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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
17 Mutual Water Co., Evergreen Mutual Water Co.,
18 Land Projects Mutual Water Co., Landale Mutual
19 Water Co., Shadow Acres Mutual Water Co.,
20 Sundale Mutual Water Co., Sunnyside Farms
21 Mutual Water Co., Tierra Bonita Mutual Water Co.,
22 Westside Park Mutual Water Co. and White Fence
23 Farms Mutual Water Co.]; and Cross-Defendants,
24 MIRACLE IMPROVEMENT CORPORATION
25 DBA GOLDEN SANDS MOBILE HOME PARK,
26 AKA GOLDEN SANDS TRAILER PARK,
27 NAMED AS ROE 1121; SAINT ANDREW'S
28 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,**
) **SHADOW ACRES MUTUAL WATER**
) **COMPANY, A MEMBER OF THE**
) **ANTELOPE VALLEY UNITED**
) **MUTUALS GROUP**

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

1. PARTY: Shadow Acres MWC is an active California mutual benefit non-profit corporation, with an entity address of Post Office Box 900669, Palmdale, CA 93590. It was formed on May 23, 1980. Its membership is comprised of the owners of the 182 mostly 2½ acre lots that are situated within its hereafter-described service area. Shadow Acres MWC's 156 active services serve the properties within Shadow Acres 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 Shadow Acres 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 Shadow Acres 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 Shadow Acres MWC is the owner of those certain rights, titles and interests in properties that
13 overlie the Antelope Valley Area of Adjudication as determined by the Court.

14 **2. PROPERTY [Service Area]:** Shadow Acres MWC's service area
15 ("Property"), which is comprised of four hundred eighty (480) 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 O; South Boundary, Ave O-12; East
18 Boundary: 20th St West; and West Boundary: 30th St West ("Service Area").

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

- 24 a. 2000: 98
- 25 b. 2001: 102
- 26 c. 2002: 106
- 27 d. 2003: 103
- 28 e. 2004: 111

1 f. 2011: 55.7

2 g. 2012 [January through November]: 49.5

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:** Shadow Acres MWC determined
9 the 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 1988, Shadow Acres MWC has purchased imported State Water
13 Project ("SWP") water from the Antelope Valley – East Kern Water Agency's ("AVEK") for
14 distribution to its member customers; which SWP purchases, in total, now exceed five thousand
15 two hundred seventy two (5,272) acre feet ("AF"). Additionally, Shadow Acres MWC and its
16 member customers have paid considerable monies for the infrastructure that is used to deliver the
17 SWP water from AVEK to its Service Area.

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

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

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

28

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

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

- 4 a. 2000: 234
5 b. 2001: 257
6 c. 2002: 260
7 d. 2003: 260
8 e. 2004: 307
9 f. 2011: 217.6
10 g. 2012: 199.1

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. As
14 such, the domestic purposes to which Shadow Acres MWC puts its water is the highest use under
15 *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 5587]; 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. 5901].

23 **9. OFFER OF PROOF:** On September 16, 2015, Shadow Acres MWC
24 posted its *Declaration of Shadow Acres Mutual Water Company In Support of Prove-Up Trial*
25 [Court Website, Document No. 10470], which details its existence as a California corporate
26 mutual water company; describes its Property [Service Area] boundaries; states the [above-
27 stated] amount of groundwater that it produced from 2000 through 2004 and from 2011 through
28 2012 [the 2011 and 2012 production having been established by the Court in the Phase 4 Trial]

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

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

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

12 Dated: September 22, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

13
14 By: 

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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
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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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DINA M. SNIDER