVICE
ROCK PRODUCTS, L.P.; and SHEEP CREEK
WATER COMPANY

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

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

) Judicial Council Coordination
) Proceeding No. 4408

22 **ANTELOPE VALLEY GROUNDWATER
23 CASES**

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

24 Including Consolidated Actions:

25 **Los Angeles County Waterworks District No.**
26 **40 v. Diamond Farming Co.**
27 Superior Court of California, County of Los
28 Angeles, Case No. BC 325 201

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

CAPTION CONTINUED ON NEXT PAGE

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|---|--|---|--------------------------------|
| 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 |) | |

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Cross-Defendant, **COLORADO MUTUAL WATER CO., A MEMBER OF THE ANTELOPE VALLEY UNITED MUTUAL GROUP** ("Colorado 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. Colorado MWC's Witness List, Exhibit List and Declaration in Support of Phase 6 [Prove-Up] Trial have been separately submitted.

1. PARTY: Colorado MWC is an active California mutual benefit non-profit corporation, with an entity address of 43841 90th St. East, Lancaster, CA 93535. It was formed on May 18, 1954. Its membership is comprised of the owners of the 24 mostly 2½ acre lots that are situated within its hereafter-described service area. Colorado MWC's 13 active services serve the properties within Colorado 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 Colorado 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. There was no 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 Colorado MWC which owns the water
9 rights, production, storage and distribution facilities, and has the right to receive water upon
10 development and demand, the Colorado 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]:** Colorado MWC's service area ("Property"),
14 which is comprised of eighty (80) acres including the production, storage and distribution
15 facilities thereto appertaining, is located in the County of Los Angeles, and is described as
16 follows: Avenue J-8 on the north, 90th Street East on the south, Avenue J-12 on the west, and 85th
17 Street on the east ("Service Area").

18 **3. CLAIMS TO GROUNDWATER PRODUCTION WITHIN THE**
19 **ADJUDICATION AREA:** Colorado MWC claims the right to produce and use groundwater
20 to 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: 40.1
- 24 b. 2001: 37.3
- 25 c. 2002: 39.8
- 26 d. 2003: 26.6
- 27 e. 2004: 37.7
- 28 f. 2011: 24.1

1 g. 2012 [January through November]: 27.7

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:** Colorado MWC determined the
8 amount of groundwater produced from the Property from pump tests and SCE electric power
9 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 Colorado 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 5593]; 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. 5919].

21 **7. OFFER OF PROOF:** On September 16, 2015, Colorado MWC posted its
22 *Declaration of Colorado Mutual Water Company In Support of Prove-Up Trial* [Court Website,
23 Document No. 10465], 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.

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

6 Should the Court require Colorado MWC to call its designated witness(es), it requests
7 that 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: 

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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.

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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.

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