United States Department of the Interior

BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
LC-4405
WTR-4.03

DEC 14 2010

DOCKET
09-AFC-8
DATE DEC 14 2010
RECD. DEC 20 2010

VIA OVERNIGHT MAIL

Ms. Rachael E. Koss
Attorney
Adams Broadwell Joseph and Cardozo
Attorneys at Law
501 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Genesis Solar, LLC – Genesis Solar Energy Project (Your Letter Dated November 4, 2010)

Dear Ms. Koss:

Thank you for your subject letter on behalf of the California Unions for Reliable Energy, Mr. Richard Reed, Mr. George R. Ellis, and Mr. Tom R. Martinez, regarding the Genesis Solar Energy Project (Genesis Project). We have been asked to respond to your letter.

The Bureau of Reclamation manages the lower Colorado River on behalf of the Secretary of the Interior and as you note is responsible for the annual accounting of Colorado River diversions mandated by Article V of the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona* v. *California,* et al., entered March 27, 2006 (547 U.S. 150 (2006)) (Consolidated Decree).

The decision for determining whether a well will pump water that will be replaced by water from the lower Colorado River rests with Reclamation, working in cooperation with the United States Geological Survey, as provided in Article V of the Colorado River Compact of 1922 which states the following:

> "The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:
>
> (a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters...."

The Survey has conducted studies and developed a method to identify wells that, when pumped, result in water that will be replaced by water from the lower Colorado River. This methodology (referred to as the "accounting surface methodology") is described in Water-Resources Investigations Report 94-4005, published in 1994. The Survey updated this report through publication of Scientific Investigations Report 2008-5113. Since July 1994, the accounting surface methodology has been and continues to be the primary tool Reclamation utilizes to determine if the use of a well does, or does not, result in a consumptive use of mainstream water from the lower Colorado River.

The accounting surface methodology describes the two part test used to determine whether a well located outside of the Colorado River flood plain is considered to be pumping water that will be replaced by water from the lower Colorado River. First, the location of the well must be within the boundaries of the Colorado River Aquifer. Second, the elevation of the static water level of the well is measured to determine if it is above or below the elevation of the accounting surface at the location of the well.

If the static water level of a well is above the accounting surface, the well would not pump water that will be replaced by water from the lower Colorado River. If the static water level of a well is below the accounting surface, the well would be considered to be pumping water that will be replaced by water from the lower Colorado River, and an entitlement for the use of Colorado River water is required by Section 5 of the Boulder Canyon Project Act (BCPA) and by the Consolidated Decree. A Colorado River water entitlement is an authorization for an individual or entity to put Colorado River water to a beneficial use pursuant to: (1) a right decreed by the United States Supreme Court; (2) a contract with the United States under Section 5 of the BCPA; or (3) a reservation of water by the Secretary.

If an entitlement is required for a well located within the State of California, it must be satisfied from Colorado River water apportioned for use within California by the Secretary in accordance with the terms of the Consolidated Decree. The entitlement to be used for a well with a static water level below the accounting surface may be from an existing entitlement, made available for this purpose by an existing entitlement holder either directly or through an exchange.

We understand that according to the information provided by Genesis Solar, LLC, to the California Energy Commission the projected groundwater levels of the Genesis Solar, LLC, wells over the life of the Genesis Project will remain above the accounting surface. If that is the case, the Genesis Solar, LLC, wells would not be considered to be pumping water that would be replaced by water from the lower Colorado River, and Genesis Solar, LLC, would not need an entitlement to divert Colorado River water for the Genesis Project.

Should you have questions, please feel free to contact Mr. Steven C. Hvinden, Chief, Boulder Canyon Operations Office, at 702-293-8414.

Sincerely,

Lorri Gray-Lee
Regional Director

cc: Ms. Sandra J. Owen-Joyce
Supervisory Hydrologist
U.S. Geological Survey
Arizona Water Science Center
520 North Park Avenue, Suite 221
Tucson, Arizona 85719

Mr. Gerald Zimmerman
Acting Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035

Mr. Ryan O'Keefe
Vice President
Genesis Solar, LLC
700 Universe Boulevard
Juno Beach, Florida 33408

Mr. Mike Monasmith
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Ms. Holly L. Roberts
Project Manager
Palm Springs-South Coast Field Office
Bureau of Land Management
1201 Bird Center Drive
Palm Springs, California 92262