

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
ABBEY, 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,**
) **EL DORADO MUTUAL WATER**
) **COMPANY, A MEMBER OF THE**
) **ANTELOPE VALLEY UNITED**
) **MUTUALS GROUP**

CAPTION CONTINUED ON NEXT PAGE

1 Los Angeles County Waterworks District No.) PROVE-UP
2 40 v. Diamond Farming Co.) Trial Date: September 28, 2015
3 Superior Court of California, County of) Time: 10:00 A.M.
Kern, Case No. S-1500-CV-254-348) Dept.: Dept. 1, Los Angeles
4) Judge: Hon. Jack Komar
5 Wm. Bolthouse Farms, Inc. v. City of)
6 Lancaster)
7 Diamond Farming Co. v. City of Lancaster)
8 Diamond Farming Co. v. Palmdale Water)
Dist.)
9 Superior Court of California, County of)
Riverside, consolidated actions, Case Nos. RIC)
353 840, RIC 344 436, RIC 344 668)
10)
11 AND RELATED ACTIONS)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

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

1. PARTY: El Dorado MWC is an active California mutual benefit non-profit corporation, with an entity address of Post Office Box 900519, Palmdale, CA 93590. It was formed on July 14, 1948. Its membership is comprised of the owners of the 276 mostly 1¼ and 2½ acre lots that are situated within its hereafter-described service area. El Dorado MWC's 232 active services serve the properties within El Dorado 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 El Dorado 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

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

14 **2. PROPERTY [Service Area]:** El Dorado MWC's service area
15 ("Property"), which is comprised of six hundred forty (640) 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 N; East Boundary: 10th St West; South
18 Boundary: Ave O; and West Boundary: 20th St West ("Service Area").

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

- 24 a. 2000: 389.8
- 25 b. 2001: 386.7
- 26 c. 2002: 294.5
- 27 d. 2003: 310.7
- 28 e. 2004: 365.5

1 f. 2011: 272

2 g. 2012 [January through November]: 280.1

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

8 **4. DETERMINATION OF PRODUCTION:** El Dorado MWC determined the
9 amount of groundwater produced from the Property from well logs and meter records, pump
10 tests and SCE electric power records.

11 **5. PURCHASES OF STATE WATER PROJECT WATER & RETURN**
12 **FLOWS:** Starting in 1982, El Dorado MWC has purchased imported State Water Project
13 ("SWP") water from the Palmdale Water District ("PWD") for distribution to its member
14 customers; which SWP purchases, in total, now exceed four thousand seven hundred twenty
15 eight (4,728) acre feet ("AF"). Additionally, El Dorado MWC and its member customers have
16 paid considerable monies for the infrastructure that is used to deliver the SWP water from PWD
17 to its Service Area.

18 El Dorado MWC has a formal agreement with PWD and the Antelope Valley – East Kern
19 Water Agency ("AVEK") regarding the purchase, delivery and storage of SWP water.

20 El Dorado MWC filed an Amended Trial Brief for the Phase 5 Trial on the Issue of
21 Return Flows from Imported Water [Court Website, Document Number 8627], which El Dorado
22 MWC incorporates herein by reference.

23 Subsequent to the filing of the Amended Trial Brief for the Phase 5 Trial, PWD and
24 AVEK agreed that the ownership of and the right to claim return flows from the water purchased
25 by El Dorado MWC from PWD belongs to El Dorado MWC, as reflected on Exhibit 8 to the
26 [Proposed] Judgment and Physical Solution; however, the Amended Trial Brief has not been
27 revised to reflect PWD's and AVEK's agreement.

28

El Dorado MWC has and claims the right to its return flows from the imported water that it purchased and will hereafter purchase from PWD.

6. CLAIMS TO RETURN FLOWS FROM IMPORTED WATER: El

Dorado MWC purchased "In-Lieu Water" from PWD for use on the Property for the following calendar years, as follows:

- a. 2000: 6.0
- b. 2001: 90.3
- c. 2002: 103.1
- d. 2003: 72.9
- e. 2004: 30.0
- f. 2011: 0
- g. 2012: 0

7. USE: The use(s) to which the groundwater produced from and In-Lieu water purchased for the Property for the calendar years listed above was for the provision of domestic water service to its mutual members, all of which are single family residential properties. As such, the domestic purposes to which El Dorado MWC puts its water is the highest use under *Water Code* § 106.

8. SUPPORTING INFORMATION AND DATA:

- a. Responses to December 12, 2012 Discovery Order for Phase 4 Trial, submitted under penalty of perjury, and filed by posting on December 21, 2012 [Court Website, Document Nos. 5573 and 5581]; and
- b. First Supplemental Responses to December 12, 2012 Discovery Order for Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January 30, 2013 [Court Website, Document Nos. 5898 through 5899].

9. OFFER OF PROOF: On September 16, 2015, El Dorado MWC posted its *Declaration of El Dorado Mutual Water Company In Support of Prove-Up Trial* [Court Website, Document No. 10467], which details its existence as a California corporate mutual water company; describes its Property [Service Area] boundaries; states the [above-stated] amount of

1 groundwater that it produced from 2000 through 2004 and from 2011 through 2012 [the 2011
2 and 2012 production having been established by the Court in the Phase 4 Trial] and how it was
3 determined; states the above-stated amount of imported SWP water that it purchased from PWD,
4 pursuant to agreement, from 2000 through 2004 and from 2011 through 2012; and describes the
5 uses to which the produced and imported SWP water has been put.

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

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

14 Dated: September 22, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

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