

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

1. PARTY: White Fence Farms MWC is an active California mutual benefit non-profit corporation, with an entity address of 41901 20th St. West, Palmdale, CA 93551. It was formed on June 17, 1948. Its membership is comprised of the owners of the 514 mostly 2½ acre lots that are situated within its hereafter-described service area. White Fence Farms MWC's 453 active services serve the properties within White Fence Farms 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 White Fence Farms 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 White Fence Farms MWC which owns the water rights, production, storage
11 and distribution facilities, and has the right to receive water upon development and demand, the
12 White Fence Farms MWC is the owner of those certain rights, titles and interests in properties
13 that overlie the Antelope Valley Area of Adjudication as determined by the Court.

14 **2. PROPERTY [Service Area]:** White Fence Farms MWC's service area
15 ("Property"), which is comprised of one thousand two hundred eighty (1,280) acres including the
16 production, storage and distribution facilities thereto appertaining, is located in the County of
17 Los Angeles, is comprised of two segments, and is: bounded on the north by Ave M, bounded on
18 the south by Ave N, bounded on the east by 20th St West, and bounded on the west by 30th St
19 West; and bounded on the north by Ave L, bounded on the south by Ave M, bounded on the east
20 by 10th St West, and bounded on the west by 20th St West ("Service Area").

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

- 26 a. 2000: 681.6 AF
- 27 b. 2001: 877.6 AF
- 28 c. 2002: 815.6 AF

- d. 2003: 850.8 AF
e. 2004: 927 AF
f. 2005: 1084 AF
g. 2006: 1037 AF
h. 2007: 994 AF
i. 2008: 1167 AF
j. 2009: 1183 AF
k. 2010: 927 AF
l. 2011: 782.8 AF
m. 2012 [January through November]: 783.3 AF

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: White Fence Farms MWC determined the amount of groundwater produced from the Property from well logs and meter records, pump tests and SCE electric power records.

5. PURCHASES OF STATE WATER PROJECT WATER & RETURN FLOWS: Starting in 1983, White Fence Farms 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 six thousand (6,000) acre feet ("AF"). Additionally, White Fence Farms 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.

White Fence Farms MWC has a formal agreement with AVEK regarding the purchase, delivery and storage of SWP water.

1 White Fence Farms MWC filed an Amended Trial Brief for the Phase 5 Trial on the Issue
2 of Return Flows from Imported Water [Court Website, Document Number 8627], which White
3 Fence Farms MWC incorporates herein by reference.

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

9 White Fence Farms MWC has and claims the right to its return flows from the imported
10 water that it purchased and will hereafter purchase from AVEK.

11 **6. CLAIMS TO RETURN FLOWS FROM IMPORTED WATER:** White
12 Fence Farms MWC purchased "In-Lieu Water" from AVEK for use on the Property for the
13 following calendar years, as follows:

- 14 a. 2000: 192 AF
- 15 b. 2001: 220 AF
- 16 c. 2002: 311 AF
- 17 d. 2003: 283 AF
- 18 e. 2004: 208 AF
- 19 f. 2005: 114 AF
- 20 g. 2006: 203 AF
- 21 h. 2007: 217 AF
- 22 i. 2008: 43 AF
- 23 j. 2009: 16 AF
- 24 k. 2010: 222 AF
- 25 l. 2011: 156.7 AF
- 26 m. 2012: 197.4 AF

27 **7. USE:** The use(s) to which the groundwater produced from and In-Lieu water
28 purchased for the Property for the calendar years listed above was for the provision of domestic

1 water service to its mutual members, all of which are single family residential properties, except
2 for twenty-six (26) commercial properties and four (4) churches. As such, the domestic purposes
3 to which White Fence Farms MWC puts its water is the highest use under *Water Code* § 106.

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

5 a. Responses to December 12, 2012 Discovery Order for Phase 4 Trial,
6 submitted under penalty of perjury, and filed by posting on December 21, 2012
7 [Court Website, Document Nos. 5573 and 5592];

8 b. First Supplemental Responses to December 12, 2012 Discovery Order for
9 Phase 4 Trial, submitted under penalty of perjury, and filed by posting on January
10 30, 2013 [Court Website, Document Nos. 5906 through 5918]; and

11 c. Second Supplemental Responses to December 12, 2012 Discovery Order
12 for Phase 4 Trial, submitted under penalty of perjury, and filed by posting on May
13 30, 2013 [Court Website, Document No. 6853].

14 **9. OFFER OF PROOF:** On September 16, 2015, White Fence Farms MWC
15 posted its *Declaration of White Fence Farms in Support of Prove-Up Trial* [Court Website,
16 Document No. 10475], which details its existence as a California corporate mutual water
17 company; describes its Property [Service Area] boundaries; states the [above-stated] amount of
18 groundwater that it produced from 2000 through 2012 [the 2011 and 2012 production having
19 been established by the Court in the Phase 4 Trial] and how it was determined; states the above-
20 stated amount of imported SWP water that it purchased from AVEK, pursuant to agreement,
21 from 2000 through 2012; and describes the uses to which the produced and imported SWP water
22 has been put.

23 White Fence Farms MWC will offer the *Declaration of White Fence Farms Mutual*
24 *Water Company In Support of Prove-Up Trial* to establish the facts declared therein and ask the
25 Court, subject to proper objection(s) and cross-examination(s), to admit the facts therein declared
26 into evidence to establish White Fence Farms MWC's claims and rights under the [Proposed]
27 Judgment and Physical Solution.

28

1 Should the Court require White Fence Farms MWC to call its designated witness(es), it
2 requests that the Court give it time to arrange for the designated witness(es) to appear in Court
3 and submit their testimony, to the extent required.

4 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

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.

9

11

13

14

15

16