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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,**  
) **LANDALE MUTUAL WATER CO., A**  
) **MEMBER OF THE ANTELOPE**  
) **VALLEY UNITED MUTUALS GROUP**

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27 **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	)
10		)

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

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

**1. PARTY:** Landale MWC is an active California mutual benefit non-profit corporation, with an entity address of Post Office Box 5808, Lancaster, CA 93539. It was formed on June 25, 1948. Its membership is comprised of the owners of the 308 mostly 2½ acre lots that are situated within its hereafter-described service area. Landale MWC's 172 active services serve the properties within Landale 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 Landale 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 Landale 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 Landale 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]:**       Landale MWC's service area ("Property"),  
14 which is comprised of five hundred seventy four (574) acres including the production, storage  
15 and distribution facilities thereto appertaining, is located in the County of Los Angeles, and is  
16 described as follows: East Boundary: 10<sup>th</sup> St East; West Boundary: Valley Line Rd; North  
17 Boundary: Ave L; and South Boundary: Ave M ("Service Area").

18       **3.       CLAIMS TO GROUNDWATER PRODUCTION WITHIN THE**  
19 **ADJUDICATION AREA:** Landale 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: 236.9
- 24               b.       2001: 241.1
- 25               c.       2002: 249.1
- 26               d.       2003: 246.3
- 27               e.       2004: 272.1
- 28               f.       2011: 139.7

g. 2012 [January through November]: 175.8

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

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

**5. PURCHASES OF STATE WATER PROJECT WATER & RETURN FLOWS:** Starting in 1991, Landale MWC has purchased imported State Water Project ("SWP") water from the Antelope Valley – East Kern Water Agency's ("AVEK") for distribution to its member customers; which SWP purchases, in total, now exceed three hundred seventeen (317) acre feet ("AF"). Additionally, Landale MWC and its member customers have paid considerable monies for the infrastructure that is used to deliver the SWP water from AVEK to its Service Area.

Landale MWC filed an Amended Trial Brief for the Phase 5 Trial on the Issue of Return Flows from Imported Water [Court Website, Document No. 8627], which Landale MWC incorporates herein by reference.

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

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

1           **6. CLAIMS TO RETURN FLOWS FROM IMPORTED WATER:**

2           Landale MWC purchased "In-Lieu Water" from AVEK for use on the Property for the  
3 following calendar years, as follows:

- 4           a.     2000: 12  
5           b.     2001: 12  
6           c.     2002: 12  
7           d.     2003: 12  
8           e.     2004: 12  
9           f.     2011: 6.8  
10          g.     2012: 6

11          **7. USE:** The use(s) to which the groundwater produced from and In-Lieu water  
12 purchased for the Property for the calendar years listed above was for the provision of domestic  
13 water service to its mutual members, all of which are single family residential properties, except  
14 for one active concrete company within Landale MWC's Service Area. As such, the domestic  
15 purposes to which Landale MWC puts its water is the highest use under *Water Code* § 106.

16          **8. SUPPORTING INFORMATION AND DATA:**

- 17          a.     Responses to December 12, 2012 Discovery Order for Phase 4 Trial,  
18 submitted under penalty of perjury, and filed by posting on December 21, 2012  
19 [Court Website, Document Nos. 5573 and 5586]; and  
20          b.     First Supplemental Responses to December 12, 2012 Discovery Order for  
21 Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January  
22 30, 2013 [Court Website, Document Nos. 5900].

23          **9. OFFER OF PROOF:**       On September 16, 2015, Landale MWC posted its  
24 *Declaration of Landale Mutual Water Company In Support of Prove-Up Trial* [Court Website,  
25 Document No. 10469], which details its existence as a California corporate mutual water  
26 company; describes its Property [Service Area] boundaries; states the [above-stated] amount of  
27 groundwater that it produced from 2000 through 2004 and from 2011 through 2012 [the 2011  
28 and 2012 production having been established by the Court in the Phase 4 Trial] and how it was

1 determined; states the above-stated amount of imported SWP water that it purchased from  
2 AVEK, pursuant to agreement, from 2000 through 2004 and from 2011 through 2012; and  
3 describes the uses to which the produced and imported SWP water has been put.

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

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

12 Dated: September 22, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

14 By: 

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19 COMPLAINANT, A. V. UNITED MUTUAL  
20 GROUP [comprised of Antelope Park Mutual  
21 Water Co., Aqua-J Mutual Water Co., Averdale  
22 Mutual Water Co., Baxter Mutual Water Co.,  
23 Bleich Flat Mutual Water Co., Colorado Mutual  
24 Water Co., Eldorado Mutual Water Co.,  
25 Evergreen Mutual Water Co., Land Projects  
26 Mutual Water Co., Landale Mutual Water Co.,  
27 Shadow Acres Mutual Water Co., Sundale  
28 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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