STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

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

TESTIMONY OF DAVID S. WHITLEY ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON ISSUES CONCERNING US BUREAU OF LAND MANAGEMENT CULTURAL RESOURCES DATA

June 4, 2010

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2364-066a

Declaration of David S. Whitley, Ph.D., RPA

The following is the declaration of David S. Whitley, Ph.D., RPA, Principal, ASM Affiliates, Inc., 122 E. Tehachapi Blvd., Suite F, Tehachapi, CA 93561. This declaration is in response to the California Energy Commission "Notice and Orders for Consolidated Hearing on Issues Concerning US Bureau of Land Management Cultural Resources Data," specifically with respect to Appendix A of that Notice, the letter of 29 April 2010 to Melissa Jones, Executive Director of the CEC, from BLM Acting State Director James Abbott.

1) I am a professional archaeologist. I received a Ph.D. in Anthropology, with a specialization in Archaeology, from the University of California, Los Angeles, in 1982. I have been previously employed as Chief Archaeologist at UCLA; have served as US Representative and on the Council of Directors for the International Council of Monuments and Sites (ICOMOS); and was appointed as Prehistoric Archaeologist to the State of California, Historical Resources Commission (1986-7). In 2001 I received the Thomas F. King Award for Excellence in Cultural Resource Management from the Society for California Archaeology. I have provided cultural resources consulting services for CEQA and NEPA applications for over 30 years. My professional publications include over 100 articles and book chapters, and seventeen books and monographs, and I fully meet the Secretary of the Interior's Standards and Guidelines for Professional Qualifications as a Principal Investigator for archaeological projects (see 36 CFR Part 61).

2) CURE retained my firm, ASM Affiliates, Inc., to review the cultural resource data for the Genesis Solar Energy Project ("Genesis") and to prepare expert testimony regarding strategies for identification, avoidance and mitigation of cultural resources impacts associated with Genesis project development.

3) The BLM's 29 April 2010 assertion that cultural resources data are protected from dissemination to the general public by both federal and California law and regulation is correct. That these data are protected from public dissemination does not however mean that they are shielded from review, evaluation and/or use by other professional archaeologists, as the BLM implies in its letter. The purpose of the request for these documents is to facilitate their peer review by professional archaeologists. The BLM's claim in this respect is unprecedented and extreme, and it violates long-standing professional guidelines and practices.

4) Numerous facts, circumstances and precedents demonstrate that the distribution of archaeological technical reports to other professionals is not simply allowed, but is common practice, including by the BLM:

a) Professional peer review of studies and reports is widely, if not universally, recognized as a cornerstone of science. The importance of peer review for federal projects and programs is explicitly acknowledged by the US Department of Interior in

National Park Service *Archeology Brief 21: Peer Review of Federal Archeology Projects and Programs* (2007). As this guideline states: "The primary goal of the peer review process is to evaluate the conduct of Federal archeological projects and assess the competence and efficiency of projects relative to archeological practice and legal compliance." The BLM's refusal to supply technical archaeological reports for evaluation by other professional archaeologists represents a remarkable violation of the Department of the Interior's own practices with respect to technical report review.

b) Cultural resources data, including site records, maps and reports, are inventoried, archived and tabulated by the State of California Office of Historic Preservation, California Historic Resources Information System (CHRIS) Information Centers—regardless of whether these sites fall on private, state, tribal or federal lands. A review of the appropriate Information Center site records and maps is required to complete CEQA Phase I Archaeological Surveys, and NHPA Inventories. Use of the CHRIS system, because of the sensitive site locational information data that it contains, is restricted to qualified archaeological professionals who have signed access and confidentiality agreements. That is, while regulations prevent the dissemination of sensitive archaeological information to the general public, a program for access to and use of this same information by professional archaeologists has been in place for almost a half-century.

c) The CHRIS access agreement (attached) requires that copies of all archaeological site records, maps and reports be submitted to the appropriate Information Center within 60 calendar days of the completion of an archaeological project. The authors of the technical reports in question were required to use the site records and maps archived in the CHRIS system to complete their technical studies, and have agreed to subsequently provide copies of their resulting technical documents to the CHRIS system within the reporting period. Critically, the BLM has shared its sensitive site location data with the CHRIS system for decades, and has in the past attempted to fully integrate its own field office data archives with the state system. The 29 April 2010 BLM claim that they alone retain these reports and will not allow them to be released, if followed, will result in the violation of the agreements under which the studies were conducted; and it will represent a major change in BLM policy and practice with respect to data archival practices.

d) Federal regulations (43 CFR 7.6b5) further state that recipients of ARPA permits, which were required for the archaeological technical studies in question, must arrange for the storage of recovered "collections, records, data, photographs and other documents" at an appropriate and approved curatorial repository. As these regulations make clear, although ownership of these materials is retained by the US government, it is not the federal government's intention to retain physical possession of these same materials; instead the intent is to ensure that they are available to other professional archaeologists for their use and study.

e) These circumstances fully reflect the Society for American Archaeology's Principles of Archaeological Ethics. Principle No. 5, Intellectual Property, states that:

"Intellectual property, as contained in knowledge and documents created through the study of archaeological resources...must be made available, by publication or otherwise, within a reasonable time and documents deposited in a suitable place for permanent safekeeping."

5) Because archaeological information is heavily redacted in an EIS or EIR, to prevent the distribution of sensitive archaeological data to the general public, full copies of the technical archaeological reports in question are required for adequate professional peer review of the proposed projects with respect to archaeological issues and compliance.

6) Professional peer review of the technical documents is essential to ensure full CEQA compliance, especially in light of the fact that the requirements of CEQA and NEPA/NHPA differ with regards to the identification and evaluation of significant adverse impacts/effects, including the means used to determine the significance of cultural resources.

7) Absent an opportunity for professional peer review and evaluation of the technical archaeological reports in question, CEQA's objectives of enhancing public participation in the planning process and fully disclosing the proposed projects' potential adverse impacts will not be met.

I have reviewed the above testimony regarding the Notice and Orders for Consolidated Hearing on Issues Concerning US Bureau of Land Management Cultural Resources Data. To the best of my knowledge, all of the facts in my testimony are true and correct. To the extent that this testimony contains opinion, such opinion is my own.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. This declaration is signed at TEHACHAPI, California.

Signed:

David S. Whitley

David S. Whitley, Ph.D., RPA

Date:

3 JUNE 2010

2364-066a

California Historical Resources Information System

ACCESS AGREEMENT

Number: _____

I, the undersigned, have been granted access to historical resources information on file at the _____ _____ Information Center of the California Historical Resources Information System.

I understand that any CHRIS Confidential Information I receive shall not be disclosed to individuals who do not qualify for access to such information, as specified in Section III(A-E) of the CHRIS Information Center Rules of Operation Manual, or in publicly distributed documents without written consent of the Information Center Coordinator.

I agree to submit historical Resource Records and Reports based in part on the CHRIS information released under this Access Agreement to the Information Center within sixty (60) calendar days of completion.

I agree to pay for CHRIS services provided under this Access Agreement within sixty (60) calendar days of receipt of billing.

I understand that failure to comply with this Access Agreement shall be grounds for denial of access to CHRIS Information.

Print Name: _____ Date: _____

Signature: _____

Affiliation: _____

Address: _____ City/State/Zip: _____

Billing Address (if different from above): _____

Telephone: _____ Fax: _____ Email: _____

Purpose of Access: _____

Reference (project name or number, title of study, and street address if applicable): _____

_____

County: _____ Township/Range/Section or UTMs: _____

USGS 7.5' Quad: _____

DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on June 4, 2010, I served and filed copies of the attached TESTIMONY OF DAVID S. WHITLEY ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON ISSUES CONCERNING US BUREAU OF LAND MANAGEMENT CULTURAL RESURCES DATA dated June 4, 2010. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/Ridgecrest_POS.pdf.

http://www.energy.ca.gov/sitingcases/genesis_solar

http://www.energy.ca.gov/sitingcases/solartwo

http://www.energy.ca.gov/sitingcases/solar_millennium_blythe/index.html

http://www.energy.ca.gov/sitingcases/solar_millennium_palen/index.html

http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/Ridgecrest_POS.pdf.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and U.S. Mail as addressed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on June 4, 2010.

_____/s/_____
Bonnie Heeley

RIDGECREST SOLAR POWER PROJECT
Docket No. 09-AFC-9

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IMPERIAL VALLEY SOLAR PROJECT
DOCKET NO. 08-AFC-5

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Blythe Solar Power Plant Project

Docket No. 09-AFC-6

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DOCKET NO. 09-AFC-7

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RIDGECREST SOLAR POEWR PROJECT
Docket No. 09-AFC-9

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