

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is entered into by and between NEWBERRY COMMUNITY SERVICES DISTRICT (the “Petitioner” or “Newberry CSD”), and Real Party in Interest DAGGETT SOLAR POWER 1 LLC, a Delaware limited liability company (“Daggett Solar”). Together, the parties to this Agreement may be referred to as “Parties,” or in the singular a “Party.”

RECITALS

A. Daggett Solar applied to the County of San Bernardino for approvals to construct and operate a 650-megawatt solar energy generating project, including up to 450 megawatts of battery storage on an approximately 3,500-acre site in unincorporated areas of the County (the “Project”). The Project will provide clean renewable energy by making use of the existing interconnection capacity from the former gas-fired Coolwater Generating Station.

B. On September 19, 2019, the Planning Commission certified the Final Environmental Impact Report (“EIR”) for the Project.

C. Newberry CSD and others appealed the certification to the Board of Supervisors and a hearing was held on December 10, 2019. Administrative appellants alleged inadequacies in the EIR’s analysis. The Board of Supervisors denied the appeal and affirmed the approvals for the Project.

D. On January 9, 2020, Newberry CSD, together with an unincorporated association calling itself “Friends of Newberry Springs,” filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in San Bernardino Superior Court, Case No. CIVDS2000745, alleging that the County’s approval of the Project violated CEQA, the California Planning and Zoning Law, and the County Development Code (the “Litigation”).

E. On April 28, 2020, counsel for petitioners filed a request to dismiss Friends of Newberry Springs from the Litigation. On or about May 28, 2020, the Court entered dismissal of Friends of Newberry Springs. Accordingly, Friends of Newberry Springs is not a party to this Agreement.

F. The Parties now deem it to be in their respective best interests and to their mutual advantage to settle the Petition without any admission of liability or wrongdoing on the part of any Party.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, of the promises, covenants, agreements, representations and warranties set forth below, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. OBLIGATIONS OF DAGGETT SOLAR

A. Condition Precedent to Daggett Solar Obligations

1. The benefit of settlement to Daggett Solar is the resolution and final dismissal of the Litigation challenging the Project approvals.
2. Newberry CSD acknowledges that it is currently the only petitioner maintaining the Litigation and it will file a dismissal with prejudice of the entire action within two (2) business days of the final execution of this Agreement (as provided in Section 2.a below).
3. If, however, any other party has sought to, or seeks to, intervene or join the Litigation or prolong or continue the Litigation by asserting a right to join or take over the role of petitioner in the Litigation (collectively “Intervene”), the material benefit of the Agreement for Daggett Solar will be destroyed.
4. Accordingly, a condition precedent to any and all obligations of Daggett Solar beyond those described in this Section 1.A will be the final dismissal and conclusion of the Litigation with no pending appeal or opportunity for any other party to Intervene and continue the Litigation against the Project.
5. If another party attempts to Intervene, the Parties agree to cooperate in resisting and opposing any such efforts to Intervene and to ask the Trial Court to deny any such effort to Intervene.
6. If any such effort to Intervene is attempted but denied by the Trial Court, the Parties agree to await finality of any such order (e.g., waiting for any appeal period to expire without any notice of appeal filed).
7. If any such effort to Intervene is successful, and any other party is thereby authorized to maintain the Litigation despite Newberry CSD’s dismissal, Daggett Solar will stipulate to Newberry CSD withdrawing its own dismissal and resuming the Litigation on its own behalf and this Agreement will be null and void and of no further force or effect.

B. Affirmative Obligations of Daggett Solar Upon Satisfaction of Condition Precedent Described in Section 1.A, above.

Daggett Solar commits to the following actions and conditions for the Project:

1. Special Newberry Setback for Solar Panels. Maintain a minimum buffer of at least 100 feet from any solar panels to residential property lines within the boundaries of the Newberry CSD (defined as Project lands east of

Minneola Road (or, CUP 5 and CUP 6 in Phase 3 as illustrated on Exhibit 2.0-2 of the Draft EIR), unless approval from the landowner has otherwise been granted.

2. Special Newberry Setback for Batteries. Locate Battery Energy Storage systems to maximize distance (in all cases at least 500 feet) from the residential property lines within the boundaries of the Newberry CSD (defined as Project lands east of Minneola Road (or, CUP 5 and CUP 6 in Phase 3 as illustrated on Exhibit 2.0-2 of the Draft EIR), unless approval from the landowner has otherwise been granted.
3. Emergency Response Training. Training for the Newberry Springs Volunteer Fire Department and the donation of a professional grade Infrared Camera, such as the Ti480 Pro for purposes of thermal detection from a safe distance in the event of an emergency with any battery energy storage system. In addition to professional training to address any emergency response associated with the solar facility, including the battery storage, Daggett Solar can affirm that it has a dedicated staff remotely monitoring system performance and a protocol for alerting local first responders, which protocol can be amended to ensure that it includes real time alerts to the Newberry Springs Volunteer Fire Department. Part of the training and the protocol is to reinforce that the battery systems are designed to be self-contained and self-extinguishing. Training shall occur once the first-phase battery cabinets arrive on site in Daggett, and once annually thereafter, and each training shall be open to first responders of Daggett, Yermo, and the Marine Corps Logistics Base in Barstow, at their option.
4. Newberry Opportunity to Comment on Dust Control Plans. Prior to the issuance of construction permits for installation of the solar panels, a Dust Control Plan must be developed that meets the requirements of the Mojave Desert Air Quality Management District (MDAQMD) Rule 403 and 403.2 to control fugitive dust, including PM10. Also, an Air Quality Construction Management Plan must be submitted and approved by the County prior to construction permits, to demonstrate compliance with mitigation measures in the Fugitive Dust Control Rules enforced by the MDAQMD, San Bernardino County Development Code Sections 83.01.040 and 84.29.035 as well as the existing State Implementation Plan available for PM10 and PM2.5.
 - a. Daggett Solar will provide the draft Dust Control and Air Quality Management Plans to Newberry CSD for comment prior to submitting those Plans to the County for review and approval. The draft plans will be transmitted via email to the CSD's designated recipient: Jodi Howard, General Manager of the CSD (unless the CSD changes the name of the designated recipient and notifies Daggett Solar in writing).

- b. Newberry CSD shall have 14-days from the transmittal of the plans by email to provide comments on the Plans for construction activity that will occur within the Newberry CSD boundary.
 - c. Daggett Solar will review the comments in good faith, and in the exercise of its reasonable discretion, will consider whether to incorporate any such comments before submitting the Plans to the County.
 - d. Daggett Solar has committed to expending no less than one million dollars (\$1,000,000) on dust control during construction and will expend further sums over the life of the 3,500-acre/650 MW Project. The expenditures include substantial application of soil binders and other treatments and coverings to prevent dust (gravel and mulch where appropriate), wind fencing, water during ground disturbance, and robust wind protocols and procedures to secure the site during any high wind events.
5. Perimeter Roads. Perimeter access roads within the Project boundary are the primary roads used during operations for project inspection and maintenance. To further reduce the risk of fugitive dust from use of perimeter roads, these roads, will be constructed with aggregate base or an equally effective treatment, installed over compacted native material.
6. Speed Limits on Project Roads. Onsite vehicle speed during construction and operation will be limited to no more than 15 miles per hour to further reduce the potential for fugitive dust. In addition, all clearing, grading, earth moving, and excavation activities will cease during period of winds greater than 20 miles per hour (averaged over one hour). All land disturbed during construction will be treated with soil binder or other equally effective process or covering to reduce and minimize dust. Daggett Solar commits to both short- and long-term stabilization of the site including any areas disturbed during construction.
- a. At the end of each workday, any broken ground that is not otherwise treated for soil stabilization, will be sprayed with dust suppressant and/or watered for dust suppression.
 - b. In the event of any high wind events expected at night, the site superintendent will assess Project conditions and may add a second shift of water trucks for dust control if conditions so warrant.
7. Dust Barrier Fencing. Permanent wind fencing will be installed and maintained along no less than 2,300 linear feet on Minneola and 2,700 linear feet on Wildhorse Road, as illustrated in Exhibit 3.3-1 of the DEIR (Air Quality section), unless otherwise directed by the County, to further minimize dust blowing in the direction of adjacent residences within the

Newberry Springs district; and will be inspected and repaired as needed on at least a quarterly basis.

- a. Understanding that the County will have final say over the location of wind fencing based on the exercise of its expertise and discretion, and based on consideration of various factors including wildlife movement, the CSD may, in connection with its opportunity to comment on draft Dust Control Plans (as set out in paragraph 4 above) suggest new or different wind fencing location for Daggett Solar's consideration in connection with the County's approval of the Dust Control Plans.
 - b. Daggett Solar will consider in good faith any suggestions from the CSD regarding the need for wind fencing in new or different locations.
8. Construction Noise Barriers. Temporary sound barriers to minimize noise levels during construction will be deployed for any construction work that may occur on the Project within 200 feet of a residence, unless otherwise approved by the affected landowner.
9. Payment to Newberry CSD. Daggett Solar agrees to provide payment to the Newberry CSD made payable to Newberry Community Services District within 20 days of the final dismissal of the Litigation (that is, no claims pending and any appeal periods expired without appeal) as follows:
- a. a one-time payment of \$211,000 (two hundred and eleven thousand dollars) to be distributed by and at the discretion of the CSD;
 - b. In addition to the one-time payment 9.a. above, Daggett Solar will provide a payment of \$15,000 for the CSD's legal fees in this matter;
 - c. In addition to the payments referenced in 9.a and 9.b. above, Daggett Solar will provide \$20,000 for air monitoring equipment for use by the Newberry CSD.
10. Daggett Solar has obtained a commitment from San Bernardino County that, when requested by the Newberry CSD after it has acquired air monitoring equipment, the County will submit a letter substantially in the form attached hereto as Exhibit A supporting the CSD's request to the Mojave Desert AQMD that the Air District work with NCSO on placement and assuming monitoring responsibilities and integration into the AQMD system.

2. OBLIGATIONS OF PETITIONER

A. Dismissal without Prejudice of Entire Action

1. Within two (2) business days of full execution of the Agreement, Newberry CSD will cause to be filed a Request for Dismissal of the Entire Action, all parties, without prejudice, as addressed above in Section 1.A.2.
2. If another party attempts to Intervene, Newberry CSD agrees to cooperate with Daggett Solar in resisting and opposing any such efforts to Intervene and to ask the Trial Court to deny any such effort to Intervene.
3. If any such effort to Intervene is attempted but denied by the Trial Court, Newberry CSD agrees to await finality of any such order (e.g., waiting for any appeal period to expire without any notice of appeal filed).
4. If any such effort to Intervene is successful, and any other party is thereby authorized to maintain the Litigation despite Newberry CSD's dismissal, Newberry CSD may apply to the Court to withdraw its own dismissal (to which Daggett Solar will stipulate) and resume the Litigation on its own behalf and this Agreement will be null and void and of no further force or effect.
5. Apart from the payments referenced in Section I.B.9 above, each party agrees to bear its own fees and costs incurred in the Litigation.

B. Non-Opposition to Project

Petitioner covenants not to challenge or oppose the implementation of the Project, which means, Petitioner shall not itself as an organization object, nor advocate that such organization or entity object, or financially support any other party in objecting, in any regulatory or legal proceeding (including without limitation any administrative hearing or proceeding, administrative appeal, judicial challenge, referendum, initiative, or moratorium that, if such moratorium were enacted, would have the effect of delaying or prohibiting):

1. Daggett Solar's Application for Conditional Use Permit No. 7 and implementation of the work to be authorized by Conditional Use Permit No. 7.
2. Daggett Solar's subsequent approvals reasonably necessary to implement, or make minor modifications to, the Project, so long as the further approvals/modification do not expand the solar panel footprint of the Project within the boundaries of the Newberry CSD (defined as Project lands east of Minneola Road (or, CUP 5 and CUP 6 in Phase 3 as illustrated on Exhibit 2.0-2 of the Draft EIR).

C. Release of Claims

As of the Effective Date, except for the obligations created by or arising from this Agreement, the Petitioner, on behalf of itself and each of its successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, trustees, beneficiaries does hereby release and absolutely and forever discharge Daggett Solar and its respective successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, trustees, beneficiaries, and persons and entities holding beneficial interests, from any and all claims, demands, causes of action, whether or not now known, suspected or claimed, which they ever had, now have, claim to have had, or may have had as of the Effective Date relating to the approval of the Project.

Accordingly, the Petitioner hereby waives the provision of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

3. GENERAL PROVISIONS

A. No Admission of Liability

This Agreement, including the release contained herein, reflects the settlement of denied and contested claims. Nothing contained herein is, or shall be construed to be, an admission by any Party of liability, of any kind, to any other Party.

B. Waiver

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to either Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

C. Entire Agreement

This instrument contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein.

D. Headings

The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

E. Applicable Law

This Agreement shall be construed according to the laws of the State of California.

F. Attorneys' Fees

If any Party commences an action against another Party or a dispute arises under this Agreement, the prevailing Party shall be entitled to recover from the other reasonable attorneys' fees and costs.

G. Binding on Successors

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

H. No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement. There are no intended third party beneficiaries.

I. Informed Decision

Each Party represents and warrants to all other Parties that they have had the advice of counsel of their own choosing in the negotiations for, and the preparation of, this Agreement and have read and understand the contents of this Agreement and its legal effect. Each Party has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement.

J. Agreement as Defense

In connection with any demand or cause of action related to a matter released herein, this Agreement may be pleaded as a defense by any Party hereto and shall operate to effect a dismissal of such demand or cause of action.

K. Cooperation/Further Assurances

The Parties shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement.

L. Joint Preparation

This Settlement Agreement shall be deemed to have been jointly prepared by the Parties, and shall not be construed against any Party in the event of any claimed uncertainty or ambiguity.

M. Warranty of Authority

The Parties, and each of them, represent and warrant to the other Parties hereto that the individual signatories to this Agreement have authority to execute this Agreement and to release claims as outlined by this Agreement, on behalf of themselves and the entities on whose behalf they purport to act, and have obtained all necessary Community Services District Board approvals.

N. No Prior Assignments

The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, association, corporation, or firm whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

O. Counterparts

This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

P. Notices

All notices required under this Agreement must be in writing, and may be given either personally, by overnight delivery by nationally recognized overnight courier service or by email. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the Parties at their addresses set forth below:

PETITIONERS:

Newberry Community Services District
P.O. Box 206
Newberry Springs, CA 92365

NewberryCSD@gmail.com

With a copy to:

Mike Gatto
Actium LLP
5419 Hollywood Blvd, Ste C-356
Los Angeles, CA 90027
Email: mike@actiumllp.com

DAGGETT SOLAR POWER 1 LLC

General Counsel
100 California Street, 4th Floor
San Francisco, CA 94111
Email: legalnotices@clearwayenergy.com

With a copy to:

Andrew Sabey
Cox, Castle & Nicholson LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
Email: asabey@coxcastle.com

Q. Severability

In the event any of the provisions of this Settlement Agreement are deemed to be invalid or unenforceable, those provisions shall be severable from the remainder of the Settlement Agreement and shall not cause the invalidity or unenforceability of the balance of the Settlement Agreement.

(Signatures on Next Page)

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT as of the dates hereafter appearing

PETITIONER:

NEWBERRY COMMUNITY SERVICES DISTRICT,
a California special district

By _____

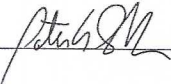
Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Mike Gatto, Esq.
Actium LLP
Counsel of Record for Newberry CSD

DAGGET SOLAR POWER 1 LLC,
a Delaware limited liability company

By:  _____ Patrick Sullivan

Its: Vice President _____

Date: July 1, 2020 _____

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT as of the dates hereafter appearing

PETITIONER:

NEWBERRY COMMUNITY SERVICES DISTRICT,
a California special district

By: *[Signature]*
Its: General Manager
Date: 7-7-20

APPROVED AS TO FORM:

By: *Mike Gatto*
Mike Gatto, Esq.
Actium LLP
Counsel of Record for Newberry CSD

**DAGGET SOLAR POWER 1 LLC,
a Delaware limited liability company**

By: _____

Its: _____

Date: _____

EXHIBIT A

[contents of County letter to MDAQMD]

On behalf of the County of San Bernardino Land Use Department, we write to express our support for the Newberry Community Services District's (Newberry CSD) request that the Mojave Desert Air Quality Management District (District) assume the operation and maintenance of the air-quality monitoring equipment that Newberry CSD recently acquired. In consultation with the District, Newberry CSD secured these compatible systems at no cost to the District. The unincorporated community of Newberry Springs had no such equipment previously, even though the community desired it and requested effective ongoing, public air-quality monitoring at locations immediately upwind (to the west of) and downwind (to the east of) Daggett Solar's proposed 650-megawatt solar energy generating project.

The County recognizes that this is a decision within the discretion of the District, but we encourage you to connect the equipment to your existing, public, air quality monitoring network. We know you are committed to attaining and maintaining healthful air quality while supporting strong and sustainable economic growth. This is accomplished through a comprehensive and common-sense program of planning, regulation, compliance assistance, enforcement, monitoring and public education.

The presence of additional air-quality monitoring equipment will help our communities attain healthy air quality. The public monitoring of such equipment will help all policymakers as they strive to achieve and maintain healthy air quality levels. Adding this capability in Daggett and Newberry Springs would increase the comprehensiveness of your air monitoring across our county. Connecting cost-free equipment is a common-sense way to deliver greater compliance assistance and monitoring. The public in Newberry Springs would be educated on which days air quality may be compromised, and likely become more aware about the state of air quality in our county generally.

We ask that you strongly consider Newberry CSD's request. Thank you in advance for your prompt reply