

**IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS
CIVIL DEPARTMENT**

DAVID BEERBOWER, LEROY
KRUGER, BRANDON WHISENHUNT,
BOA CASPER, KATIE CASPER,
TIMOTHY EMERSON, SAMUEL
TRAN, KAREN TRAN, AND MICHAEL
WUNDERLY,

Plaintiffs,

Case No. BB-2024-CV-000075

vs.

THE BOARD OF COUNTY
COMMISSIONERS OF BOURBON
COUNTY KANSAS, HINTON CREEK
SOLAR, LLC, TENNYSON CREEK
SOLAR LLC, AND TENNYSON
CREEK SOLAR II LLC,

Defendants.

**CROSS-CLAIM OF BOARD OF COUNTY COMMISSIONERS
OF BOURBON COUNTY, KANSAS**

COMES NOW, Board of County Commissioners of Bourbon County, Kansas, (the
“Board”) and for its cross-claim against defendants Hinton Creek Solar, LLC, Tennyson Creek
Solar LLC, and Tennyson Creek Solar II LLC states as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendant Hinton Creek Solar, LLC is a Delaware limited liability company that
has procured leases, licenses, and/or easements to use land in Bourbon County for purposes of
commercial-scale power generation using solar resources and seeks to construct and operate a
facility (Solar Project) in Bourbon County for such purposes.

2. Defendant Tennyson Creek Solar LLC is a Delaware limited liability company that has procured leases or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes.

3. Defendant Tennyson Creek Solar II LLC is a Delaware limited liability company that has procured leases or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes.

4. Jurisdiction and venue are proper in this Court pursuant to K.S.A. 12-760 and K.S.A. 19-223.

5. Jurisdiction and venue are also proper in this County because all actions giving rise to this action took place in Bourbon County.

FACTUAL ALLEGATIONS

6. Defendants Hinton Creek Solar, LLC, Tennyson Creek Solar LLC and Tennyson Creek Solar II LLC (Corporate Defendants) each entered into agreements with the Board of County Commissioners of Bourbon County, which were approved by the Board on October 31, 2024 (the Agreements). The Agreements pertained to the development in Bourbon County of their respective Solar Projects. Copies of those agreements are attached as Exhibits 1-9 to Plaintiff's Petition.

7. The terms of the Agreements purport to limit the Board of County Commissioners' exercise of police powers in the future with respect to Corporate Defendants, including during

times when those commissioners who voted for the approval of the Agreements would no longer be serving as county commissioners.

8. The Agreements purport to agree that the rights of Corporate Defendants to develop their solar projects vest upon execution of the Agreements.

9. The Agreements purport to agree that if the Board adopts zoning regulations in the future, the rights to use Bourbon County property for the Corporate Defendants' Solar Projects will be vested, effectively excluding those Solar Projects from the application of the zoning regulations.

10. The Agreements purport to bind the Board to make, on an ongoing basis into the future, every reasonable effort to further the implementation of the intentions of the parties as reflected in the Agreements, including exempting the Corporate Defendants' Solar Projects from any future zoning regulations that the Board might adopt.

11. The Agreements purport to bind Bourbon County to cooperate with Corporate Defendants in the development and construction of their Solar Projects.

12. The Agreements purport to bind the Board to continue the same road maintenance practices as had become usual at the time of the Agreements, and thereby limit the power of the Board to change those practices to serve the needs of the community as determined by the Board.

13. The Agreements purport to limit the rights of the Board, in the case of a future breach, to pursue remedies otherwise permitted by law.

14. The Agreements purport to subject Bourbon County to indemnity obligations unlimited in amount, in violation of the Kansas Cash Basis Law.

15. The Agreements are injurious to the interests of the public and/or tend to interfere with the public welfare or safety and contravene public policy such that they are void.

16. The terms of the Agreements, if enforceable, would materially impede or prevent the Board from exercising police power through zoning over future land uses by Corporate Defendants.

17. Within the weeks prior to the Board of County Commissioners of Bourbon County voting to approve the Agreements, each of the Corporate Defendants committed to donate funds to specific recipients, which did not include Bourbon County (Donation Commitments).

18. At the time the Donation Commitments were made by the Corporate Defendants, plaintiff David Beerbower was unopposed in the upcoming general election for County Commission seats.

19. At the time the Donation Commitments were made by the Corporate Defendants, David Beerbower and LeRoy Kruger, not commissioners, had publicly disclosed that they were more skeptical of appropriateness of unregulated utility scale solar energy in Bourbon County than the commissioners they would replace. Once in office, they were willing to consider using the police power of the Board of County Commissioners of Bourbon County to adopt zoning, or otherwise impose regulations with respect to utility scale solar energy developments in Bourbon County in view of their adverse effects or potential adverse effects on the citizens of Bourbon County.

20. The Donation Commitments were at variance with, and in substitution for, prior commitments or expressions of willingness on the part of the Corporate Defendants to make donations in connection with their proposed Solar Projects in Bourbon County.

21. On information and belief, the decision to change the anticipated recipients of the donations and to make the Donation Commitments was the result of direct or indirect communications from one or more individual commissioners asserting the Corporate Defendants would find favorable treatment with respect to the Agreements by changing the anticipated recipients of donations. The recipients of the donations were thereby changed to recipients or causes of personal interest to one or more of the commissioners. Once those changes were made in the Donation Commitments the interested commissioners voted in favor of the Agreements.

22. On information and belief, one or more of the commissioners voting in favor of approving the Agreements intentionally requested a benefit, reward, or consideration in the form of a donation commitment to a cause or entity of personal interest. The granting of the requested change improperly influenced the commissioner. In exchange for changing the recipients of the agreements, the commissioners promised orally and through the agreements that the Board of County Commissioners would not exercise, and would omit the performance of police powers.

23. On information and belief, the Corporate Defendants entered into the Donation Commitments to provide a benefit to one or more of the commissioners to improperly influence one or more of the commissioners. This was done in exchange for the approval of the Agreements including provisions therein promising that the Board of County Commissioners would not exercise, and would omit the performance of police powers.

24. The fact that the Corporate Defendants had entered into the Donation Commitments was explicitly considered in connection with the vote to approve the Agreements.

COUNT I – DECLARATORY JUDGMENT

25. Pursuant to K.S.A. 60-1701, the Court may “declare the rights, status, and other legal relations whether or not further relief is, or could be, sought.”

26. The approval of the Agreements was unlawful.

27. The terms of the Agreements, including those terms purporting to limit, or having the effect of limiting, the exercise of police powers by the Board of County Commissioners of Bourbon County as constituted after January 13, 2025, are unenforceable, void, and/or voidable.

28. The Board of County Commissioners of Bourbon County, Kansas seeks a declaration from the Court setting aside the Agreements; declaring them to be unenforceable; establishing that the powers of the Board of Commissioners of Bourbon County to regulate the activities of the Corporate Defendants’ companies are unimpaired by any agreement with any of those defendants.

WHEREFORE, the Board of County Commissioners seek judgment setting aside the Agreements; declaring them to be unenforceable; establishing that the powers of the Board of Commissioners of Bourbon County to regulate the activities of the Corporate Defendants’ companies are unimpaired by any agreement with any of those defendants; and for such further relief as may be just and equitable.

Respectfully submitted,

**FISHER, PATTERSON, SAYLER &
SMITH, LLP**

/s/ Jacob D. Bielenberg

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ATTORNEY FOR DEFENDANT BOARD
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BOURBON COUNTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 26, 2025, the above and foregoing was filed with the Court using the Court's electronic filing system, which will send a notice of said filing to all counsel of record.

/s/ Jacob D. Bielenberg

Attorneys for the Board of County
Commissioners of Bourbon County.