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

**1. PARTY:** Evergreen MWC is an active California mutual benefit non-profit corporation, with an entity address of 4646 East Lumber Street, Lancaster, CA 93535. It was formed on November 9, 1954. Its membership is comprised of the owners of the 48 mostly 1½ acre lots that are situated within its hereafter-described service area. Evergreen MWC's 46 active services serve the properties within Evergreen 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 Evergreen 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 Evergreen MWC which owns the water rights, production, storage and  
11 distribution facilities, and has the right to receive water upon development and demand, the  
12 Evergreen 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]:** Evergreen MWC's service area  
15 ("Property"), which is comprised of one hundred twenty (120) 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 I; South Boundary: Lancaster Blvd; West  
18 Boundary: 42nd St East; and East Boundary: 47th St East ("Service Area").

19       **3. CLAIMS TO GROUNDWATER PRODUCTION WITHIN THE**  
20 **ADJUDICATION AREA:** Evergreen 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: 72
- 25           b. 2001: 72
- 26           c. 2002: 89
- 27           d. 2003: 86
- 28           e. 2004: 92

1 f. 2011: 66.4

2 g. 2012 [January through November]: 72.6

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

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

16 a. Responses to December 12, 2012 Discovery Order for Phase 4 Trial,  
17 submitted under penalty of perjury, and filed by posting on December 21, 2012  
18 [Court Website, Document Nos. 5573 and 5582]; and

19 b. First Supplemental Responses to December 12, 2012 Discovery Order for  
20 Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January  
21 30, 2013 [Court Website, Document No. 5887].

22 **7. OFFER OF PROOF:** On September 16, 2015, Evergreen MWC posted its  
23 *Declaration of Evergreen Mutual Water Company In Support of Prove-Up Trial* [Court Website,  
24 Document No. 10466], which details its existence as a California corporate mutual water  
25 company; describes its Property [Service Area] boundaries; states the [above-stated] amount of  
26 groundwater that it produced from 2000 through 2004 and from 2011 through 2012 [the 2011  
27 and 2012 production having been established by the Court in the Phase 4 Trial] and how it was  
28 determined; and describes the uses to which the produced water has been put.

1           Evergreen MWC will offer the *Declaration of Evergreen 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 Evergreen MWC's claims and rights under the [Proposed] Judgment and Physical  
5 Solution.

6           Should the Court require Evergreen 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

11     By: 

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COMPLAINANT, A. V. UNITED MUTUAL  
GROUP [comprised of Antelope Park Mutual  
Water Co., Aqua-J Mutual Water Co., Averdale  
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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