

1 Michael Duane Davis, SBN 093678
2 Marlene L. Allen-Hammarlund, SBN 126418
3 Derek R. Hoffman, SBN 285784
4 **GRESHAM SAVAGE NOLAN & TILDEN, PC**
5 3750 University Avenue, Suite 250
6 Riverside, CA 92501-3335
7 Telephone: (951) 684-2171
8 Facsimile: (951) 684-2150

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

1. PARTY: West Side Park MWC is an active California mutual benefit non-profit corporation, with an entity address of 40317 11th Street West, Palmdale, CA 93551. It was formed on November 27, 1950. Its membership is comprised of the owners of the 174 mostly 2½ acre lots that are situated within its hereafter-described service area. West Side Park MWC's 155 active services serve the properties within West Side Park 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 West Side Park 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 West Side Park MWC which owns the water rights, production, storage and
11 distribution facilities, and has the right to receive water upon development and demand, the West
12 Side Park 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]:** West Side Park MWC's service area
15 ("Property"), which is comprised of four hundred (400) acres including the production, storage
16 and distribution facilities thereto appertaining, is located in the County of Los Angeles, and is
17 described as follows: Bounded on the north by Avenue O, on the east by 10th Street West, on the
18 south by Avenue O-8, on the East by 15th Street West, on the south by Avenue O-12, and on the
19 West by 20th Street West ("Service Area").

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

- 25 a. 2000: 298.6
- 26 b. 2001: 240.6
- 27 c. 2002: 279
- 28 d. 2003: 291

- e. 2004: 310
- f. 2011: 294
- g. 2012 [January through November]: 267.5

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 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: West Side Park 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 1982, West Side Park MWC has purchased imported State Water Project ("SWP") water from the Palmdale Water District ("PWD") for distribution to its member customers; which SWP purchases, in total, now exceed nine hundred forty three (943) acre feet ("AF"). Additionally, West Side Park MWC and its member customers have paid considerable monies for the infrastructure that is used to deliver the SWP water from PWD to its Service Area.

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

Subsequent to the filing of the Amended Trial Brief for the Phase 5 Trial, PWD and the Antelope Valley – East Kern Water Agency ("AVEK") agreed that the ownership of and the right to claim return flows from the water purchased by West Side Park MWC from PWD belongs to West Side Park MWC, as reflected on Exhibit 8 to the [Proposed] Judgment and Physical Solution; however, the Amended Trial Brief has not been revised to reflect PWD's and AVEK's agreement.

West Side Park 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: West Side Park MWC purchased "In-Lieu Water" from AVEK for use on the Property for the following calendar years, as follows:

- a. 2000: 23.4
- b. 2001: 65.4
- c. 2002: 77
- d. 2003: 57.6
- e. 2004: 73.1
- 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 West Side Park 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 5591]; 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. 5903 through 5905].

9. OFFER OF PROOF: On September 16, 2015, West Side Park MWC posted its *Declaration of West Side Park in Support of Prove-Up Trial* [Court Website, Document No. 10474], 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 West Side Park MWC will offer the *Declaration of West Side Park Mutual Water*
7 *Company In Support of Prove-Up Trial* to establish the facts declared therein and ask the Court,
8 subject to proper objection(s) and cross-examination(s), to admit the facts therein declared into
9 evidence to establish West Side Park MWC's claims and rights under the [Proposed] Judgment
10 and Physical Solution.

11 Should the Court require West Side Park MWC to call its designated witness(es), it
12 requests that the Court give it time to arrange for the designated witness(es) to appear in Court
13 and submit 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
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Mutual Water Co., Baxter Mutual Water Co.,
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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.

