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13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES

16  
17 **ANTELOPE VALLEY  
GROUNDWATER CASES**

18 Included Actions:  
19 Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
20 Court of California, County of Los  
Angeles, Case No. BC 325201;

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

24 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
25 Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
26 California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to The Honorable Jack Komar

**DECLARATION OF KEITH LATHAM  
FOR NRG SOLAR ALPINE, LLC, IN LIEU  
OF DEPOSITION TESTIMONY FOR  
PHASE 4 TRIAL**

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1  
2 **DECLARATION**

3 I, Keith Latham, declare:

4 1. I am Vice President, Development, for NRG Solar LLC, which is the controlling member  
5 of NRG Solar Alpine LLC (“NRG”), a party to this action. In lieu of deposition testimony for the  
6 Phase 4 trial, I am providing this declaration. This declaration applies only to the categories I  
7 have filled in. The items left blank or crossed out do not apply to me. I have personal knowledge  
8 of each fact herein and would testify competently thereto under oath.

9 **Property Ownership and Parcel Size**

10 2. NRG owns property that overlies the Antelope Valley Area of Adjudication as decided by  
11 this Court. The land is in Los Angeles County and is identified by the following APN/APNs:  
12 3256-015-02; 3256-015-05; 3256-015-06; 3256-015-07; 3256-015-08; 3256-015-09; 3256-015-  
13 10; 3256-015-11; 3256-015-13; 3256-015-14; 3256-015-15; 3256-015-16; 3256-015-17; 3256-  
14 016-17; 3256-016-20; 3256-016-29; 3256-016-33; 3256-016-37; 3256-016-40; and 3256-017-  
15 030.

16 3. NRG claims groundwater rights only as to the properties listed in Paragraph 2.

17 4. For each APN/APNs identified above, the total acreage by parcel is as follows: see  
18 Exhibit B.

19 5. For each APN/APNs identified above, NRG owned the property during the following time  
20 period: NRG purchased the following parcels in approximately June of 2010: 3256-015-02;  
21 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-  
22 14; 3256-015-15; 3256-015-16; and 3256-015-17. NRG purchased APN 3256-016-17 on January  
23 7, 2011; APN 3256-016-20 on July 13, 2011; APN 3256-016-29 on December 28, 2010; APN  
24 3256-016-33 on December 28, 2010; APN 3256-016-37 on December 28, 2010; APN 3256-016-  
25 40 on July 26, 2011; and APN 3256-017-30 on December 28, 2010.

26 6. The following are all individuals/entities appearing on the title for the above  
27 identified APN/APNS from Jan 1, 2000 to the present:

28 APNs 3256-015-02; 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-

1 015-13; 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17, Alta Vista Sun Tower, LLC;  
2 APN 3256-016-17, Johann G. Berft;  
3 APN 3256-016-20, Florita B. Ruskin, Jane Sonet and Marsha Sonet;  
4 APN 3256-016-29, Yen-Ming and Miao-Jen L. Hwang;  
5 APN 3256-017-30, Tammy Thao T. Tran and Dam Phi Pham;  
6 APN 3256-016-33, Robert Thomas and Irene Blanche La Briola;  
7 APN 3256-016-37, Shu Chun Chen;  
8 APN 3256-016-40, Los Angeles County.

9 These are the entities/individuals from whom NRG purchased these APNs. NRG has not  
10 confirmed the names of any other individuals/entities that appeared on title for these APNs since  
11 2000.

12 7. For each individual/entity identified in paragraph 6 that individual/entity appeared  
13 on the title during the following time: it is NRG's understanding that Alta Vista Sun Tower, LLC  
14 purchased the parcels it sold to NRG in 2010 on the following dates: 3256-015-02 (January 1,  
15 2009); 3256-015-05 (May 20, 2008); 3256-015-06 (July 11, 2008); 3256-015-08 (July 10, 2008);  
16 3256-015-10 (May 06, 2008); 3256-015-11 (May 6, 2008); 3256-015-13 (July 11, 2008); 3256-  
17 015-14; (October 13, 2008); 3256-015-15 (June 23, 2008); 3256-015-16 (February 22, 2008); and  
18 3256-015-17 (June 10, 2008). NRG has no additional information on previous owners of these  
19 parcels. NRG has no information on the period during which the sellers of the other parcels  
20 currently owned by NRG owned those parcels or on the identity of any previous owners of those  
21 parcels.

22 **Leases -- THIS SECTION IS NOT APPLICABLE TO NRG.**

23 8. \_\_\_\_\_ (declarant or party affiliated with declarant) leases property that  
24 \_\_\_\_\_ own and that overlies the Antelope Valley Area of Adjudication as  
25 decided by this court and identified by the following APNS:  
26 \_\_\_\_\_.

27 9. The total acreage by parcel is: \_\_\_\_\_.

1 10. The property is currently leased to: \_\_\_\_\_.

2 11. The property was leased on the following dates: \_\_\_\_\_.

3 12. The lease provides that \_\_\_\_\_ may claim groundwater rights from the use of  
4 water on the leased property. Attached to this declaration is a true and correct copy of the lease.  
5 [If additional room is needed, please list APN/APNs, acreage by APN, Lessee by APN and dates  
6 for each Lessee by APN for each parcel in Exhibit C.] A true and correct copy of Exhibit C is  
7 attached hereto and incorporated herein.

8 13. \_\_\_\_\_ leases property from \_\_\_\_\_ which overlies the  
9 Antelope Valley Area of Adjudication as decided by this court and is identified by the following  
10 APNS: \_\_\_\_\_.

11 14. The total acreage by parcel is: \_\_\_\_\_.

12 15. The Lease provides that \_\_\_\_\_ may claim groundwater rights from use of  
13 water on leased property. Attached to this declaration is a true and correct copy of the lease.  
14 [If additional room is needed, please attach APN/APNs, Name of the Lessor and acreage by APN  
15 for each parcel list in Exhibit D to this declaration.] A true and correct copy of Exhibit D is  
16 attached hereto and incorporated herein.

17 16. \_\_\_\_\_ claims groundwater rights only as to the leasehold interests listed  
18 in Paragraph 15 and Exhibit D.

19 17. \_\_\_\_\_ claims groundwater rights only as to the properties listed in  
20 Paragraph 2 and Exhibit A and as to the leasehold interests listed in Paragraph 8 and Exhibit C.

21 18. To the best of my knowledge, only \_\_\_\_\_ claims groundwater rights as to the  
22 leased parcel(s) identified in paragraph 15 and Exhibit D.

23 **Water Meter Records**

24 19. NRG measures the groundwater production on the above referenced properties by a water  
25 meter that measures pumping from a groundwater well installed on APN 3256-015-16.  
26 Exhibit E contains a chart identifying the amounts of water pumped monthly as measured by  
27 water meter for the following years: 2011-2012. A true and correct copy of Exhibit E is attached  
28

1 hereto and incorporated herein.

2 20. Exhibit E also sets forth the total yearly production amounts by the metered water well on  
3 APN 3256-015-16 for the years 2011 and 2012.

4 **State Water Project Purchases -- THIS SECTION IS NOT APPLICABLE TO NRG.**

5 21. \_\_\_\_\_ purchases State Water Project water from a State Water Contractor  
6 for use by \_\_\_\_\_ on the properties referenced above. Exhibit G contains true  
7 and correct copies of the invoices for delivery of State Water Project Water to the properties  
8 referenced above.

9 22. Exhibit H sets forth the total yearly State Water Project water deliveries to the properties  
10 referenced above for the years 2000-2004, 2011, and 2012. A true and correct copy of Exhibit H  
11 is attached hereto and incorporated herein.

12 **Pump Tests/ Electric Records -- THIS SECTION IS NOT APPLICABLE TO NRG.**

13 23. In order to calculate groundwater pumped and used on the properties referenced above,  
14 \_\_\_\_\_ relied on pump tests and electric records. Exhibit I contains true and correct  
15 copies of the pump test records and electrical records for wells on the properties referenced  
16 above. The electric records attached to this declaration as Exhibit I do not include electric use on  
17 the properties referenced above for anything other than pumping groundwater.

18 24. Exhibit J sets forth the amount of total yearly groundwater that \_\_\_\_\_  
19 estimates was pumped and used on the properties referenced above for the years 2000-2004,  
20 2011, and 2012 based on the attached pump test records and electrical records for the wells on the  
21 properties referenced above. A true and correct copy of Exhibit J is attached hereto and  
22 incorporated herein.

23 25. Pump tests were performed on the following dates: \_\_\_\_\_.

24 26. \_\_\_\_\_ is not producing pump test records for the following dates \_\_\_\_\_  
25 because: \_\_\_\_\_.

26 27. I am not aware of any other pump tests having been performed on the properties  
27 referenced above.

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1                   **Pump Tests/Diesel Records** -- THIS SECTION IS NOT APPLICABLE TO NRG.

2           28.     In order to calculate groundwater pumped and used on the properties referenced above,  
3           \_\_\_\_\_ relied on pump tests and diesel fuel records. Exhibit K contains  
4           true and correct copies of the records pertaining to pump tests and diesel fuel purchases for the  
5           properties referenced above. The diesel fuel records attached to this declaration as Exhibit K do  
6           not include diesel fuel used on the properties referenced above for anything other than pumping  
7           groundwater.

8           29.     Exhibit L sets forth the amounts of total yearly groundwater pumped and used on the  
9           properties referenced above for the years 2000-2004, 2011, and 2012. A true and correct copy of  
10          Exhibit L is attached hereto and incorporated herein.

11          30.     Pump tests were performed on the following dates: \_\_\_\_\_.

12          31.     \_\_\_\_\_ is not producing pump test records for the following  
13          dates \_\_\_\_\_ because: \_\_\_\_\_.

14          32.     I am not aware of any other pump tests having been performed on the properties  
15          referenced above.

16                   **Crop Duties and Irrigated Acres** -- THIS SECTION IS NOT APPLICABLE TO NRG.

17          33.     In order to calculate water use on the properties referenced above, \_\_\_\_\_  
18          relies on the amount of acres in irrigation on the properties referenced above multiplied by the  
19          crop duty identified in the Summary Expert Report, Appendix D-3: Table 4, a true and correct  
20          copy of which is attached to this declaration as Exhibit M.

21          34.     The total amount of irrigated acres and type of crops on the properties referenced above  
22          by APN for the years 2000-2004, 2011 and 2012 are described in Exhibit N. A true and correct  
23          copy of Exhibit N is attached hereto and incorporated herein.

24                   **Other Sources of Water** -- THIS SECTION IS NOT APPLICABLE TO NRG.

25          35.     On the properties referenced above, \_\_\_\_\_ received water from sources  
26          other than groundwater pumped within the Basin or State Water Project Water. Exhibit O sets  
27          forth the source of the water and the amounts received for the years 2000-2004, 2011, and 2012.  
28

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**Use of Water**

*(Complete for each APN. If water for used for multiple purposes, identify the amount of water for each use.)*

**THIS SECTION IS NOT APPLICABLE TO NRG EXCEPT FOR THE YEARS 2011-2012.**

36. NRG used \_\_\_\_\_ acre feet of water on APN# \_\_\_\_\_ in 2000. The water was used for the following: \_\_\_\_\_.

[State the crop type and number of acres of that crop. If not used for irrigation, describe the use. In lieu of answering this question, a crop map may be attached that shows the date, crop type, irrigated acreage and parcels.]

37. \_\_\_\_\_ used \_\_\_\_\_ acre feet of water on APN# \_\_\_\_\_ in 2001. The water was used for the following: \_\_\_\_\_.

[State the crop type and number of acres of that crop. If not used for irrigation, describe the use. In lieu of answering this question, a crop map may be attached that shows the date, crop type, irrigated acreage and parcels.]

38. \_\_\_\_\_ used \_\_\_\_\_ acre feet of water on APN# \_\_\_\_\_ in 2002. The water was used for the following: \_\_\_\_\_.

39. \_\_\_\_\_ used \_\_\_\_\_ acre feet of water on APN# \_\_\_\_\_ in 2003. The water was used for the following: \_\_\_\_\_.

[State the crop type and number of acres of that crop. If not used for irrigation, describe the use. In lieu of answering this question, a crop map may be attached that shows the date, crop type, irrigated acreage and parcels.]

40. \_\_\_\_\_ used \_\_\_\_\_ acre feet of water on APN# \_\_\_\_\_ in 2004. The water was used for the following: \_\_\_\_\_.

[State the crop type and number of acres of that crop. If not used for irrigation, describe the use. In lieu of answering this question, a crop map may be attached that shows the date, crop type, irrigated acreage and parcels.]

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41. NRG used approximately 1.5 acre feet of water on contiguous APNs 3256-015-02; 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17 in 2011. The water was used for the following: dust control, soil stabilization and conditioning, and other construction purposes during the construction of a solar power facility.

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42. NRG used approximately 126 acre feet of water on contiguous APNs 3256-015-02; 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17 in 2012. The water was used for the following: dust control, soil stabilization and conditioning, and other construction purposes during the construction of a solar power facility.

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43. Other than what is declared hereinabove, NRG did not produce or use water within the Antelope Valley Area of Adjudication for 2000-2004, 2011, and 2012. Once construction of the solar power facility is completed in the spring of 2013, NRG estimates that two (2) AFY of groundwater will be used for the project for domestic purposes, the irrigation of approximately 10 acres of screening landscaping required to be planted around the Site, and the cleaning of solar modules and other operational uses. An additional 22 AFY of groundwater will be needed for the first three to five years of the project's life to establish the required screening landscape.

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20  
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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Executed this 28<sup>th</sup> day of January 2013, at Carlsbad, California.





## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On **January 31, 2013**, I served the within documents:

### DECLARATION OF KEITH LATHAM FOR NRG SOLAR ALPINE, LLC, IN LIEU OF DEPOSITION TESTIMONY FOR PHASE 4 TRIAL

- by transmitting via facsimile a copy of said document(s) listed above to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- by electronic mail: by posting the document listed above to the Santa Clara Superior Court website: [www.scefilng.org](http://www.scefilng.org) regarding the ANTELOPE VALLEY GROUNDWATER matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **January 31, 2013**, at San Diego, California.

  
Saraí DeJesus