

Michael Duane Davis, SBN 093678
Marlene L. Allen-Hammarlund, SBN 126418
Derek R. Hoffman, SBN 285784
GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation
3750 University Avenue, Suite 250
Riverside, CA 92501-3335
Telephone: (951) 684-2171
Facsimile: (951) 684-2150

Attorneys for Cross-Defendant/Cross-Complainant,
ANTELOPE VALLEY UNITED MUTUALS GROUP; and
Cross-Defendants, ADAMS BENNETT INVESTMENTS,
LLC; MIRACLE IMPROVEMENT CORPORATION dba
GOLDEN SANDS MOBILE HOME PARK, aka GOLDEN
SANDS TRAILER PARK, named as ROE 1121; ST.
ANDREW'S ABBEY, INC., named as ROE 623; SERVICE
ROCK PRODUCTS, L.P.; and SHEEP CREEK WATER
COMPANY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY GROUNDWATER
CASES**

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

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of
Kern, Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of
Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water
Dist.

Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination
Proceeding No. 4408;
Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

**SAINT ANDREW'S ABBEY, INC.'S,
TEJON RANCHCORP/TEJON RANCH
COMPANY'S AND U.S. BORAX INC.'S
OPPOSITION BRIEF IN RESPONSE
TO WILLIS CLASS' BRIEF
REGARDING EXPORT OF
GROUNDWATER PUMPED FROM
NATIVE SAFE YIELD BY CERTAIN
STIPULATING PARTIES**

For Court's Use Only:
Santa Clara County; Case No. 1-05-CV-049053
(For E-Posting/E-Service Purposes Only)

Date: October 13, 2015
Prove-Up Trial Date: September 28, 2015
Time: 10:00 a.m.
Dept.; LASC – Stanley Mosk

1 AND RELATED ACTIONS.
2

3 Robert G. Kuhs, SBN 160291
4 Bernard C. Barmann, Jr., SBN 149890

5 **KUHS & PARKER**

6 P.O. Box 2205
7 1200 Truxtun Avenue, Suite 200
8 Bakersfield, CA 93303
9 Telephone: (661) 322-4004
10 Facsimile: (661) 322-2906

11 Attorneys for Defendants
12 TEJON RANCHCORP, TEJON RANCH COMPANY and
13 GRANITE CONSTRUCTION COMPANY
14

15 William M. Sloan, SBN 203583
16 **MORRISON & FOERSTER LLP**
17 425 Market Street
18 San Francisco, CA 94501-2482
19 Telephone: 415.268.7000
20 Facsimile: 415.268.7522

21 Attorneys for U.S. BORAX INC.
22
23
24
25
26
27

1 Saint Andrew's Abbey, Inc. ("St. Andrew's"), Tejon Ranchcorp/Tejon Ranch
2 Company ("Tejon"), and U.S. Borax Inc. ("Borax") (collectively, "Responding Parties"),
3 hereby submit this *Opposition Brief in Response to Willis Class' Brief Regarding Export of*
4 *Groundwater Pumped From Native Safe Yield By Certain Stipulating Parties*, which was filed on
5 October 6, 2015, regarding Paragraph 6.4 of the Proposed Judgment and Physical Solution
6 ("Proposed Judgment").

7 I. INTRODUCTION

8 Having run out of straws to grasp, the Willis Class ("Willis") is now tilting at windmills,
9 and taking issue with Paragraph 6.4 of the Proposed Judgment and Physical Solution ("Paragraph
10 6.4"). Paragraph 6.4 permits four large landowners, including the United States, with contiguous
11 lands both inside and outside the Antelope Valley Area of Adjudication ("AVAA") to use
12 groundwater on their respective lands both inside and outside the AVAA but within the
13 watershed of the AVAA. Willis argues, without any evidence, that Paragraph 6.4 violates
14 California law by allowing exportation of groundwater and would eventually deplete the Basin
15 water supply, citing *Burr v. Maclay Rancho Water Co.* (1911) 160 Cal. 268, 273 ("*Burr II*") and
16 *Corona Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522, 525-526 ("*Lillibridge*"). (Willis
17 Brief, p. 2, lines 15-20.) Willis misreads both Paragraph 6.4 and the authorities cited.

18 First, Paragraph 6.4 by its express terms does not authorize the exportation of
19 groundwater. Second, none of St. Andrew's, Tejon's or Borax's water use occurs outside the
20 watershed of the Basin. Third, Paragraph 6.4 is consistent with California law. Fourth, the
21 historic practices of St. Andrew's, Tejon and Borax were accounted for in the safe yield analysis
22 contained in the Public Water Supplier's Summary Expert Report ("SER"). Finally, Willis has
23 not and cannot show—legally or factually—how this provision would harm either the Class or
24 the Basin.

II. ARGUMENT

A. Paragraph 6.4 Does Not Authorize Groundwater Exportation.

An overlying right is defined as an “owner’s right to take water from ground underneath for use on his land **within the basin or watershed.**” (*California Water Service Co. v. Edward Sidebotham & Sons* (1964) 224 Cal.App.2d 715, 725; emphasis added). Groundwater exportation means taking water from an underground basin and applying that water to lands located outside of the basin’s watershed. (*City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 15-16.) Paragraph 6.4 does not authorize groundwater exportation. The Proposed Judgment defines the “Basin” as the “area adjudicated in this Action as shown on Exhibit 2...which lies within the boundaries of the line labeled ‘Boundaries of the Adjudicated Area’ and described therein. Following the Phase 1 Trial, the Court defined the AVAA generally consistent with California Department of Water Resources Bulletin 118-2003 (“Bulletin 118”), to include land overlying water bearing alluvium but to exclude the watershed of the Basin. (Declaration of Michael Duane Davis in Support of Saint Andrew’s Abbey, Inc., Tejon Ranchcorp/Tejon Ranch Company’s And U.S. Borax Inc.’s Opposition Brief In Response To Willis Class’ Brief Regarding Export Of Groundwater Pumped From Native Safe Yield By Certain Stipulating Parties (“Davis Dec.”), ¶3; Davis Dec., Ex. A, 2:20-28; 3:1-4, 20-24; 4:7-9).

Willis’ brief incorrectly states that the AVAA boundary is “in many areas” coterminous with the watershed boundary. In fact, the opposite is true. As shown on Exhibit 9 to the Proposed Judgment, the vast majority of the watershed (shown in green) is located several miles beyond the AVAA boundary (shown in red).

Several parties, including St. Andrew’s, Tejon, U.S. Borax and the United States, own large tracts of land that straddle the AVAA boundary. All groundwater use by these parties from the aquifer that is subject to these proceedings occurs on their lands within the watershed of the Basin. Paragraph 6.4 of the Proposed Judgment is entitled “Injunction Against Transportation From Basin” and reads in relevant part:

1 “Except upon further order of the Court, each and every Party, its
2 officers, agents, employees, successors and assigns, is ENJOINED
3 AND RESTRAINED from transporting Groundwater hereafter
4 Produced from the Basin to areas outside the Basin except as
5 provided for by the following ... This injunction does not prevent
6 Saint Andrew’s Abbey, Inc., U.S. Borax and Tejon
7 Ranchcorp/Tejon Ranch Company from conducting business
8 operations on lands both inside and outside the Basin boundary,
9 and transporting Groundwater Produced consistent with this
10 Judgment for those operations and for use on those lands outside
11 the Basin and **within the watershed of the Basin** as shown in
12 Exhibit 9 ...” (Emphasis added.)
13

14 By its own terms, Paragraph 6.4 does not authorize exportation of groundwater; rather, it
15 merely permits specific uniquely situated parties with land straddling the Adjudication Area
16 boundary to use groundwater on their respective lands **within the watershed** of the Basin. By
17 definition, groundwater used within the watershed flows back to the Basin, and *ipso facto* causes
18 no harm to either Willis or the Basin.

19 **B. All of the St. Andrew’s Water Use Occurs within the Basin Watershed.**

20 A picture is worth a thousand words. Following the Phase 1 Trial, the Court entered a
21 *Revised Order after Hearing on Jurisdictional Boundaries*, which included a map depicting the
22 AVAA and including St. Andrew’s property (“Phase 1 Map”). (Davis Dec., ¶3, Ex. A.) During
23 the Phase 4 Trial, the Court admitted into evidence an exhibit marked and identified as
24 “4 StAndrews-1,” which included a map entitled “Saint Andrew’s Abbey Land Ownership”
25 dated March 2, 2012 (“St. Andrew’s Map”) and prepared by St. Andrew’s designated expert
26 witness, Robert A. Krieger, a California Licensed Professional Engineer, of Krieger & Stewart,
27 Inc. (Davis Dec., ¶4, Ex. B; Declaration of Robert A. Krieger in Support of Saint Andrew’s
28 Abbey, Inc., Tejon Ranchcorp/Tejon Ranch Company’s and U.S. Borax Inc.’s Opposition Brief
In Response to Willis Class’ Brief Regarding Export of Groundwater Pumped from Native Safe
Yield by Certain Stipulating Parties (“Krieger Dec.”), ¶3.) St. Andrew’s Map shows, in thick
green lines on the map, St. Andrew’s parcels according to Los Angeles County Assessor
numbers, which were depicted in alignment with United States Geological Survey topographic

1 data. St. Andrew's Map superimposes the AVAA boundary determined by the Court in the
2 Phase 1 Trail, as depicted by the thick blue lines. (Krieger Dec., ¶3.)

3 As reflected in St. Andrew's Map, the vast majority of St. Andrew's property is located
4 within the AVAA. The AVAA boundary is inclusive of the alluvial soils and topographical
5 conditions; as such, and meanders in, around and through St. Andrew's contiguous
6 approximately 1,878-acre property located high on the north slope of the San Gabriel Mountains,
7 near Valyermo, California. In general, the lower elevation alluvial areas of St. Andrew's
8 property fall within the AVAA boundary, whereas the higher elevation areas that do not contain
9 alluvial materials, are not included within the AVAA boundary. (Krieger Dec., ¶4.)

10 Nevertheless, all of St. Andrew's property is situated within the watershed of the Basin,
11 which is depicted by the dark green line labeled "Boundary of the Antelope Valley Watershed
12 Contributory to the Antelope Valley Groundwater Basin" in Exhibit 9 to the Proposed Judgment.
13 (Krieger Dec., ¶5; Davis Dec., ¶5, Ex. C.) Water utilized on the higher elevations of St.
14 Andrew's property, which is not fully consumed and does not evaporate, runs down gradient to
15 the portions of St. Andrew's property lying within the AVAA. As such, **all** of the water
16 produced by St. Andrew's and used on its property remains within the watershed of the Basin.
17 (Krieger Dec., ¶6.) St. Andrew's does not export groundwater as a matter of fact or a matter of
18 law.

19 **C. Tejon Has Used Groundwater Within the Watershed Since at Least 1966.**

20 Tejon established in Phases 3, 4 and 5 that it owns about 33,530 acres of land within the
21 AVAA. Tejon owns Rancho La Liebre, a 48,400 acre Rancho first acquired in 1846 by Mexican
22 land grant and confirmed by United States District Court Judgment and Federal Patent. The
23 Phase 5 evidence also established that the AVAA boundary bisects the Rancho, leaving
24 approximately 28,858 acres of Rancho La Liebre inside the AVAA and 19,542 acres outside the
25 AVAA, but within the watershed of the Basin.

26 Since at least 1966 Tejon has leased a portion of Rancho La Liebre to National Cement
27 Company, Inc., or its predecessor in interest, for the mining and processing of portland cement.

1 The leased premises are outside the AVAA but within the watershed. During the Phase 4 Trial
2 Tejon established that National Cement pumps an average of 386 acre Feet per year (“afy,”
3 2000-2012) from Tejon’s well inside the AVAA and transports the water to National Cement’s
4 processing plant on the Rancho and within the watershed of the AVAA. Tejon does not export
5 groundwater as a matter of fact or a matter of law.

6 **D. All of U.S. Borax’s Water Use Occurs Within the Basin Watershed.**

7 As established in Phase 1 and Phase 4 of the adjudication proceedings, U.S. Borax owns
8 lands in the northeastern portion of the AVAA that overlap the adjudication boundary. *See, e.g.,*
9 Amended Supplemental Declaration of Bruce N. Nelson, P.E. (Exhibit A) (Doc. # 341) admitted
10 at Phase 1 Trial, and Trial Exhibits 4-U.S. Borax-1 through 3 admitted at Phase 4 Trial.
11 Paragraph 6.4 of the Proposed Judgment and Physical Solution simply accommodates the
12 circumstance created by the delineation of the boundary directly through Borax’s facilities. To
13 avoid any uncertainty, the language in the Proposed Judgment and Physical Solution sets forth
14 that the use of water at the facility that may happen to lie on the other side of the adjudication
15 boundary is not prohibited.¹

16 **E. Paragraph 6.4 is Consistent with California Law.**

17 The right of an overlying owner to use groundwater on his land within the watershed of
18 the Basin is well settled in California Law. “An overlying right, ‘analogous to that of the
19 riparian owner in a surface stream, is the owner’s right to take water from the ground underneath
20 for use on his land **within the basin or watershed.** . . .” (*City of Barstow v. Mojave Water*
21 *Agency* (2000) 23 Cal.4th 1224, 1240-41 [quoting *California Water Service Co. v. Edward*
22 *Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715, 725]; see also *City of Pasadena v. City of*
23 *Alhambra* (1949) 33 Cal.2d 908, 925.) The reason is self-evident. By definition, any water used
24

25 ¹ It is also worth noting that, by law, U.S. Borax is a zero discharge facility, meaning that regardless of where
26 water is used, Borax is prohibited from letting water return to the aquifer. (*See, e.g.,* California Regional Water
27 Quality Control Board, Lahontan Region, Waste Discharge Requirements, Order No. R6V-2015-PROP, WDID
28 No. 6B152004001.) Put differently, Borax puts its water to 100% consumptive use. Nonetheless, Borax has
still agreed to be bound to keep its use within the watershed boundary through the Proposed Judgment and
Physical Solution.

1 outside the AVAA, but within the watershed, ultimately flows back to the Basin.
2 Misunderstanding this line of authority, Willis cites two cases for the proposition that California
3 law prohibits the use of groundwater within the watershed, but outside the basin. (Willis Brief,
4 p. 2, lines 15-20.) Neither case stands for the propositions cited.

5 In *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428 ("*Burr I*"), a landowner sued to
6 enjoin the water company, an appropriator, from producing water from the basin for sale and use
7 on remote lands. (*Id.* at p. 430.) There existed a subterranean dyke impervious to water. (*Id.* at
8 p. 431.) Defendant pumped on land north of the dyke near plaintiff's land and delivered the
9 water for use on lands several miles south of the dyke and outside the basin, causing the water
10 levels in plaintiff's wells to drop 27-30 feet. (*Id.* at p. 432.) The trial court granted the plaintiff
11 and the water company each a fixed right to pump six days per month at a defined rate without
12 regard to the annual basin yield. (*Ibid.*) The plaintiff appealed contending that giving the
13 appropriator a fixed right could lead to the eventual depletion of the basin. The Court agreed and
14 modified the judgment to provide that (1) defendant water company could not pump in excess of
15 the annual yield, and (2) defendant's pumping could not reduce the water level in plaintiff's
16 wells. (*Id.* at p. 438-439.)

17 In *Burr II*, the water company and some of its customers appealed the judgment in *Burr I*,
18 as modified, contending that the evidence was not sufficient to support a finding that plaintiff
19 and the water company were pumping from a common water supply. (*Id.* at pp. 271-275.) The
20 Court disagreed, holding that the findings were supported by the evidence. (*Id.* at p. 279.) The
21 Court modified the judgment to make clear that the judgment did not bar the water company
22 from pumping water on its land within the basin for use on such land, and otherwise affirmed.
23 (*Id.* at p. 282) Water use within the watershed of the basin was not before the court in *Burr I* or
24 *Burr II*.

25 Willis' reliance on *Lillibridge* is also misplaced. In *Lillibridge*, the plaintiffs, overlying
26 owners in the Corona Basin, brought an action to enjoin defendants from exporting water out of
27 the basin. (*Id.* at p. 523.) Defendants pumped water from their lands within the basin into an

1 open ditch, then into the Santa Ana River and sold such water to users in Orange County, more
2 than ten miles away. (*Ibid.*) Defendants admitted that they were exporting water, but claimed
3 that they were pumping from a different basin than the plaintiffs. (*Id.* at p. 524.) The trial court
4 rejected defendants' arguments, finding that both plaintiffs and defendants were pumping from a
5 single basin, that both parties had correlative rights, but that the plaintiffs' rights were paramount
6 to the right of defendants to export and sell the water out of the basin, an appropriative use. (*Id.*
7 at p. 525.) The defendants appealed, arguing that the plaintiffs had not met their burden of
8 showing a single basin, and the Court affirmed. Defendants' use of water within the watershed
9 of the Corona Basin was not an issue before the Court, and the holding has no application to the
10 issues raised by Willis.

11 Paragraph 6.4 is consistent with these principles, expressly limits groundwater use to
12 within the watershed, and enjoins exportation. Indeed, Paragraph 6.4 actually limits, rather than
13 expands, the rights of landowners within the AVAA to use groundwater outside the AVAA and
14 thus is entirely consistent with California law.

15 **F. Paragraph 6.4 Does Not Harm The Basin or the Class.**

16 California law allows a court to exercise its equitable powers to impose a physical
17 solution designed to alleviate overdraft and the consequential depletion of a water supply. (*City*
18 *of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287–288, *as modified on denial of reh'g*
19 (Dec. 21, 2012).) Paragraph 6.4 is a reasonable provision acknowledging a very limited number
20 of specific parties' unique property locations *vis-a-vis* the AVAA boundary and allowing those
21 parties to continue their operations consistent with the terms of the Proposed Judgment.
22 Paragraph 6.4 does not harm either Willis or the Basin. Notably, even Willis' own previously
23 designated expert witness, Brian E. Gray, a law professor, does not find any fault with Paragraph
24 6.4. Willis specifically assigned Mr. Gray to identify perceived legal issues with the Proposed
25 Judgment, but he makes no mention of this provision in his expert witness report. Nevertheless,
26 Mr. Gray's expert witness report and testimony comprise an inadmissible legal opinion. (See
27

1 *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155 [holding that an expert opinion on
2 matters of law is not admissible and invades the province of the Court].)

3 **III. CONCLUSION**

4 Paragraph 6.4 of the Proposed Judgment simply allows specific, uniquely situated parties
5 with land straddling the Basin boundary to continue to pump groundwater from the Basin for use
6 on their land within the watershed. It does not authorize exportation, it is consistent with
7 California law and evidence from prior trial phases, and it will not harm Willis or the Basin. The
8 Court should overrule Willis' objection to Paragraph 6.4 of the Proposed Judgment.

9
10 Dated: October 13, 2015

GRESHAM SAVAGE NOLAN & TILDEN, PC

11
12 
13 MICHAEL DUANE DAVIS, ESQ.
MARLENE L. ALLEN-HAMMARLUND, ESQ.
DEREK R. HOFFMAN, ESQ.

14 Attorneys for CROSS-DEFENDANT / CROSS-COMPLAINANT,
ANTELOPE VALLEY UNITED MUTUALS GROUP; and CROSS-
15 DEFENDANTS, ADAMS BENNETT INVESTMENTS, LLC,
MIRACLE IMPROVEMENT CORPORATION dba GOLDEN SANDS
16 MOBILE HOME PARK, aka GOLDEN SANDS TRAILER PARK [ROE
17 1121], ST. ANDREW'S ABBEY, INC. [ROE 623], SERVICE ROCK
PRODUCTS, L.P., and SHEEP CREEK WATER COMPANY, INC.

18 Dated: October 13, 2015

KUHS & PARKER

19
20 _____/S/_____
21 ROBERT G. KUHS, ESQ.
BERNARD C. BARMANN, JR., ESQ.

22 Attorneys for TEJON RANCHCORP,
TEJON RANCH COMPANY and
23 GRANITE CONSTRUCTION COMPANY

24 Dated: October 13, 2015

MORRISON & FOERSTER

25
26 _____/S/_____
27 WILLIAM M. SLOAN, ESQ.
Attorneys for U.S. BORAX INC.

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated
Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

On October 13, 2015, I served the foregoing document(s) described **SAINT ANDREW'S ABBEY, INC., TEJON RANCHCORP/TEJON RANCH COMPANY'S AND U.S. BORAX INC.'S OPPOSITION BRIEF IN RESPONSE TO WILLIS CLASS' BRIEF REGARDING EXPORT OF GROUNDWATER PUMPED FROM NATIVE SAFE YIELD BY CERTAIN STIPULATING PARTIES** on the interested parties in this action in the following manner:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DINA SNIDER