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10 Attorneys for Cross-Defendant AV Solar  
11 Ranch 1, LLC

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

11 ANTELOPE VALLEY  
12 GROUNDWATER CASES

13 INCLUDED ACTIONS:

14 LOS ANGELES COUNTY  
15 WATERWORKS DISTRICT NO. 40 v.  
16 DIAMOND FARMING COMPANY, et  
17 al., Los Angeles Superior Court Case No.  
18 BC325201;

19 LOS ANGELES COUNTY  
20 WATERWORKS DISTRICT NO. 40 v.  
21 DIAMOND FARMING COMPANY, et  
22 al., Kern County Superior Court Case  
23 No. S-1500-CV-254-348;

24 DIAMOND FARMING COMPANY,  
25 and W.M. BOLTHOUSE FARMS, INC.,  
26 v. CITY OF LANCASTER, et al.,  
27 Riverside Superior Court Case No. RIC  
28 344436 [c/w case no. RIC 344668 and  
355840]

Judicial Council Coordination No. 4408

**RESPONSE TO DECEMBER 12, 2012**  
**DISCOVERY ORDER FOR PHASE 4 TRIAL**

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

Trial Date: February 11, 2013  
Time: 9:00 a.m.

1 Cross-Defendant AV Solar Ranch 1, LLC ("AV Solar"<sup>1</sup>) responds to the Court's  
2 December 12, 2012 Discovery Order for Phase 4 Trial ("Discovery Order") as follows.

3 **I. Reservation of Rights**

4 AV Solar objects to the Discovery Order's abbreviated discovery period. Until the  
5 December 11, 2012, case management conference before the Court, there was no determination  
6 as to the scope of the Phase 4 trial. Prior to the December 11th case management conference,  
7 parties submitted various proposals regarding the scope of the Phase 4 trial, some of which  
8 proposed a trial on discrete issues such as return flows or prescription and would not have  
9 included a "prove-up" of parties' water rights claims. While AV Solar hereby responds in  
10 accordance with its utmost ability based on its prior review of its water rights claim and the basis  
11 for that claim, AV Solar reserves the right to supplement this response as additional information  
12 becomes available.

13 **II. Response to Section I.1 of the Discovery Order**

14 **A.** AV Solar owns, occupies, or otherwise controls approximately 2,100 acres of  
15 property in Los Angeles County identified by the following Assessor Identification Numbers:  
16 3236001024, 3236001025, 3236001026, 3236001027, 3236001028, 3236001029,  
17 3236001030, 3236001031, 3236001032, 3236001033, 3236001034, 3236001035, 3236001036,  
18 3236001037, 3236001038, 3236001039, 3257010033, 3257010034, 3257010035, 3257010036,  
19 3257010037, 3257010038, 3257010039, 3257010040, 3257010041, 3257010042, 3257018006,  
20 3257018007, 3257018008, 3257018009, 3257018010, 3257018011, 3257018012, 3257018013  
21 (the "AV Solar Property").

22 **B.** AV Solar is the record title owner for all of the AV Solar Property. AV Solar is  
23 inquiring into the previous owners of the property, formerly known as the Larsen Ranch, and the  
24 dates of any acquisitions since 2000.

25 **C.** Two groundwater wells existed on the AV Solar Property from 2000-04 and  
26 2011-012. One well supplied an on-site farm residence. A second well was used for irrigation.

27 \_\_\_\_\_  
28 <sup>1</sup> AV Solar Ranch 1, LLC is the current owner of the property, having purchased the  
property from High Desert Investments, LLC.

1           **D.**     Two groundwater wells were operated on the AV Solar Property from 2000-04  
2 and 2011-12.

3           **E.**     AV Solar estimates, based on information currently and reasonably available to it,  
4 that the amount of water pumped from the well(s) described above in Section II.C-D is:

<b>Year</b>	<b>AFY</b>
2000	392
2001	392
2002	392
2003	392
2004	392
2011	129
2012	147

13          **F.**     The water described above in Section II.E was utilized for agricultural irrigation.

14          **G.**     AV Solar does not produce groundwater off-site.

15          **H.**     In 2011 and 2012, the AV Solar Property is being used for the construction and  
16 operation of an approximately 230-megawatt solar photovoltaic electrical power generation  
17 facility.

18          **I.**     The AV Solar Property is not currently utilized for agricultural uses. From the late  
19 1960s to the early 1990s, approximately 100 acres of the AV Solar Property was utilized for  
20 alfalfa growing and utilized approximately 776 afy (utilizing a multiplier of 7.76 acre feet of  
21 water per acre of land farmed. As recently as 2004, 80 acres of the AV Solar Property was  
22 utilized to grow onions, utilizing approximately 392 afy (utilizing a multiplier of 4.89 acre feet  
23 of water per acre of land farmed).

24          **J.**     In addition to rights associated with past and current pumping, AV Solar reserves  
25 the right to assert its "unexercised overlying rights" associated with prospective overlying uses  
26 that are reasonable and beneficial. As noted in *City of Los Angeles v. City of San Fernando*  
27 (1975) 14 Cal.3d 199, 293, fn. 100, "prescriptive rights would not necessarily impair the private  
28 defendants' rights to ground water for new overlying uses for which the need had not yet come

1 into existence during the prescriptive period.” (See also *City of Barstow v. Mojave Water Agency*  
2 (2000) 23 Cal.4th 1224, 1247-49; 1-11 California Water Law and Policy § 11.12 [Bender 2011].)

3 **K.** AV Solar claims 392 afy as the reasonable and beneficial use for its property as  
4 well as any amount required pursuant to Section II.J above.

5 **III. Response to Section I.2 of the Discovery Order**

6 **A.** AV Solar does not lease the AV Solar Property.

7 **IV. Response to Section I.3 of the Discovery Order**

8 **A.** An environmental impact report (“EIR”) prepared and certified by the County of  
9 Los Angeles for the AV Solar Property’s proposed solar facility project under the California  
10 Environmental Quality Act (Cal. Pub. Resources Code, § 21000 et seq.) included an analysis of  
11 the AV Solar Property’s historical water use, including amounts pumped based on the  
12 agricultural crops and acreage. The EIR included technical reports prepared by URS of Santa  
13 Ana, CA (November 2009) as well as a technical memorandum prepared by Joseph C.  
14 Scalmanini (June 2010).

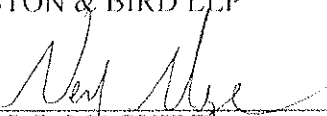
15 **V. Response to Section V of the Discovery Order**

16 Dan Wusinich is the AV Solar representative most qualified to testify to the above facts.  
17

18 Dated: December 21, 2012

ALSTON & BIRD LLP

19  
20 By:

  
NEAL P. MAGUIRE

Attorneys for Cross-Defendant AV Solar Ranch 1,  
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**VERIFICATION**


I, Ronald Zack, declare as follows:

I am the Assistant Secretary of Cross-Defendant AV Solar Ranch 1, LLC and am authorized to make this Verification on its behalf. I have read the foregoing **RESPONSE TO DECEMBER 12, 2012 DISCOVERY ORDER FOR PHASE 4 TRIAL** ("Discovery Response") and know the contents thereof. I certify that the responses contained in the Discovery Response are true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

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

Executed this 20<sup>th</sup> day of December, 2012 at Philadelphia, Pennsylvania.

By:



Ronald Zack  
Assistant Secretary  
AV Solar Ranch 1, LLC

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**PROOF OF SERVICE**

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On December 21, 2012, I served the document(s) described as **RESPONSE TO DECEMBER 12, 2012 DISCOVERY ORDER FOR PHASE 4 TRIAL** on the interested parties in this action as follows:

- ☐ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.
- ☒ BY ELECTRONIC MAIL: By posting the document listed above to the Santa Clara Superior Court website: [www.sccfiling.org](http://www.sccfiling.org) regarding the ANTELOPE VALLEY GROUNDWATER matter.
- ☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.
- ☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- ☒ [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 under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 21, 2012, at Los Angeles, California.

  
YOLANDA S. RAMOS