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 2 ERNEST A. CONANT, Esq., SB# 089111
 3 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
 4 1800 30th Street, Fourth Floor
 5 Bakersfield, CA 93301
 6 Telephone: (661) 327-9661
 7 Facsimile: (661) 327-0720

8 Attorneys for GERTRUDE VAN DAM, DELBERT VAN DAM, CRAIG VAN DAM, GARY
 9 VAN DAM and ANTELOPE VALLEY WATER STORAGE LLC

10
 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 Coordination Proceeding
 14 Special Title (Rule 1550(b))

15 ANTELOPE VALLEY GROUNDWATER
 16 CASES

17 Included Actions:

18 Los Angeles County Waterworks District
 19 No. 40 v. Diamond Farming Co.
 20 Superior Court of California
 21 County of Los Angeles, Case No. BC
 22 325201

23 Los Angeles County Waterworks District
 24 No. 40 v. Diamond Farming Co.
 25 Superior Court of California, County of
 26 Kern, Case No. S-1500-CV 254348

27 Wm. Bolthouse Farms, Inc. v. City of
 28 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 353840, RIC 344436, RIC
 344668

Judicial Council Coordination Proceeding
 No. 4408.

SC Case No. 105CV 049053
 Assigned to the Honorable Jack Komar

DECLARATION OF SCOTT K. KUNEY
 IN SUPPORT OF VAN DAM PARTIES
 AND ANTELOPE VALLEY WATER
 STORAGE LLC OPPOSITION TO
 PUBLIC WATER SUPPLIERS' MOTION
 TO SIGN ORDER RE JURISDICTION
 OVER TRANSFEREES

Date: June 14, 2010
 Dept.: LA County Superior Court,
 Dept. 1
 Time: 9:00 a.m.
 Judge: Honorable Jack Komar

1 I, SCOTT K. KUNEY, hereby declare:

2 1. I am an attorney duly licensed to practice law in all the courts of the State of
3 California, and I am a partner in the Law Offices of Young Wooldridge LLP, and one of the
4 counsel of record for defendants Gertrude Van Dam, Delbert Van Dam, Gary Van Dam, Craig
5 Van Dam ("Van Dam Parties") and Antelope Valley Water Storage, LLC ("AVWS"). The
6 following matters are within my own personal knowledge, and if called as a witness, I could and
7 would testify competently thereto;

8 2. I am personally familiar with the records and files of this litigation;

9 3. The Public Water Purveyors' Motion For Court to Sign Proposed Order Re
10 Jurisdiction Over Transferees, dated May 26, 2010 was filed and served on May 26, 2010
11 electronically at approximately 3:10 p.m. which provided our offices approximately 24 hours to
12 review and prepare a response;

13 4. Attached hereto and incorporated herein as Exhibit "A", is a true and correct copy
14 of the Response to Van Dam Parties And Antelope Valley Water Storage LLC Notice And
15 Objection to Failure to Join Indispensable Party;

16 5. Based on a review of the most currently available records posted on the Court's
17 website for this Adjudication, none of the three (3) owners identified in the Van Dam Parties and
18 Antelope Valley Water Storage District, LLC Notice and Objection to Failure to Join an
19 Indispensable Party (to wit: SGS Antelope Valley Development, LLC [960 acres], Gaskell
20 SunTower LLC [980 acres], and WDS California II, LLC [1,210 acres]) have of this date been
21 served and joined in this Adjudication. The total acreage described in the Grant Deeds for these
22 three (3) record owners is approximately 3,150 acres;

23 6. Since the filing of the first objection for failure to join indispensable parties, I
24 have become aware of an additional record owner, AV Solar I, LLC, based on deeds of record,
25 that owns approximately 2,100 acres of land within the Basin boundaries that also is not a party
26 to this Adjudication.
27
28

7. Attached hereto and incorporated herein as Exhibit "B", is a true and correct copy of a recorded Grant Deed from High Desert Investments, LLC to AV Solar Ranch 1, LLC;

8. Attached hereto and incorporated herein as Exhibit "C", is a true and correct copy of a recorded Grant Deed from AV Solar Ranch 2, LLC to AV Solar Ranch 1, LLC;

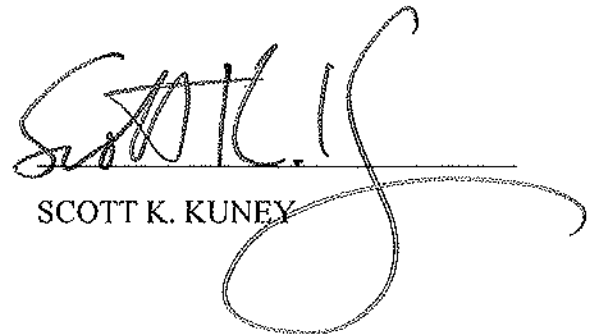
9. Attached hereto and incorporated herein as Exhibit "D", is a true and correct copy of a map depicting the lands described in the Grant Deeds attached hereto as Exhibits "B" and "C" with the highlighted area depicting the Basin boundaries the subject of this Adjudication;

10. Based on a review of the most currently available records posted on the Court's website for this Adjudication neither AV Solar Ranch 1, LLC or AV Solar Ranch 2, LLC have been served and joined in this Adjudication;

11. Based on a review of the most currently available records posted on the Court's website for this Adjudication, High Desert Investments, LLC has been served and is joined in this Adjudication;

12. Attached hereto and incorporated herein as Exhibit "E", is a true and correct copy of the Brief of Tejon Ranchcorp Re Jurisdiction Over Transferees of Land.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 27th day of May 2010, at Bakersfield, County of Kern, State of California.


SCOTT K. KUNEY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On May 27, 2010, I caused the foregoing document(s) entitled as: DECLARATION OF SCOTT K. KUNEY IN SUPPORT OF VAN DAM PARTIES AND ANTELOPE VALLEY WATER STORAGE LLC OPPOSITION TO PUBLIC WATER SUPPLIERS' MOTION TO SIGN ORDER RE JURISDICTION OVER TRANSFERREES to be served on the parties via the following service:

X By Posting: I posted the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through www.sccfiling.org.

Executed on May 27, 2010, at Bakersfield, California.

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


LEANN BANDUCCI

1 BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
2 JEFFREY V. DUNN, Bar No. 131926
STEFANIE D. HEDLUND, Bar No. 239787
3 5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614
4 TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
5 Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
6 DISTRICT and LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
7

8 OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
RAYMOND G. FORTNER, JR., Bar No. 42230
9 COUNTY COUNSEL
WARREN R. WELLEN, Bar No. 139152
10 SENIOR DEPUTY COUNTY COUNSEL
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11 LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-8407
12 TELECOPIER: (213) 687-7337
Attorneys for Cross-Complainant LOS ANGELES
13 COUNTY WATERWORKS DISTRICT NO. 40
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
17

18 ANTELOPE VALLEY
GROUNDWATER CASES
19

Included Actions:
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
Angeles, Case No. BC 325201;
22

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

25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
28

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

Judicial Council Coordination No. 4408

CLASS ACTION

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

**RESPONSE TO VAN DAM PARTIES AND
ANTELOPE VALLEY WATER STORAGE
LLC NOTICE AND OBJECTION TO
FAILURE TO JOIN INDISPENSABLE
PARTY**

RESPONSE TO VAN DAM PARTIES NOTICE AND OBJECTION TO FAILURE TO JOIN AN INDISPENSABLE PARTY

EXHIBIT

A

RESPONSE

As acknowledged by previous rulings from the Court, this action is a comprehensive adjudication of water rights. It satisfies McCarran Amendment requirements and is consistent with California law. Over the last several years the Court has obtained jurisdiction over more than 70,000 parties in an approximately 1,000 square mile area. In yet another attempt by a large landowner party to delay the Court's safe yield determination, only now do the Van Dam parties (collectively, "Van Dam") in their self-labeled "objection" claim that three overlying owners have not yet been served and these coordinated actions cannot proceed without these 3 parties.

Even if these parties were not included in the adjudication proceedings, the coordinated cases would continue to be comprehensive within the meaning of the McCarran Amendment and under California law. Regardless, the Public Water Suppliers will serve the additional three property owners in order to avoid yet another attempt to delay this proceeding.

I. Van Dam Lacks Standing To Object Pursuant to the McCarran Amendment

The Van Dam assertion that "indispensable parties" have not been joined and that this is not a comprehensive adjudication shows their effort to delay the proceedings based on the Van Dam misunderstanding of the McCarran Amendment. It resolves "a general problem arising out of the limitations that federal sovereign immunity placed on the ability of the States to adjudication water rights." *Arizona v. San Carlos Apache Tribe of Arizona* (1983) 463 U.S. 545, 545. The McCarran Amendment waives federal sovereign immunity in cases comprehensively adjudicating water rights to rivers or other source of water. *Orff v. United States* (9th Cir. 2004) 358 F. 3d 1137, 1142. By waiving federal sovereign immunity for comprehensive adjudications only, the McCarran Amendment protects the federal government from "piecemeal adjudication" of water rights. As the intent of the McCarran Amendment is to protect the federal government only the federal government has standing to object to an adjudication under the McCarran Amendment.

Over the course of several years, this Court has considered and addressed the United States' position regarding the McCarran Amendment. To have the comprehensiveness issue come before the Court, the United States filed a motion to dismiss in August 2006. In the motion, the United

1 States took the position that the Court lacked subject matter jurisdiction under the McCarran
2 Amendment due to a lack of comprehensiveness because not all potential claimants are parties.
3 (United States' Motion for Judgment on the Pleadings an Memorandum in Support, August 18,
4 2006.) After many months of extensive briefing and argument, this Court denied the motion.
5 (Order After Hearing, September 22, 2006.)

6 Even if Van Dam had standing to object and this issue had not already been resolved by the
7 Court, the "objection" would still fail. As previously established, the McCarran Amendment does
8 not require that all users of water in a groundwater basin be included in the adjudication to be
9 comprehensive adjudication . Both state and federal courts have rejected this argument. (See *In*
10 *re the General Adjudication of All Rights to Use Water in the Gila River System and Source* (Ariz.
11 1993) 175 Ariz. 382, 394 ["A properly crafted de minimus exclusion will not cause piecemeal
12 adjudication of water rights or in any other way run afoul of the McCarran Amendment."])

13 In the case of *In re the General Adjudication of All Rights to Use Water in the Gila River*
14 *System and Source*, the Arizona Supreme Court found the McCarran Amendment does not require
15 that each and every claimant be a party. The court held that the McCarran Amendment allows a
16 court to exclude well owners pumping minimal amounts of groundwater: "It is sensible to
17 interpret the McCarran Amendment as permitting the trial court to adopt reasonable simplifying
18 assumptions to allow us to finish these proceedings within the lifetime of some of those presently
19 working on the case." (*Id.* at 394.)

20 Instead of requiring every actual or potential water right claimant to be joined, courts have
21 taken a reasonable and practical approach by examining the overall proceedings to determine a
22 genuine effort to comprehensively adjudicate the parties' rights or merely a bilateral action by
23 certain claimants against the United States. (See generally *Dugan v. Rank* (1963) 372 U.S. 609;
24 *United States v. District In And For County Of Eagle, Colorado* (1981) 401 U.S. 520.) In these
25 proceedings with more than two thousand named parties and more than 70,000 class members,
26 there can be no legitimate claim the Antelope Valley Groundwater Adjudication is anything but a
27 comprehensive adjudication of water rights.
28

1 II. The Adjudication Is Consistent With California Law

2 The Antelope Valley Groundwater Adjudication is consistent with California law governing
3 comprehensive adjudications. Although there is no judicial or administrative framework for
4 comprehensively resolving groundwater claims, California does have a statutory scheme for
5 comprehensive river and stream adjudications. (See Water Code Section 2500.) Significantly,
6 this statutory scheme provides a minimus exclusion for parties using relatively small quantities of
7 water, less than 10 acre feet annually. (Water Code Section 2503.) Thus, California's statutory
8 framework for river and stream adjudications contemplates an adjudication without every water
9 potential water right claimant.

10 Additionally, the California Supreme Court has found that not all users of water are
11 necessary for a comprehensive adjudication. In *City of Pasadena v. City of Alhambra* (1949) 33
12 Cal.3d 908, the California Supreme Court upheld a stipulated judgment in a groundwater
13 adjudication even though some users were not parties to the proceeding. The Supreme Court
14 found that the need for a comprehensive adjudication must yield to practical considerations:

15 The line must be drawn somewhere in order to bring the proceeding
16 within practical bounds, and it would have been impossible to reach
17 a solution of the problems involved and to render a valid judgment
18 if jurisdiction to make an allocation depended on the joinder of
19 every person having some actual or potential right to the water in
20 the basin and its sources of supply. *Id.* at 920.

21 Already, the Public Water Suppliers have personally served thousands of individuals and
22 through the class action mechanism have mailed notices to over 70,000 individuals. No statutory
23 or case law imposes the unreasonable requirement to continuously track each and every change in
24 property ownership interests. Finally, the Public Water Suppliers have published legal notices of
25 the adjudication proceedings in several newspapers which, as the Court has commented, provides
26 notice to the general public of the adjudication proceedings.

27 III. The Court Adopted A Methodology For Property Transfers

28 The Court has already had briefing, heard argument and adopted a method for dealing with
property transfers within the adjudication area. Prior to a May 21, 2007 Case Management

1 conference, the Court asked Tejon Ranchcorp legal counsel to brief the question of how to obtain
2 jurisdiction over transferees. This issue was then discussed further at subsequent case
3 management conferences. Eventually, during the December 18, 2007, hearing the Court directed
4 legal counsel for Tejon Ranchcorp to prepare a Proposed Order.

5 Tejon Ranchcorp submitted a Proposed Order on January 8, 2008, a copy is attached hereto
6 as Exhibit A. A signed copy of this Order, however, is not posted on the Court's website. For
7 that reason, the Public Water Suppliers' respectfully request the Court to sign or post a signed
8 copy of the Proposed Order, attached as Exhibit "A."

9 Dated: May 3, 2010

BEST BEST & KRIEGER LLP

10
11 By 

12 ERIN L. GARNER
13 JEFFREY V. DUNN
14 STEFANIE D. HEDLUND
15 Attorneys for Cross-Complainants
16 ROSAMOND COMMUNITY SERVICES
17 DISTRICT and LOS ANGELES
18 COUNTY WATERWORKS DISTRICT
19 NO. 40
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EXHIBIT “A”

1 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
2 FRED A. FUDACZ (SBN 050546)
3 HENRY S. WEINSTOCK (SBN 089765)
4 445 S. Figueroa Street, 31st Floor
5 Los Angeles, California 90071-1602
6 Telephone: (213) 612-7800
7 Facsimile: (213) 612-7801

8 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

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

10 ANTELOPE VALLEY)	Judicial Council Coordination Proceeding No.
11 GROUNDWATER CASES)	4408
12 Included Actions:)	
13 Los Angeles County Waterworks District No. 40)	Santa Clara Case No. 1-05-CV-049053
14 v. Diamond Farming Co.)	Assigned to The Honorable Jack Komar
15 Superior Court of California)	
16 County of Los Angeles, Case No. BC 325 201)	[PROPOSED]
17 Los Angeles County Waterworks District No. 40)	ORDER RE JURISDICTION OVER
18 v. Diamond Farming Co.)	TRANSFEREES OF PROPERTY
19 Superior Court of California, County of Kern,)	Hearing Date: January 14, 2008
20 Case No. S-1500-CV-254-348)	Time: 9:00 a.m.
21 Wm. Bolthouse Farms, Inc. v. City of Lancaster)	Department: 1
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)	

22 Prior to the May 21, 2007 Case Management Conference, the Court asked Tejon
23 Ranchcorp counsel to brief the question of how best to obtain jurisdiction over transferees of Antelope
24 Valley land, so that the Court's final judgment will be binding upon them. In a brief dated May 11,
25 2007, Tejon Ranchcorp discussed these issues, including the inadvisability of relying on a *lis pendens*.
26 Instead, it recommended, in summary, that the Court order that the transferors of property post notice of
27 their transfers on the Court website and notify their transferees of this litigation. These issues were
28 discussed further in subsequent case management conferences. At the Case Management Conference on

December 18, 2007, there was further discussion of these issues, and the Court requested that counsel for Tejon Ranchcorp prepare and circulate this Proposed Order prior to the hearing on January 14, 2008, which Tejon Ranchcorp counsel has done.

NOW, THEREFORE, THE COURT ORDERS AS FOLLOWS:

1. This Order applies to all parties to this adjudication, including individual parties and class members, that own real property or an interest in real property within the jurisdictional boundaries of this adjudication, as previously or hereafter defined by the Court.

2. This Order shall be effective from the date hereof and continue after entry of judgment, until such time as it is modified or terminated by this Court.

3. Any party (hereinafter "transferor") that sells, assigns, gives, exchanges, or otherwise transfers (hereinafter "transfers") an interest, in whole or in part, in any real property within the jurisdictional boundaries of the Antelope Valley Groundwater Adjudication shall, within 20 days after the transfer, post notice of the transfer on the Court website. This notice shall include: the name, address, and phone number of the buyer, transferee, recipient, or assignee (hereinafter "transferee"); the Assessor Parcel Number and the address or legal description of the property transferred; and identification of all applicable County Deed Numbers or Deed Reference Numbers. If the transferor is required to provide a Real Estate Transfer Disclosure Statement by Civil Code § 1102, et seq., the transferor shall provide the above information with that Statement.

4. At least 10 days before completion of any such transfer, the transferor shall provide to the transferee the following information regarding this adjudication: the title of this case; the case number; the location of the court; a copy of this Order; a copy of the current Cross-Complaint of the "Public Water Suppliers"; a copy of the current answer and/or cross-complaint filed by the transferor; and a copy of any Settlement Agreement and/or Judgment in this adjudication that applies to the transferred real property.

5. The notice of transfer required to be posted by paragraph 3 above shall include a representation to the Court by the transferor that it provided the information required in paragraph 4 above.

6. Counsel for all parties shall advise their clients, both individuals and class

1 members, of the requirements of this order. To assist class counsel in this regard, a copy of this Order
2 shall be included with the initial Notice of Class Action that will be mailed to all class members.

3 7. After a notice of transfer is posted pursuant to paragraph 3 above, the "Public
4 Water Suppliers" shall promptly serve their current Cross-Complaint on any transferees that are new
5 parties to this adjudication, except new class members, substituting the transferees as cross-defendants
6 per CCP § 368.5.

7 IT IS SO ORDERED.

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9 Dated: January ____, 2008

10 The Honorable Jack Komar
11 Judge of the Superior Court
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1 **PROOF OF SERVICE**

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3 The undersigned declares:

4 I am employed in the County of , State of California. I am over the age of 18 and am not a party
5 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.
Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

6 On January 4, 2008, I served the foregoing **[PROPOSED] ORDER RE JURISDICTION**
7 **OVER TRANSFEREES OF PROPERTY** on all interested parties:

8 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed
and placed for collection and mailing following the usual business practice of my said employer.
9 I am readily familiar with my said employer's business practice for collection and processing of
correspondence for mailing with the United States Postal Service, and, pursuant to that practice,
10 the correspondence would be deposited with the United States Postal Service, with postage
thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

11 Honorable Jack Komar
12 Judge of the Superior Court of California
County of Santa Clara
13 191 North First Street, Department 17C
San Jose, CA 95113

14 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court
15 website in regard to the Antelope Valley Groundwater matter in compliance with the Court's
electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

16 () (By Federal Express) I served a true and correct copy by Federal Express or other overnight
17 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope
or package designated by the express service carrier; deposited in a facility regularly maintained
18 by the express service carrier or delivered to a courier or driver authorized to receive documents
on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying
19 service list.

20 Executed on January 4, 2008 at Los Angeles, California.

21 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

22 () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct.

24
25 _____
Mitchi Shibata

PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On May 3, 2010, I served the within document(s):

**RESPONSE TO VAN DAM PARTIES AND ANTELOPE VALLEY WATER
STORAGE LLC NOTICE AND OBJECTION TO FAILURE TO JOIN
INDISPENSABLE PARTY**

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to 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 Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

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 that 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 in affidavit.

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

Executed on May 3, 2010, at Irvine, California.


Kerry V. Keefe

2
NOTED BY:
FL. NATIONAL TITLE
escrow 652502-EL
order 725115460

Recording Requested by:

Fidelity National Title Insurance Company

When Recorded Return to:

Latham & Watkins, LLP
1800 W. Broadway
Suite 1800
San Diego, California 92101
Attention: Steven E. Otto, Esq.



Mail Tax Statements to:

NextLight Renewable Power, LLC
101 California Street, Suite 2480
San Francisco, CA 94111
Attn: General Counsel

SPACE ABOVE THIS LINE FOR RECORDING USE

The undersigned Grantor declares: documentary transfer tax not shown pursuant to
Section 11932 of the Revenue and Taxation Code, as amended

TRANSFER TAX
NOT A PUBLIC RECORD

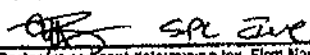
GRANT DEED

FOR VALUE RECEIVED, HIGH DESERT INVESTMENTS, LLC, a Delaware limited liability company, hereby grants to AV SOLAR RANCH 1, LLC, a Delaware limited liability company ("Grantee") that certain real property and all improvements located thereon ("Property") situated in Los Angeles County, described on Exhibit A attached hereto and by this reference incorporated herein.

SUBJECT TO the following:

- (a) All liens, encumbrances, easements, covenants, conditions, restrictions and other matters of record;
- (b) All matters which a correct survey of the Property would disclose;
- (c) All matters which could be ascertained by a physical inspection of the Property;
- (d) Any and all liens not yet delinquent for real property taxes and for general and special assessments against the Property; and

SD6429983

DOCUMENT TRANSFER TAX \$	Not A Public Record
<input type="checkbox"/> COMPUTED ON FULL VALUE OF PROPERTY CONVEYED	
<input type="checkbox"/> OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.	
	
Signature of Declarant or Agent determining tax Firm Name	

EXHIBIT

B

(e) Building and zoning ordinances and regulations and any other laws, ordinances, or governmental regulations restricting, regulating or relating to the use, occupancy or enjoyment of the Property.

[SIGNATURE PAGE FOLLOWS]

08 1520869

4

18 IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of August 2008.

HIGH DESERT INVESTMENTS, LLC,
a Delaware limited liability company

By: LA Desert Investments, LLC,
a Delaware limited liability company,
Its: Manager

By: 
Heath Johnston, Sole Member

08 1520869

[SIGNATURE PAGE TO GRANT DEED]

State of ~~California~~ Utah)
County of ~~Los Angeles~~ ^{Ogden} Utah)

On August 18, 2008 before me, Jennifer Browning,
personally appeared Heath Johnston,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ^{Utah} ~~California~~ that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jennifer Browning (Seal)



08 1520869

[ACKNOWLEDGMENT]

Escrow No.:
Locate No.: CAFNT0972-0972-0051-0725115460
Title No.: 08-725115460-DJ

EXHIBIT "A"

PARCEL 1: (APN: 3258-012-024 THROUGH 3258-012-083, 3258-025-001 THROUGH 3258-025-059 AND 3258-024-001 THROUGH 3258-024-028)

LOTS 1 TO 147, INCLUSIVE, OF TRACT NO. 34427, AS PER MAP RECORDED IN BOOK 1098 PAGES 43 TO 49 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING FROM LOTS 1 TO 15, INCLUSIVE, 30 TO 59, INCLUSIVE, AND 74 TO 147, INCLUSIVE, OF TRACT NO. 34427, AS PER MAP RECORDED IN BOOK 1098, PAGES 43 TO 49 INCLUSIVE OF MAPS, ALL MINERALS AND RIGHTS IN RELATING THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

ALSO EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES BELOW, IN AND UNDER SAID LAND, WITHOUT HOWEVER, THE RIGHT OF ENTRY UPON THE SURFACE OF SAID LAND OR THAT PORTION OF THE SUBSURFACE LYING ABOVE A DEPTH OF 500 FEET MEASURED VERTICALLY DOWNWARD FROM THE SURFACE AS GRANTED TO G P L PETROLEUM PARTNERSHIP IN DEED RECORDED APRIL 1, 1988 AS INSTRUMENT NO. 88-446415, OF OFFICIAL RECORDS.

PARCEL 2: (APN: 3257-018-006 THROUGH 3257-018-013)

THE EAST HALF OF SECTION 14, IN TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

PARCEL 3: (APN: 3236-001-024 THROUGH 3236-001-039)

ALL OF SECTION 24, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

PARCEL 4: (APN: 3257-010-033 THROUGH 3257-010-036)

THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPT THEREFROM ALL MINERALS, TO INCLUDE ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AS RESERVED IN THE DEED FROM SOUTHERN TRUST COMPANY RECORDED IN BOOK 4717 PAGE 298 OF DEEDS.

PARCEL 5:

A NON-EXCLUSIVE EASEMENT FOR WATER PIPE-LINES, WITH NECESSARY AND PROPER VALVES AND OTHER APPLIANCES AND FITTINGS AS GRANTED BY THAT CERTAIN DOCUMENT ENTITLED "DEED EASEMENT AND RIGHT-OF-WAY" AND RECORDED JUNE 7, 1978, INSTRUMENT NO. 78-614066, OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, STATE OF CALIFORNIA.

PARCEL 6:

A NON-EXCLUSIVE EASEMENT FOR WATER PIPE-LINES, WITH NECESSARY AND PROPER VALVES AND OTHER APPLIANCES AND FITTINGS AS GRANTED BY THAT CERTAIN DOCUMENT ENTITLED "DEED EASEMENT AND RIGHT-OF-WAY" AND RECORDED JUNE 7, 1978, INSTRUMENT NO. 78-614067, OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, STATE OF CALIFORNIA.

Fidelity NATIONAL TITLE

2

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Pfeiffer Thigpen FitzGibbon & Zientz, LLP
233 Wilshire Boulevard, Suite 220
Santa Monica, CA 90401
Attention: Mitch Zientz, Esq.



MAIL TAX STATEMENTS TO:

NextLight Renewable Power, LLC
353 Sacramento Street
Suite 2100
San Francisco, California 94111
Attention: General Counsel

A.P.N. 3257-010-037, 038, 039, 040, 041, 042

5

The undersigned Grantor declares that documentary transfer tax is zero (\$0) because the grantors and the grantees in this conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, California Revenue and Tax Code Section 11925(d).

The transfer between Grantor and Grantee does not constitute a "change of ownership" since the ultimate proportional ownership interests of Grantor and Grantee remain the same, California Revenue and Tax Code Section 62.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, ~~AV SOLAR RANCH 2, LLC~~, a Delaware limited liability company ("Grantor") hereby grants to AV SOLAR RANCH 1, LLC, a Delaware limited liability company ("Grantee") that certain real property and all improvements located thereon (the "Property") situated in the County of Los Angeles, State of California, described on Exhibit A attached hereto and by this reference incorporated herein.

Said grant is made subject to all covenants, conditions, restrictions, easements, encumbrances, circumstances and other matters of record that currently exist and affect the Property.

[SIGNATURE ON NEXT PAGE]

5

EXHIBIT

C

3

Dated: February 19, 2010

GRANTOR:

AV SOLAR RANCH 2, LLC,
a Delaware limited liability company

By: AV Solar Ranch 2 Holdco, LLC,
a Delaware limited liability company
its Member

By: NextLight Renewable Power, LLC,
a Delaware limited liability company,
its Member

By: Frank De Rosa
Frank De Rosa
Chief Executive Officer

4

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

On FEB 19 2010, before me, Ruth G. Bolender, a Notary Public, personally appeared Frank De Rosa, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Ruth G. Bolender

(Seal)

5

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

PARCEL 2:

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

PARCEL 3:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

PARCEL 4:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

PARCEL 5:

THE SOUTH 10 ACRES OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

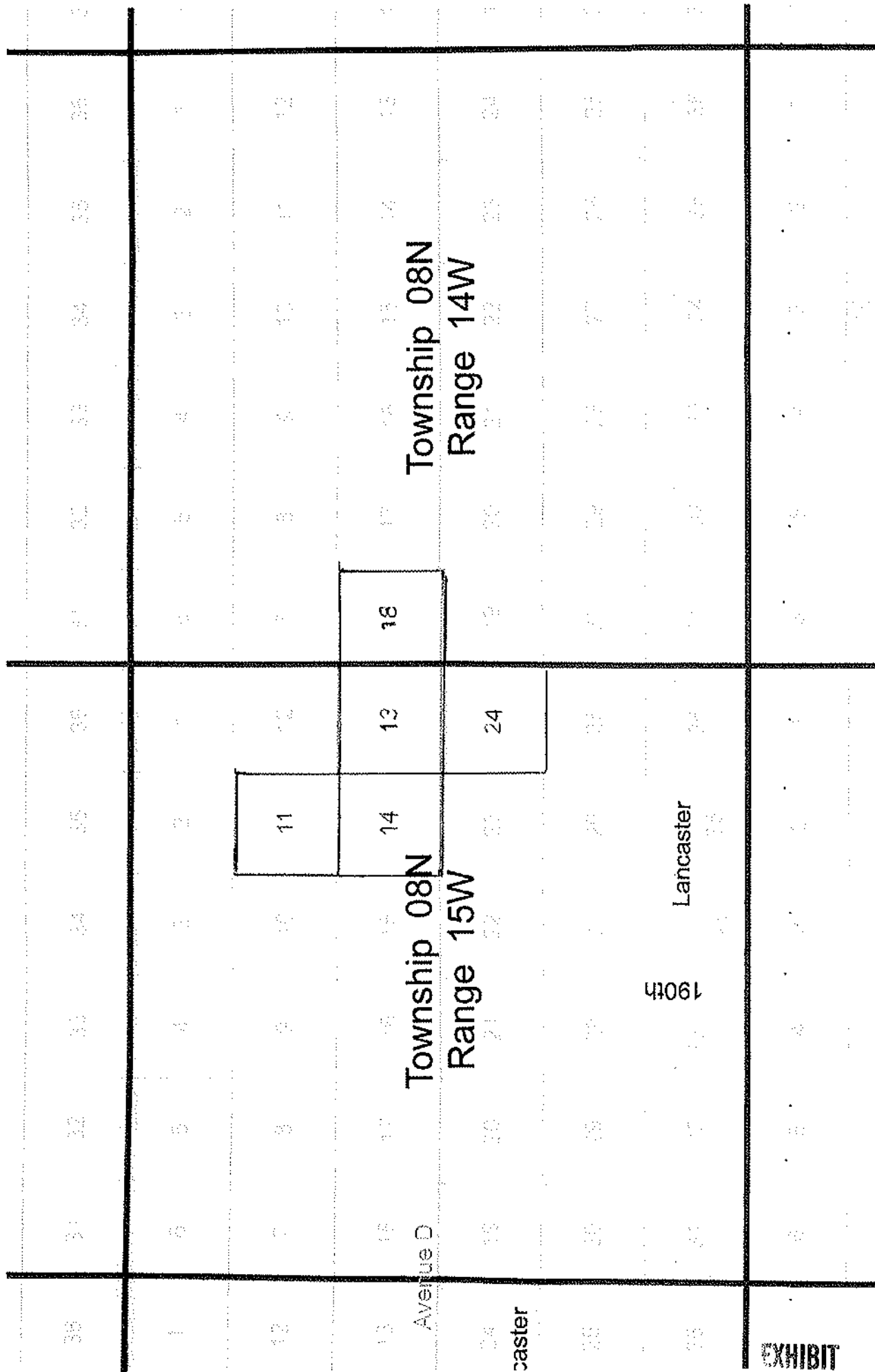
EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

PARCEL 6:

THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 15 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPTING THEREFROM ALL MINERALS AND RIGHTS IN RELATION THERETO AND WITHIN THE MEANING OF MINERALS AND MINERAL RIGHTS SHALL BE DEEMED INCLUDED ALL OIL, PETROLEUM, ASPHALTUM AND LIKE SUBSTANCES AND THE RIGHT TO MINE, DIG OR BORE FOR THE SAME, AND ALSO ALL CONVENIENT RIGHTS OF WAY AND OF STORAGE OVER AND WITHIN THE SURFACE OF SAID LANDS.

APN: 3257-010-037, 3257-010-038, 3257-010-039, 3257-010-040, 3257-010-041, 3257-010-042



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Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included 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

) **BRIEF OF TEJON RANCHCORP RE
JURISDICTION OVER TRANSFEREES OF
LAND**

) Date: May 21, 2007
) Time: 9:00 a.m.
) Department: 1

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1 **I. INTRODUCTION AND CONCLUSION.**

2 The parties desire that the Court's final judgment bind all Antelope Valley landowners,
3 excluding those served by a purveyor, so that the judgment will be as effective and "comprehensive" as
4 possible. However, even if all landowners are properly joined in this action, many will sell or otherwise
5 transfer their properties during and after entry of judgment. The Court asked us to brief the question of
6 how best to obtain jurisdiction over these transferees so that the Court's judgment will be binding on
7 them, and the Court asked about the advisability of recording a lis pendens.

8 We conclude that although it may be legally permissible to record a lis pendens giving
9 notice of these actions in Los Angeles and Kern Counties, it is not mandatory; it may not be practical or
10 advisable; and there are less problematic alternatives that could achieve the same goal. For example, the
11 Court could order that all landowner parties post notice of any transfer of their property, that they notify
12 the transferees of this litigation, and that the purveyors promptly serve their Cross-Complaint on the
13 transferees. If the final judgment limits the water rights of any landowners, their transferees will be
14 bound under traditional res judicata principles.

15 **II. ADVISABILITY OF RECORDING LIS PENDENS IN THESE CASES.**

16 A lis pendens or "notice of pendency of action" gives constructive notice to the world of
17 the pendency of litigation affecting the described real property, if the notice has been properly drafted,
18 served, recorded, and filed. If all of these requirements have been met, and if the lis pendens is not
19 expunged, title to the property is effectively clouded, and transferees of the property cannot be bona fide
20 purchasers, preserving the priority of the noticed claims against the property. (See CCP § 405.24;
21 *Malcolm v. Superior Court* (1981) 29 Cal.3rd 518, 523.)

22 The law does not mandate the filing of a lis pendens by the public water suppliers herein.
23 CCP § 761.010(b) requires that the plaintiff in a quiet title action file a lis pendens. In these cases, the
24 public water suppliers have asserted claims for declaratory relief, physical solution, and other relief –
25 but not quiet title relief.

26 However, recording of a lis pendens is permissible whenever a claimant asserts a "real
27 property claim," which is defined as a cause of action which would, if meritorious, affect "title to, or
28 the right to possession of, specific real property." (CCP § 405.4.) Although we have found no case

1 applying this statutory language to such water rights claims, it is likely that the purveyor's water rights
2 claims would, if upheld, affect the landowners' title to or right to possession of Antelope Valley
3 groundwater and their overlying rights to use it.

4 "An overlying right, 'analogous to that of the riparian
5 owner in a surface stream, is the owner's right to take water
6 from the ground underneath for use on his land within the
7 basin or watershed; it is based on the ownership of the land
8 and is appurtenant thereto.' (*California Water Service Co.*,
9 *supra*, 224 Cal. App. 2d at p. 725.)"
10 (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.
11 4th 1224, at 1240.)

12 On the other hand:

13 "Both riparian and *overlying* water rights are usufructuary
14 only, and while conferring the legal right to use the water
15 that is superior to all other users, confer no right of private
16 ownership in public waters. (See *People v. Shirokow* (1980)
17 26 Cal. 3d 301, 307.)"
18 (*City of Barstow, supra* at 1237 note 7.)

19 However, assuming recordation of a lis pendens is permissible here, it appears to be
20 inadvisable for several reasons:

21 1. **Cloud On Landowners' Title.** If the lis pendens is effective, it will cloud title to
22 practically all of the real estate in the Antelope Valley, outside of the purveyors' service areas, hindering
23 or preventing transfer of the properties, harming property values, and obstructing financing of thousands
24 of parcels, even though there has been no adjudication that the purveyors' claims are meritorious.

25 2. **Burden On Purveyors.** In a case of this magnitude, with so many parcels and
26 parties, the technical requirements for drafting, serving, recording, indexing, and filing a lis pendens in
27 Los Angeles County and Kern County could be extremely burdensome, and failure to satisfy any such
28 mandates may invalidate the lis pendens. For example, CCP § 405.20 requires that the lis pendens must
correctly identify all of the thousands of landowner parties and provide an adequate "description of the
property affected by the action" – the current Jurisdictional Boundary Order may not suffice. Where, as
here, there are numerous separate parcels and unrelated landholdings, it is unclear whether the statute
requires the filing of a separate lis pendens for each parcel. In addition, before recordation, copies of the
lis pendens must be mailed, by Registered or Certified mail, to all of the adverse landowner parties at

1 "all known addresses" (CCP § 405.22), or else the lis pendens is void (§ 405.23). In addition, a proof of
2 service must be recorded with the lis pendens. (§ 405.23.) Moreover, a copy of each lis pendens must
3 be filed with the court. (§ 405.22.) Lastly, the lis pendens is not effective unless the document has been
4 properly indexed. (Government Code §§ 27250; *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850,
5 1866.)

6 **3. County Recorders And Others May Not Cooperate.** We are informed that in
7 the Mojave groundwater adjudication, the water purveyors unsuccessfully tried to record a lis pendens,
8 but the county recorder, title companies, or other parties did not cooperate, so the effort failed. Mr.
9 William Brunick, counsel for AVEK herein, was involved in the unsuccessful effort to record a lis
10 pendens in the Mojave case, and he can explain further.

11 **4. Ancillary Litigation re Lis Pendens.** Because of the harm caused by a lis
12 pendens, the affected landowners may move to expunge the lis pendens as to their properties, and such
13 motions could be made on different grounds by different landowners. For example, the lis pendens must
14 be expunged if the pleading on which it is based does not contain a "real property claim" (§ 405.31).
15 More importantly, the lis pendens must be expunged if the purveyors cannot established the "probable
16 validity" of their real property claims by a preponderance of the evidence (§ 405.32). The purveyors
17 would have the burden to establish the probable validity of each element of their prescriptive rights and
18 other claims. This would require the Court to conduct a "mini-trial on the merits" of the purveyor
19 claims as to each landowner who moves for expungement of the lis pendens. (*Howard S. Wright*
20 *Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319-320.) The party prevailing on the
21 motion to expunge may recover and will request its reasonable attorney's fees. (§ 405.38.) Moreover,
22 even if the lis pendens survives the above challenges, the Court must order it expunged as to any
23 landowners who give an adequate undertaking. (§ 405.33.) Whether or not landowners move to
24 expunge, they may also move to require the purveyors to provide an undertaking as a condition to
25 maintaining the lis pendens. (§ 405.34.) Consequently, there may be a great deal of ancillary litigation
26 challenging the propriety of a lis pendens, the strengths and weaknesses of the purveyors' claims, and
27 the adequacy of proposed undertakings.

1 **III. THERE ARE ALTERNATIVES PREFERABLE TO A LIS PENDENS.**

2 There are less problematic alternatives to a lis pendens that would achieve the same goal.
3 In particular the Court could order:

- 4 1. That landowners parties (individuals and class members) do the following:
- 5 (a) post notice of transfer on the Court website within 10 days after any
6 transfer of their property, stating the name, address, and other contact information of the transferee; and
7 (b) notify their transferees of this litigation and provide them a copy of the
8 public water suppliers' Cross-Complaint; and
- 9 2. That the public water suppliers promptly serve their Cross-Complaint on
10 transferees, substituting the transferees as cross-defendants per CCP § 368.5.

11 Such an order would be superior to a lis pendens for another important reason -- it would
12 provide actual notice to transferees, not merely constructive notice, of the purveyors' claims against
13 their water rights. Of course, such an order will "cloud" title to the landowners' water rights in a
14 manner similar to a lis pendens, but it will give notice in a more reliable, understandable, and
15 straightforward fashion; and it does not depend on technical compliance with all of the lis pendens
16 requirements and cooperation of the county recorders, title companies, et al.

17 Compared to the risks and problems of the lis pendens process, we think the above order
18 would better insure that all landowners are bound by the judgment. To maximize notice of this proposed
19 order, the purveyors should serve it with their Cross-Complaint on all new cross-defendants; and it
20 should be served with the notice that the Court approves to be given to the landowner classes.

21 **IV. POST-JUDGMENT TRANSFEREES WOULD BE BOUND BY RES JUDICATA.**

22 If a final judgment is entered in this case that affects the water rights of the current
23 landowners, post-judgment transferees of the property would be bound by the judgment under traditional
24 res judicata principles:

25 **"Code of Civil Procedure § 1908--Conclusive effect of a
26 judgment in various cases.**

- 27 (a) The effect of a judgment or final order in an action or
28 special proceeding before a court or judge of this state, or of the
United States, having jurisdiction to pronounce the judgment or
order, is as follows:
(1) In case of a judgment or order against a specific thing, or

1 in respect to the probate of a will, or the administration of the
2 estate of a decedent, or in respect to the personal, political, or
3 legal condition or relation of a particular person, the judgment or
4 order is conclusive upon the title to the thing, the will, or
5 administration, or the condition or relation of the person.

6 (2) In other cases, the judgment or order is, in respect to the
7 matter directly adjudged, **conclusive between the parties and
8 their successors in interest by title** subsequent to the
9 commencement of the action or special proceeding, litigating for
10 the same thing under the same title and in the same capacity,
11 provided they have notice, actual or constructive, of the
12 pendency of the action or proceeding." (Emphasis added.)

13 California res judicata cases treat transferees as privies:

14 "Under the requirement of privity, only parties to the
15 former judgment or their privies may take advantage of or be
16 bound by it. (Ibid.) A party in this connection is one who is
17 "directly interested in the subject matter, and had a right to make
18 defense, or to control the proceeding, and to appeal from the
19 judgment. [Citations omitted.] A privy is one who, after
20 rendition of the judgment, has acquired an interest in the subject
21 matter affected by the judgment through or under one of the
22 parties, as by inheritance, succession, or purchase. [Citation
23 omitted.]
24 (*Bernhard v. Bank of America* (1942) 19 Cal. 2d 807, 811.)

25 In *Gale v. Tuolumne County Water Co.* (1914) 169 Cal. 46, 50-51, the Court applied these res judicata
26 principles to bind a transferee power company to a water rights judgment against its transferor and held
27 the transferee guilty of contempt of court.

28 "The Power Company, successor in interest of the
original defendant Water Company, was bound by the judgment
rendered in 1870, and to the same extent as was the Water
Company before the latter transferred its property. (Code Civ.
Proc., sec. 1908.) The Power Company being bound by
the judgment and injunction, as the successor of the Water
Company, its violation of the injunction, with notice thereof,
constituted contempt of court. [Citations omitted.]"

Likewise, in *Adams v. Barber*, the Court enforced an injunction against the successors in interest:

"By that judgment the superior rights of the original
grantors of the plaintiffs to all the water of said creek, with the
exception of that appropriated to the Woodruff tract above
noted, were conclusively established, and by that judgment
Freeman, the defendant in the action in which it was entered,
and his privies or successors in interest by title subsequent to the
commencement of said action are bound and estopped in this


1 action from asserting any right to any of the water flowing in
2 said creek based upon any claim alleged to have existed anterior
3 to the entry of said judgment. (Code Civ. Proc., sec. 1908, subd.
4 2; Freeman on Judgments, secs. 300-309; Riverside Land Co. v.
Jensen, 108 Cal. 146; Green v. Thornton, 130 Cal. 482; Estate of
Bell, 153 Cal. 331, 345.).” *Adams v. Barber*, 1913 21 Cal.App.
503, 513-14.

5 Accordingly, a properly recorded judgment against any current landowners should be
6 binding on their successors.

8 Dated: May 11, 2007

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
FREDRIC A. FUDACZ
HENRY S. WEINSTOCK

11 By:



HENRY S. WEINSTOCK

Attorneys for Tejon Ranchcorp

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of , State of California. I am over the age of 18 and am not a party
4 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.
5 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

6 On May 11, 2007, I served the foregoing **BRIEF OF TEJON RANCHCORP RE**
JURISDICTION OF TRANSFEREES OF LAND on all interested parties:

7 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed
8 and placed for collection and mailing following the usual business practice of my said employer.
9 I am readily familiar with my said employer's business practice for collection and processing of
10 correspondence for mailing with the United States Postal Service, and, pursuant to that practice,
11 the correspondence would be deposited with the United States Postal Service, with postage
12 thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

13 Honorable Jack Komar
14 Judge of the Superior Court of California
15 County of Santa Clara
16 191 North First Street, Department 17C
17 San Jose, CA 95113

18 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court
19 website in regard to the Antelope Valley Groundwater Cases in compliance with the Court's
20 electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

21 () (By Federal Express) I served a true and correct copy by Federal Express or other overnight
22 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope
23 or package designated by the express service carrier; deposited in a facility regularly maintained
24 by the express service carrier or delivered to a courier or driver authorized to receive documents
25 on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying
26 service list.

27 Executed on **May 11, 2007** at Los Angeles, California.

28 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing 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.

24 _____
25 Mitchi Shibata