BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

Applications for Certification for the	**)**	**Docket Nos.**
	)	
Calico Solar (SES Solar One) Project,	**)**	**08-AFC-13,**
Genesis Solar Energy Project,	**)**	**09-AFC-8,**
Imperial Valley (SES Solar Two) Project,	**)**	**08-AFC-5,**
Solar Millennium Blythe Project,	**)**	**09-AFC-6,**
Solar Millennium Palen Project, and	**)**	**09-AFC-7,**
Solar Millennium Ridgecrest Project.	**)**	**09-AFC-9, and**
	)	
Consolidated Hearing on Issues	**)**	**10-CRD-1**
Concerning US Bureau of Land	**)**	
Management Cultural Resources Data	**)**	
	)	

NOTICE AND ORDERS FOR CONSOLIDATED HEARING ON ISSUES CONCERNING US BUREAU OF LAND MANAGEMENT CULTURAL RESOURCES DATA

Introduction

The Siting Committee will hold on its own motion a consolidated hearing in the solar Application for Certification (AFC) cases listed above to consider issues relating to the potential release of certain information pertaining to cultural resources in these cases. All parties who have an interest in cultural resources in any of the cases are invited to attend and submit briefs and testimony. The Commission staff is an independent party in the proceedings along with the applicants and other parties, including intervenors.

The Consolidated Hearing will be conducted on:

WENESDAY, June 9, 2010
Beginning at 2:30 p.m.

California Energy Commission
Hearing Room B
1516 Ninth Street
Sacramento, CA 95814

Parties and the Public may attend the Evidentiary Hearing in person at the above location or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the "Participation through WebEx" directions attached.

Background

On October 30, 2008, the Commission's Executive Director granted the Imperial Valley project proponent's application for confidentiality of specified cultural resources data that the applicant submitted to the docket of the proceeding. On March 10, 2010, intervenor California Unions for Renewable Energy ("CURE") submitted a request for access to some of that data (the "Imperial Valley Request"). On April 15, 2010, the Commission's Chief Counsel granted CURE's Imperial Valley Request in part, subject to a nondisclosure agreement limiting who would have access to the data and under what circumstances. On April 29, 2010, the Commission received a data request from CURE that was substantially similar to its Imperial Valley Request, for documents relating to cultural resources in the Genesis Solar Energy Project which had similarly been designated confidential (the "Genesis Request"). On May 3, 2010, the Commission released to CURE documents in response to the Imperial Valley Request, in accordance with the April 15th determination of the Commission Chief Counsel.[1] All of the actions set forth in this paragraph were taken under authority granted by the Commission's regulations. (See Cal. Code Regs., tit. 20, §§ 2505, 2506.)

On May 4, 2010, the Energy Commission received an April 29, 2010, letter from the Bureau of Land Management (BLM) requesting reconsideration of the Energy Commission's decision to grant the Imperial Valley Request (Request for Reconsideration). BLM's request speaks to the issue broadly, and generally opposes the release of documents of a similar nature to those sought in the Imperial Valley Request on the grounds that BLM controls data pertaining to cultural resources on BLM land. Similarly, on May 18, 2010, BLM wrote to recommend that CURE's Genesis Request be denied; the Chief Counsel's decision on that request is pending. The Committee anticipates that similar issues may arise in any of the other cases listed above, and believes that the Commission should resolve these issues as soon as possible, in a way that gives clear guidance for the current solar AFC proceedings and for future proceedings.

Orders Regarding the Hearing

Pursuant to powers delegated to it in Commission Order No. 09-0225-2, the Siting Committee hereby Orders as follows:

1. Pursuant to Section 2508(a) of Title 20 of the California Code of Regulations, the above hearing shall address issues raised by BLM's Request for

[1] Pursuant to Cal. Code Regs., tit. 20, § 2506 (b) the Commission Chief Counsel's decision on the Genesis Request is due no later than May 24, 2010.

Reconsideration, relating to the potential release to CURE and other intervenors certain confidential information relating to cultural issues in the above-referenced cases.

2. The Committee will treat the pending petition from CURE in the Genesis proceeding as if it were granted by the Chief Counsel, and as if BLM had filed a timely request for reconsideration. (See Cal. Code Regs., tit. 20, §§ 1203, subd. (c), 2506, subd. (b).) In addition, the Commission may hold a hearing on the confidentiality of the Genesis records at any time. (Id.,§ 2508, subd. (a).)

3. The AFC proceedings listed in the caption above are consolidated for the limited purpose of considering and resolving issues related to BLM-related cultural resources data, as more specifically described in Appendix B, attached hereto. (Cal. Code Regs., tit. 20, §§ 1203, subds. (c), (d), 1208, 1719, subd. (a).)

4. The hearing will be conducted by the Siting Committee as follows:

a. Prehearing Briefing Schedule:

(1) BLM's Request for Reconsideration (attached hereto as Appendix A) and its May 18 letter regarding the Genesis Request (Appendix B) shall be deemed the opening briefs.

(2) Briefs in support of or in opposition to BLM's request shall be received no later than **noon on June 1, 2010**.

(3) Reply briefs from all parties shall be received no later than **5 p.m. on June 4, 2010**.

b. Evidence:

(1) All testimony must be in writing and filed and served no later than **5 p.m. on June 4, 2010**.

(2) All testimony *must* contain the following:

(i) A summary of one page or less, which shall contain a brief description of the qualifications of the witness(es). The summaries may be read at the hearing, but there shall be no other direct oral testimony.

(ii) A description of the party's interest in the use or protection of the specific cultural resource data. The Committee may, on the motion of a party or on its own motion, refuse to admit any evidence offered by a

party in the absence of evidence establishing that party's legitimate and important interest.

(iii) A statement signed by each witness under penalty of perjury, attesting to the truth of the matters stated.

(3) There will be no rebuttal evidence unless ordered by the Committee during or after the hearing.

c. Parties shall address the issues set forth in Appendix C in their testimony and prehearing briefs.

d. The Siting Committee does not anticipate post-hearing briefs, but reserves the right to order them if it deems them necessary.

e. Testimony, briefs, and any other pleadings or documents relating to this proceeding must be filed in **Docket No. 10-CRD-1**, and served on all parties in each of the proceedings identified in the above caption.

5. The Committee will issue a proposed decision that will be considered by the full Commission.

6. The Commission may designate its final decision in this matter as a precedent decision under section 11425.60 of the Government Code.

7. Handling of Records. Neither the Docket Office nor any other entity or person at the Commission may release or return any records reasonably within the scope of this Notice, until 14 days after the Commission has concluded the hearing and issued an appropriate order, unless ordered otherwise by the Commission.

Agency and Public Participation

Although only parties will present testimony, cross-examine, and file briefs, it is not necessary to be an Intervenor to participate in the hearing. There will be time for comments from interested members of the public who are not parties to the proceeding. Anyone desiring information on how to participate may contact the Public Adviser's office at 916-654-4489 or 800-822-6228 or e-mail: **[publicadviser@energy.state.ca.us].**

If you have a disability and need assistance to participate in this event, contact Lourdes Quiroz at (916) 654-5146 or e-mail: **[lquiroz@energy.state.ca.us].**

Energy Commission Information

Questions of a legal or procedural nature should be directed to Paul Kramer, the Chief Hearing Officer, at (916) 654-5103 or e-mail: **[pkramer@energy.state.ca.us].**

Information concerning the status of the individual projects, as well as notices and other relevant documents, including the AFCs, may be viewed on the Energy Commission's Internet web page at: **[www.energy.ca.gov/sitingcases/alphabetical.html].** You may also subscribe to receive email notification of all notices at **[www.energy.ca.gov/listservers]**.

Technical questions concerning the individual projects should be addressed to the individual project's Staff Project Manager, whose contact information can be found on the project's web page found via the link provided in the above paragraph.

Media inquiries should be directed to the Energy Commission's Office of Media and Communications at (916) 654-4989 or e-mail: **[mediaoffice@energy.state.ca.us]**.

Dated May 21, 2010, at Sacramento, California.

KAREN DOUGLAS
Chairman and Presiding Member
Energy Commission Siting Committee

ROBERT B. WEISENMILLER
Commissioner and Associate Member
Energy Commission Siting Committee

PARTICIPATION IN THE STATUS CONFERENCE THROUGH WEBEX
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. ***Meeting number***: 922 378 883 ***meeting password***: cultural@230

2. ***COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:***

- Please go to https://energy.webex.com and enter the above ***meeting number.***
- When prompted, enter your information and the above ***meeting password.***

After you login, a prompt will appear on-screen for you to provide your phone number. In the Number box, type your area code and phone number and click OK. You will receive a call back on your phone for the audio of the meeting. International callers can use the "Country/Region" button to help make their connection.

3. ***COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:***

- Please go to https://energy.webex.com and enter the above ***meeting number.***
- When prompted, enter your information and the above ***meeting password.***

- *After you login, a prompt will ask for your phone number. Click "CANCEL."*

- ***Instead*** *call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.*

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4. ***TELEPHONE ONLY (NO COMPUTER ACCESS):***

   - *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the above* meeting number.

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [http://support.webex.com/support/system-requirements.html].

*Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.

Appendix A

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.ca.blm.gov

In Reply Refer To:
3000/CA-910 P

APR 29 2010

Melissa Jones, Executive Director
California Energy Commission
Media and Public Communications Office
1516 Ninth Street
Sacramento, California 95814-5512

Dear Ms. Jones:

The California Energy Commission (CEC) has received a number of draft cultural resource reports prepared for a number of solar projects on Bureau of Land Management (BLM) administered lands. These draft cultural resource reports contain sensitive location and other information that BLM does not make publically available. The BLM has recently been informed that some of these documents were docketed with the CEC as part of its public file for the Imperial Valley solar facility, and that a recent decision was made by the CEC Chief Counsel to release this information.

The information that is contained in the following docketed reports contains sensitive cultural resources information on federal public lands managed by the BLM:

1. Cultural Resources Technical Report, dated 1/8/2010 from A. Leiba to C. Meyer, Docket: 54859.
2. Class III Cultural Resources Technical Report, dated 12/24/2009, from A. Leiba to C. Meyer, Docket: 54707.
3. Cultural Resources Report, Appendix D, dated 6/12/2009, from A. Leiba to C. Meyer, Docket: 52055.
4. Cultural Resources Site Location and Cultural Content Groundtruth task: Levels 1 and 2 Evaluations and Recommendations, dated 6/4/2009, from M. Zentner to C. Meyer, Docket 51882.

All of this information was generated with respect to cultural resources located on federal public land. Although the CEC has designated these materials confidential, it has likewise received a petition for inspection and copying, accompanied by a Non-disclosure Agreement, which it has granted. The California Code of Regulations provide for a 14 day period to reconsider the determination of the Chief Counsel. Without waiving our right to contest jurisdiction in this matter based on principles of federal sovereignty, we submit this request for reconsideration.

The BLM asks that you reconsider the April 15, 2010 Chief Counsel determination on the following bases and for the following reasons:

1. Archaeological Resources Protection Act ("ARPA"): 16 United States Code ("U.S.C.") 470hh provides that the nature and location of archaeological resource information for which the excavation or removal requires a permit or other permission "may not" be made available to the public "unless" the Federal land manager makes a determination that disclosure would further the purposes of ARPA, and not create a risk of harm to the resources or the site where the resources are located. *See also* 43 CFR 7.18. The Federal land manager in this instance is the California Office of the BLM. The "nature and location" of this information is on federal public land. No disclosure determination has been made by the BLM. Unless and until this determination is made, this confidential cultural information acquired on federal public lands is not appropriate for public review.
2. National Historic Preservation Act ("NHPA"): 16 U.S.C. 470w-3 provides that a federal agency "shall withhold from disclosure to the public" information about the location or character of a historic resource if a determination is made that disclosure may risk harm to the historic resource, among other things. *See also* 36 CFR 800.11(c). If this determination is made, the federal agency may subsequently determine who may have access to the information in order to carry out the purposes of this Act. The BLM practice and policy reflects its general position that historical resource location and character information is not releasable to the general public. *See* BLM Manual 8140, Protecting Cultural Resources. In this case, BLM has not made any further determination who, if anyone, may have access to this information.
3. Freedom of Information Act ("FOIA"): The federal FOIA (5 U.S.C. 552) provides for the public release of information with certain exceptions. One of the exceptions provided by the Act provides that the non-disclosure provisions of other federal statutes allow withholding under the FOIA. In that regard, the BLM has received and denied requests filed by the same petitioner in this case for location and other sensitive cultural information under its FOIA authorities based upon ARPA and NHPA. BLM has not publically released the information that is sought in the underlying CURE petition under FOIA.
4. BLM Permit terms and conditions: The BLM issued a Field Authorization, subject to a BLM State Permit for Archaeological Investigations, to URS Corporation to conduct cultural resource investigations for the proposed Imperial Valley solar facility site. *See* BLM Manual 8150, Permitting Uses of Cultural Resources. These permits and authorizations are subject to BLM national standards and California BLM special permit conditions. All permittees are subject to these standard permit conditions and special permit conditions through their acceptance of the permit. Permittees are directed not to publish any locational or other identifying site location information without BLM approval (See Permit for Archeological Investigations Permit, Standard Permit conditions "x"). In addition, cultural resource reports are to be submitted to the BLM, and all notes, photographs, and other related materials that are acquired under the provisions of a permit remain the property of the United States Government and may be recalled at any time. The BLM has sought the recall and return of all cultural resource reports and any copies submitted by URS to any third party, including CEC.

5. California Government Code.
    a. 6253.9(g): Nothing in the Public Records Act provides that the public has access to records held by "any agency" to which access is otherwise restricted by statute. It is BLM's position that the information that has been determined to be subject to release by the CEC Chief Counsel is prohibited from release by federal law (ARPA and NHPA) unless and until the BLM provides an official determination of release to the contrary.
    b. 6254(k): Nothing in the Public Records Act is to be construed to require disclosure of records which are exempt or prohibited pursuant to federal law. The Public Records Act does not require that these documents be disclosed inasmuch as they are prohibited from disclosure under federal law.
    c. 6254(r); 6254.10: Nothing in the Public Records Act requires Native American location or feature records, or archaeological site information or reports that are maintained by or in the possession of a state agency be disclosed. CEC is under no obligation under this Act to disclose these types of records. On the other hand, nothing prevents disclosure unless prohibited by law. It is BLM's position that disclosure of these records is not required under the Public Records Act, and is, rather, prohibited from disclosure by federal law. The Public Records Act does not require disclosure of these federally protected records.
6. California Public Resources Code 25223: The CEC is directed to make any information filed or submitted under this division of state law available to the public under the provisions of the Public Records Act, Chapter 3.5, commencing with section 6250 of the California Government Code. As noted above, nothing requires the disclosure of this information, and indeed, public access is actually restricted since it is otherwise restricted by statute.
7. Inappropriate Disclosure under Federal Law: The documentation that has been docketed with the CEC for decision making purposes has been made under an inappropriate disclosure under federal law. The BLM has requested that this information be recalled and secured by the entity that filed this information with the CEC. In addition, the BLM has asked that the siting division of the CEC return any and all cultural resource reports and other information, and all copies of the same, pending further agreement between the BLM and the CEC as to the future protection of this information.
8. Property of the United States for which no authorization has been granted: The above referenced cultural resource information is and remains the property of the United States. As its steward, the BLM has not approved the release of this information for purposes of docketing with the CEC. The BLM has taken appropriate steps to secure the return of this information. It has likewise contacted the CEC siting division and the state with the understanding that an agreement regarding appropriate release conditions will be reached in the very near future.

For all of the above reasons, the BLM requests that the full Commission deny the CURE petition to inspect and copy cultural resource information belonging to the United States.

Sincerely,

Lynda L Barly

James Wesley Abbott
for Acting State Director

cc:

Deborah Dyer, Senior Staff Counsel, California Energy Commission

Terry O'Brien, Deputy Director, California Energy Commission

Christopher Myer, Energy Commission Project Manager, California Energy Commission

Copy above at the following address:
California Energy Commission
Media and Public Communications Office
1516 Ninth Street
Sacramento, CA 95814-5512

Wayne Donaldson, State Historic Preservation Officer, Office of Historic Preservation, Post Office Box 942896, Sacramento, California 94296-0001

Erica Niebauer, Office of the Regional Solicitor, Pacific Southwest Region, 2800 Cottage Way, E-1712, Sacramento, CA 95825

Appendix B

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W-1623
Sacramento CA 95825
www.ca.blm.gov

MAY 18 2010

In Reply Refer To:
3000 (CA930)P

Ms. Melissa Jones, Executive Director
California Energy Commission
Media and Public Communications Office
1516 Ninth Street
Sacramento, California 95814-5512

Dear Ms. Jones:

The California Energy Commission (CEC) has received a number of draft cultural resource reports prepared for a number of solar projects on Bureau of Land Management (BLM) administered lands. These draft cultural resource reports contain sensitive location and other information that BLM does not make publicly available. The BLM has recently been informed that some of these documents were docketed with the CEC as part of its public file for the Genesis solar facility, and that a recent request was made to the CEC Chief Counsel to release this information.

The information that is contained in the following docketed reports contains sensitive cultural resources information on federal public lands managed by the BLM:

1. Draft Class II and Class III Cultural Resources Inventories for the Genesis Solar Energy Project, Riverside County, California, as referenced in the confidential cover submittal, dated 08/31/2009 from J. Farrell to M. Jones, Docket: 53095.

2. Data Adequacy Supplemental Cultural Resource (AFC Section5.16 Information), as referenced in Confidential cover submittal from J. Farrell to M. Jones, Docket: 53610, dated 10/12/2009, including:

- Department of Parks and Recreation (DPR) 523 Forms for the following previously recorded archaeological resources:P-33-9037, P-33-9038, P-33-13088, P-33-13089, P-33-13467, P-33-13470, P-33-13471, P-33-13657, and CA-RIV-9084 and P-33-17834 (total of 41 pages);

- Maps: Appendix H: Class III Archaeological site Locations within ROW and Surveyed Corridor and Appendix H:Class III Archaeological site Locations within ROW and Surveyed Corridor (total of 4 maps); and

- Draft Historical Resources Inventory Genesis Solar Energy Project, Riverside County, California (total of 34 pages).

3. Application for Confidential – Data Adequacy Supplement Cultural Resources, dated 11/02/09, Docket: 53923.

4. Revised Draft II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, as referenced in confidential cover submittal from J.Farrell to M. Jones, dated 11/02/2009.

5. Final Draft: Class II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, from R. Gladden to M. Jones, dated 11/16/09, Docket: 54200.

6. Data Responses 1B – Cultural Resources, from R. Gladden to M. Jones, dated 01/11/2010, Docket: 54874.

7. Final Draft Class II and Class III, from M. Mills to M. Jones, dated 03/04/2010, Docket: 55822.

All of this information was generated with respect to cultural resources located on federal public land. Although the CEC has designated these materials confidential, it has likewise received a petition for inspection and copying. Without waiving our right to contest jurisdiction in this matter based on principles of federal sovereignty, we submit this response to the request for inspection and copying for your consideration.

The BLM asks that you deny the request for inspection and copying of this sensitive cultural information on the following bases and for the following reasons:

1. Archaeological Resources Protection Act ("ARPA"): 16 United States Code (U.S.C.) 470hh provides that the nature and location of archaeological resource permission "may not" be made available to the public "unless" the Federal land manager makes a determination that disclosure would further the purposes of ARPA, and not create a risk of harm to the resources or the site where the resources are located. *See also* 43 CFR 7.18. the Federal land manager in this instance is the California Office of the BLM. The "nature and location" of this information is on federal public land. No disclosure determination has been made by the BLM. Unless and until this determination is made, this confidential cultural information acquired on federal public lands is not appropriate for public review.
2. National Historic Preservation Act ("MHPA"): 16 U.S.C. 470w-3 provides that a federal agency "shall withhold from disclosure to the public" information about the location or character of a historic resource if a determination is made that disclosure may risk harm to the historic resource, among other things. *See also* 36 CFR 800.11©. If this determination is made, the federal agency may subsequently determine who may have access to the information in order to carry out the purposes of this Act. The BLM practice and policy reflects its general position that historical resource location and character information is not releasable to the general public. *See* BLM Manual 8140, Protecting Cultural Resources. In this case, BLM has not made any further determination who, if anyone, may have access to this information.
3. Freedom of Information Act ("FOIA"): The federal FOIA (5 U.S.C. 552) provides for the public release of information with certain exceptions. One of the exceptions provided by the Act provides that the non-disclosure provisions of other federal statutes allow withholds under the FOIA. In that regard, the BLM has received and denied requests filed by the same petitioner for location and other sensitive cultural information under its FOIA authorities based upon ARPA and NHPA. BLM has not publically released the information that is sought in the underlying request for inspection and copying under FOIA.

4. BLM Permit terms and conditions: The BLM issued a Field Authorization, subject to a BLM State Permit for Archaeological Investigations, to conduct cultural resource investigations for the proposed Genesis solar facility site. *See* BLM Manual 8150, Permitting Uses of Cultural Resources. These permits and authorizations are subject to BLM national standards and California BLM special permit conditions. All permittees are subject to these standard permit conditions and special permit conditions through their acceptance of the permit. Permittees are directed not to publish any locational or other identifying site location information without BLM approval (See Permit for Archeological Investigations Permit, Standard Permit conditions "x"). In addition, cultural resource reports are to be submitted to the BLM, and all notes, photographs, and other related materials that are acquired under the provisions of a permit remain the property of the United States Government and may be recalled at any time. The BLM has sought the recall and return of all cultural resource reports and any copies submitted to any third party, including CEC.
5. California Government Code.
    a. 6253.9(g): Nothing in the Public Records Act provides that the public has access to records held by "any agency" to which access is otherwise restricted by statute. It is BLM's position that the information that has been requested for inspection and copying is prohibited from release by federal law (ARPA and NHPA) unless and until the BLM provides an official determination of release to the contrary.
    b. 6254(k): Nothing in the Public Records Act is to be construed to require disclosure of records which are exempt or prohibited pursuant to federal law. The Public Records Act does not require that these documents be disclosed inasmuch as they are prohibited from disclosure under federal law.
    c. 6254(r); 6254.10: Nothing in the Public Records Act requires Native American location or feature records, or archaeological site information or reports that are maintained by or in the possession of a state agency be disclosed. CEC is under no obligation under this Act to disclose these types of records. On the other hand, nothing prevents disclosure unless prohibited by law. It is BLM's position that disclosure of these records is not required under the Public Records Act, and is, rather, prohibited from disclosure by Federal Law. The Public Records Act does not require disclosure of these Federally Protected Records.
6. California Public Resources Code 25223: The CEC is directed to make any information filed or submitted under this division of state law available to the public under the provisions of the Public Records Act, Chapter 3.5, commencing with section 6250 of the California Government Code. As noted above, nothing requires the disclosure of this information, and indeed, public access is actually restricted since it is otherwise restricted by federal statute.
7. Inappropriate Disclosure under Federal Law: The documentation that has been docketed with the CEC for decision making purposes is subject to a request for inspection and copying. If the Commission approves the request, the BLM's position is that such approval would result in an inadvertent release of federal property. The BLM requests the recall of this information from your docket files and the return of this information to the BLM immediately. In addition, the BLM has asked that the siting division of the CEC return any and all cultural resource reports and other information, and all copies of the same, pending further agreement between the BLM and the CEC as to the future protection of this information.
8. Property of the United States for which no authorization has been granted: The above referenced cultural resource information is and remains the property of the United States. As its steward, the BLM has not approved the release of this information for purposes of docketing with the CEC. The BLM asks that the CEC return this information immediately. It has likewise contacted the CEC siting division and BLM has met with representatives of the CEC in an attempt to reach agreement regarding the appropriate conditions under which this information may be released to the CEC.

For all of the above reasons, the BLM requests that the full Commission deny the California Unions for Reliable Energy petition to inspect and copy cultural resource information belonging to the United States.

Sincerely,

James Wesley Abbott
Acting State Director

cc:
Deborah Dyer, Senior Staff Counsel, California Energy Commission
Terry O'Brien, Deputy Director, California Energy Commission
Christopher Myer, Energy Commission Project Manager, California Energy Commission
Copy above at the following address:
California Energy Commission
Media and Public Communications Office
1516 Ninth Street
Sacramento, CA 95814-5512
Wayne Donaldson, State Historic Preservation Officer, Office of Historic Preservation, Post Office Box 942896, Sacramento, California 94296-0001
Erica Niebauer, Office of the Regional Solicitor, Pacific Southwest Region, 2800 Cottage Way, E-I712, Sacramento, CA 95825

APPENDIX C:
BLM CULTURAL RESOURCE DATA ISSUES IN THE SOLAR AFCs

1. Who "owns" or controls the data at issue (e.g., BLM, the applicant, the Energy Commission (CEC)?

2. If BLM limits use of the data, what "controls" or restrictions has it put on the data?

Has the applicant (or other entity or person that submitted the data to the Commission) complied with the controls or restrictions that BLM may have placed upon the use of the data?

3. Who submitted the data to the Commission?

4. What is the data?

5. Is there restricted access to the land on which the cultural resources are found?

6. Should local tribal entities with an interest in the project site have access to the data and the land?

7. Which substantive law(s) govern the confidentiality of the data: federal cultural resources statute(s) and regulation(s), state cultural resources statute(s) and regulations?

8. What restrictions do each of those laws put on access to the data?

9. What are the cultural resource issues in the proceedings?

10. What data does the Commission need, under the Warren-Alquist Act, the CEC regulations, CEQA, NEPA, the cultural resources laws, and the APA, to resolve those issues?

11. For projects proposed on BLM land, can the CEC defer, partially or entirely, to BLM's decisions on cultural resource issues, under the Warren-Alquist Act, the CEC regulations, CEQA, NEPA, the cultural resources laws, and the APA?

12. In a Commission proceeding for a project(s) proposed on private land, are there similar issues of who should be permitted access to confidential cultural resources data?

13. What data are parties entitled to, under the Warren-Alquist Act, the CEC regulations, CEQA, NEPA, the cultural resources laws, and the APA?

14. If the CEC Staff has access to certain data, must some or all other parties have access, under the Warren-Alquist Act, the CEC regulations, CEQA, NEPA, the cultural resources laws, and the APA?

15. If the data is revealed to any party, including but not limited to the CEC Staff, what appropriate nondisclosure agreements, if any, should be made?

16. May the Commission legally remove information from the docket of an adjudicative proceeding?

17. If limited access by parties other than BLM is appropriate, how should the access be handled (e.g., through restricted websites, controlled room viewing, redacting, etc.)?

18. Any closely related other matter necessary to resolve the issues.