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Inc., Red Dawn SunTower, LLC, Sierra
SunTower, LLC, Gaskell SunTower, LLC,
and Tumbleweed SunTower, LLC

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 COMPANY, et
al., Los Angeles Superior Court Case No.
BC325201;

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

DIAMOND FARMING COMPANY,
and W.M. BOLTHOUSE FARMS, INC.,
v. CITY OF LANCASTER, et al.,
Riverside Superior Court Case No. RIC
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-Defendants eSolar, Inc. ("eSolar") and its wholly-owned subsidiaries Red Dawn
2 SunTower, LLC, Sierra SunTower, LLC, Gaskell SunTower, LLC, and Tumbleweed SunTower,
3 LLC, also Cross-Defendants (collectively, "eSolar"), respond to the Court's December 12, 2012
4 Discovery Order for Phase 4 Trial ("Discovery Order") as follows.

5 **I. Reservation of Rights**

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

15 **II. Response to Discovery Order by Red Dawn SunTower, LLC ("Red Dawn")**

16 **A. Response to Section I.1 of the Discovery Order**

17 1. Red Dawn owns, occupies, or otherwise controls property in Los Angeles
18 County identified by the following Assessor Identification Numbers: 3256-005-001, 3256-006-
19 012, 3256-006-013, 3256-006-019 (the "Red Dawn Property").¹

20 2. eSolar or Red Dawn is the record title owner for all of the Red Dawn
21 Property since 2008. Prior to that, eSolar's predecessor, Littlerock Ranch, owned the property.
22 Before 2008, The John and Barbara Calandri 2001 Trust owned at least a portion of the Red
23 Dawn Property (known then as part of the Calandri Home Ranch). Red Dawn is inquiring into
24 the prior ownership of any remaining parcels.

25
26
27 ¹ Red Dawn also owns, occupies, or otherwise controls property in Kern County
28 identified by the following Assessor Identification Numbers: 261-200-15, 261-200-18, 261-200-
19. This property is not contiguous to Red Dawn's property in Los Angeles County. Red Dawn
is inquiring into groundwater pumping and use at this property.

1 3. Two groundwater wells exist on the Red Dawn Property from 2000-04
2 and 2011-012.

3 4. On information and belief, groundwater wells were operated on the Red
4 Dawn Property from 2000-04.

5 5. Red Dawn estimates, based on information currently and reasonably
6 available to it, that the amount of water pumped from the well(s) described above in Section
7 II.A.3-4 is:

Year	AFY
2000	480
2001	480
2002	480
2003	480
2004	480
2011	n/a
2012	n/a

16 6. The water described above in Section II.A.5 was utilized for agricultural
17 irrigation.

18 7. Red Dawn does not produce groundwater off-site.

19 8. In 2011 and 2012, the Red Dawn Property is not being utilized. It is
20 anticipated that the property may be utilized in the near future for the construction and operation
21 of a solar power generation facility.

22 9. The Red Dawn Property is not currently utilized for agricultural uses.
23 Based on information currently and reasonably available to it, the Red Dawn Property was used
24 from 2000 to 2004 for the growth of a variety of non-alfalfa crops, primarily baby carrots.

25 10. In addition to rights associated with past and current pumping, Red Dawn
26 reserves the right to assert its "unexercised overlying rights" associated with prospective
27 overlying uses that are reasonable and beneficial. As held in *City of Los Angeles v. City of San*
28 *Fernando* (1975) 14 Cal.3d 199, 293, fn. 100, "prescriptive rights would not necessarily impair

1 the private defendants' rights to ground water for new overlying uses for which the need had not
2 yet come into existence during the prescriptive period." (See also *City of Barstow v. Mojave*
3 *Water Agency* (2000) 23 Cal.4th 1224, 1247-49; 1-11 California Water Law and Policy § 11.12
4 [Bender 2011].)

5 11. Red Dawn claims 480 afy as the reasonable and beneficial use for its
6 property as well as any amount required pursuant to Section II.A.10 above.

7 **B. Response to Section I.2 of the Discovery Order**

8 1. Red Dawn does not lease the Red Dawn Property.

9 **C. Response to Section I.3 of the Discovery Order**

10 1. Red Dawn is seeking documentation from the prior property owner
11 regarding the amount and use of groundwater production at the Red Dawn Property. At this time,
12 the prior landowner is disclaiming an obligation to provide those materials. Red Dawn can make
13 available documents confirming ownership of the parcels described above.

14 **D. Response to Section V of the Discovery Order**

15 Michael Bass is the eSolar and Red Dawn representative most qualified to testify to the
16 above facts. Certain former eSolar employees may also have information on these matters.

17 **III. Response to Discovery Order by Sierra SunTower, LLC ("Sierra")**

18 **A. Response to Section I.1 of the Discovery Order**

19 1. Sierra owns, occupies, or otherwise controls property in Los Angeles
20 County identified by the following Assessor Identification Numbers: 3137-007-020 and 3137-
21 007-034 (the "Sierra Property").

22 2. eSolar or Sierra is the record title owner for all of the Sierra Property since
23 2008. Sierra does not currently have information on prior owners since 2000.

24 3. A groundwater well existed on the Sierra Property since 2008, including in
25 2011-12.

26 4. A groundwater well was operated on the Sierra Property since 2008,
27 including in 2011-12.

28 5. Sierra estimates, based on information currently and reasonably available

to it, that the amount of water pumped from the well(s) described above in Section III.A.3-4 is:

Year	AFY
2000	n/a
2001	n/a
2002	n/a
2003	n/a
2004	n/a
2011	n/a
2012	n/a

6. Sierra does not produce groundwater off-site.

7. In 2011 and 2012, the Sierra Property is being used for the construction and operation of a solar power generation facility.

8. The Sierra Property is not currently utilized for agricultural uses.

9. Sierra reserves the right to assert its "unexercised overlying rights" associated with prospective overlying uses that are reasonable and beneficial. As held in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, fn. 100, "prescriptive rights would not necessarily impair the private defendants' rights to ground water for new overlying uses for which the need had not yet come into existence during the prescriptive period." (See also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1247-49; 1-11 California Water Law and Policy § 11.12 [Bender 2011].)

10. Sierra claims as the reasonable and beneficial use for its property any amount required pursuant to Section III.A.9 above.

B. Response to Section I.2 of the Discovery Order

1. Sierra does not lease the Sierra Property.

C. Response to Section I.3 of the Discovery Order

1. Sierra's claim is based on any amount required pursuant to Section III.A.9 above. Sierra can provide documentation regarding current ownership of the property.

D. Response to Section V of the Discovery Order

1 Michael Bass is the eSolar and Sierra representative most qualified to testify to the above
2 facts.

3 **IV. Response to Discovery Order by Gaskell SunTower, LLC ("Gaskell")**

4 After the filing of its Amended Statement of Claims of Water Rights, eSolar disposed of
5 the property referenced in, and the subject of, that Statement.

6 **V. Response to Discovery Order by Tumbleweed SunTower, LLC ("Tumbleweed")**

7 **A. Response to Section I.1 of the Discovery Order**

8 1. Tumbleweed previously owned in fee property in Los Angeles County
9 identified by the following Assessor Identification Number: 3262-001-005 (the "Tumbleweed
10 Property"). Tumbleweed was the owner in fee of the Tumbleweed Property from 2008 to 2012.
11 Tumbleweed currently possesses an interest in the title of the Tumbleweed Property that may
12 ripen back into a fee ownership in the near future.

13 2. eSolar or Tumbleweed is the record title owner for all of the Tumbleweed
14 Property since 2008 to November 2012. Prior to that, David Tepper owned the Tumbleweed
15 Property. Caliente Solar, Inc. is the current record owner.

16 3. A groundwater well exists on the Tumbleweed Property from 2000-04 and
17 2011-012.

18 4. On information and belief, a groundwater well was operated on the
19 Tumbleweed Property from 2000-04.

20 5. Tumbleweed estimates, based on information currently and reasonably
21 available to it, that the amount of water pumped from the well(s) described above in Section
22 V.A.3-4 is:

Year	AFY
2000	438
2001	438
2002	438
2003	438
2004	438

2011 n/a

2012 n/a

6. The water described above in Section V.A.5 was utilized for agricultural irrigation.

7. Tumbleweed does not produce groundwater off-site.

8. In 2011 and 2012, the Tumbleweed Property is not being utilized. It is anticipated that the property will be utilized in the near future for the construction and operation of a solar power generation facility.

9. The Tumbleweed Property is not currently utilized for agricultural uses. Based on information currently and reasonably available to it, the Tumbleweed Property was used from 2000 to 2004 for the growth of a variety of non-alfalfa crops, primarily baby carrots.

10. In addition to rights associated with past and current pumping, Tumbleweed reserves the right to assert its "unexercised overlying rights" associated with prospective overlying uses that are reasonable and beneficial. As held in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, fn. 100, "prescriptive rights would not necessarily impair the private defendants' rights to ground water for new overlying uses for which the need had not yet come into existence during the prescriptive period." (See also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1247-49; 1-11 California Water Law and Policy § 11.12 [Bender 2011].)

11. Tumbleweed claims 438 afy as the reasonable and beneficial use for its property as well as any amount required pursuant to Section V.A.10 above.

B. Response to Section I.2 of the Discovery Order

1. Tumbleweed does not lease the Tumbleweed Property.

C. Response to Section I.3 of the Discovery Order

1. Tumbleweed can provide documentation of agricultural use at the Tumbleweed Property from 2000-04, including photographs of the site illustrating such use. Tumbleweed can provide documentation regarding current ownership of the property.

1 **D. Response to Section V of the Discovery Order**

2 Michael Bass is the eSolar and Tumbleweed representative most qualified to testify to the
3 above facts.

4
5 Dated: December 21, 2012

ALSTON & BIRD LLP

6
7 By:


NEAL P. MAGUIRE

Attorneys for Cross-Defendants eSolar, Inc., Red
Dawn SunTower, LLC, Sierra SunTower, LLC,
Gaskell SunTower, LLC, and Tumbleweed SunTower,
LLC

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VERIFICATION

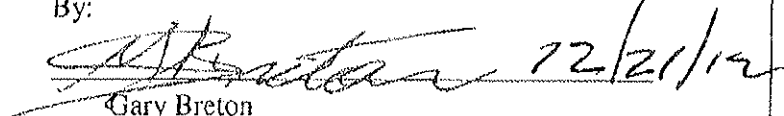
I, Gary Breton, declare as follows:

I am the Senior Vice President of Operations of Cross-Defendant eSolar, Inc. 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 21 day of December, 2012 at Burbank, California.

By:

 12/21/12
Gary Breton
Senior Vice President of Operations
eSolar, Inc.

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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.scefilings.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