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August 13, 2010

DOCKET	
08-AFC-5	
DATE	<u>AUG 13 2010</u>
RECD.	<u>AUG 13 2010</u>

Docket Office
Attn: Docket No. 08-AFC-5
California Energy Commission
1516 Ninth Street, MS-4
Sacramento, CA 95814

Re: Imperial Valley Solar Project (08-AFC-5)

Dear Docket Clerk:

Enclosed are an original and copy of **CALIFORNIA UNIONS FOR RELIABLE ENERGY EXHIBIT 499S – REBUTTAL TESTIMONY OF CLAUDIA NISSLEY ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON CULTURAL RESOURCES**. Please process this document, conform and return the copy in the envelope provided.

Sincerely,

/s/

Loulena A. Miles

LAM:bh
Enclosure

EXHIBIT 499-S

**STATE OF CALIFORNIA
California Energy Commission**

In the Matter of:

The Application for Certification for the
IMPERIAL VALLEY SOLAR PROJECT
(formerly SES Solar Two)

Docket No. 08-AFC-5

**REBUTTAL TESTIMONY OF CLAUDIA NISSLEY
ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY
ON CULTURAL RESOURCES**

August 13, 2010

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Attorneys for the CALIFORNIA UNIONS
FOR RELIABLE ENERGY

I. Statement of Qualifications

The California Unions for Reliable Energy (CURE) retained my firm, C. Nissley Environmental Consultants, Inc. to review the cultural resources staff assessment for the Imperial Valley Solar Project and to assess compliance with CEQA, NEPA, and NHPA, Section 106. In addition to my qualifications enumerated below and my attached resume, I have an extensive background in California archaeology. I was fortunate to be able to work with Phil Wilke, the first scientist to study Lake Cahuilla and analyze the receding shorelines and associated fish traps (1978). As a result of this project and several others, I am intimately familiar with the cultural resources in the project area of southern California. My experience also includes teaching classes in CEQA and Section 106 of NHPA to staff for CA SHPO, California Department of Transportation, private contractors and energy corporations operating in CA.

My qualifications meet the Department of Interior Standards for Professional Qualifications in Archaeology and Cultural Anthropology. I have served both as an executive for the Advisory Council on Historic Preservation and as the Wyoming Governor appointed State Historic Preservation Officer. For the last twelve years, I have taught for the National Preservation Institute, the Falmouth Institute, and the American Bar Association's Continuing Legal Education in the area of Native American, cultural property and preservation law. I design and teach classes on the National Historic Preservation Act, National Environmental Protection Act, Consultation and Protection of American Indian Sacred Lands, Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act. As a consultant for the last decade, my clients have included but are not limited to Environmental Protection Agency, General Services Administration, National Park Service, U.S. Fish and Wildlife Service, Minerals Management Service, U.S. Army Corps of Engineers, Navy, North Dakota, Wisconsin, Vermont, private energy corporations, and multiple American Indian tribes.

While with the Advisory Council as Director of the western office for 15 years, and as the WY SHPO for several years, I was responsible for oversight of federal agencies compliance with Section 106 of the National Historic Preservation Act for all of the states west of the Mississippi River and east of Japan. Approximately 75% of the cases involved American Indian tribes and their traditional cultural properties in aboriginal lands. My primary role was one of consultation, negotiation and resolution between the tribes, state and federal agencies and proposed development. I have written, reviewed and commented on thousands of documents containing determinations of eligibility and determinations of effect as required for the Section 106 process. I teach multiple classes on how to write agreement documents such as Programmatic Agreements, for resolution of adverse effects and programs or projects for development and management of cultural resources and have authored numerous Memorandum of Agreements and Programmatic Agreements.

II. Summary of Conclusions

My conclusion after reviewing the Staff Assessment, Supplemental Staff Assessment and Cultural Resources Technical Report for the Imperial Valley Solar Project is that the Commission Staff have not adequately identified the cultural resources on the Project site, determined the significance of the cultural resources on the Project site, assessed the impacts from the project on these resources or proposed adequate mitigation.

CEQA requires state agencies to identify the environmental impacts of a proposed project, determine if the impacts will be significant, and identify alternatives and mitigation measures that will substantially reduce or eliminate significant impacts to the environment (Staff Assessment 2010: C.3.3.3).

For cultural resources, the Staff Assessment identified five steps that the agency must follow:

- 1) Determine the geographic extent of the project area of analysis;
- 2) create an inventory of cultural resources within the area;
- 3) assess the historical significance of known resources;
- 4) assess the impacts of the project on eligible resources; and
- 5) resolve significant impacts on eligible resources.

Out of five steps, Commission Staff has admittedly undertaken only two, and even the analysis completed for the first two steps is legally inadequate.

Although the Staff Assessment endeavors to address step one (define project area of analysis), the definition of the geographic area is incomplete. Commission Staff define the project area of analysis too narrowly and do not take into account the full range of potential indirect and cumulative significant impacts.

The Staff analysis has also begun to undertake step two (inventory of the cultural resources), however the inventory is too narrow in scope and only addresses surface archaeological sites and a portion of the historic built environment. The Staff has not undertaken any inventory of subsurface resources, although there is ample evidence that subsurface resources will be discovered and may be extensive and significant. Finally, the provisions for mitigation of project impacts are wholly inadequate. The only mitigation proposed is Condition of Certification CUL-1, which simply defers the remainder of step two and the following three steps until after project approval. The deferral of the completion of step two and the remaining three steps violates CEQA.

III. Failure to Follow Standard Archaeological Practice for CEQA Compliance and Implementation

As is widely understood, the CEQA Guidelines encourage state and local agencies to develop their own implementation procedures for regulatory compliance. Although this permits some agency-specific latitude, such procedures must satisfy the CEQA requirement that “each significant environmental effect” be identified, and that the potential mitigation measures for each adverse effect must be discussed (CEQA Guidelines 15126.4(a)1).

CEQA lead agencies and agency staffs have both formally and informally adopted a set of standard archaeological procedures intended to comply with these requirements. For the preparation of a DEIR, the widely followed CEQA standard practice includes a Phase I archaeological survey (intensive site “inventory”) and a Phase II test excavation and determination of significance. Final recommendations for the management of cultural resources are developed, and included in a DEIR, based on the results of these two procedures.

As is discussed below, these two procedures are necessary to develop appropriate mitigation measures for each identified adverse impact. Such measures will vary depending upon the nature of the specific resource and the significance values that these procedures identify. As the Supplemental Staff Assessment acknowledges, the Applicant’s archaeological consultants have completed site inventories but not determinations of significance, based on test excavations that provide affirmative information concerning the size, integrity and nature of each cultural resource. Staff have not determined significance, and instead propose to defer this analysis until after the Project is approved.

The completion of a Phase II survey and determination of significance, as standard CEQA practice, represents the tacit acknowledgment that survey level data alone are inadequate for accurate significance determinations. That is, the completion of test excavations, as standard CEQA practice, reflects the well-known archaeological fact that surface evidence obtained during site surveys is at best incomplete and, at worst, may be entirely misleading.

Staff’s justification for departing from CEQA standard practice, cites federal regulations (36 CFR 800.14b) that allow for the resolution of “complex” cultural resource project situations through the development of a Programmatic Agreement (PA), providing for site evaluations and mitigation measures after project certification.

Two points are important to emphasize in this regard:

(1) There is nothing complex about the Imperial Valley Project from the cultural resources survey perspective, especially relative to numerous CEQA regulated California land developments. In fact, a phase 1, 100% cultural resource survey has already been completed.

(2) The reason that Staff is not following the standard CEQA process for cultural resources analysis is for the sole purpose of meeting the needs of the Applicant. As the Supplemental Staff Assessment makes clear (C.3-158 – 159),

“Energy Commission staff believes...that it is an unavoidable consequence of the accelerated schedule to which this licensing process has been and continues to be subject that there will have been insufficient time to develop a thoughtful and integrated cultural resource avoidance plan for the present configuration of the project area. The absence of formal recommendations and determinations on the historical significance of the entire inventory of cultural resources prior to a decision on the license application or prior to the onset of construction, should the project be approved, precludes the possibility of developing such a plan.”

Whereas federal regulations allow for these kinds of data gaps and procedures, CEQA has no such dispensation for the gathering of cultural resource information and significance evaluations. CEQA instead requires that each potential adverse impact be identified, and appropriate mitigation measures be identified, described and considered by the agencies and the public prior to project approval.

Staff’s analysis fails to acknowledge that the proposed Project has not complied with standard CEQA practice with respect to cultural resources.

IV. Analysis of Whole Categories of Resources Was Omitted or Incorrect

The Staff’s 25% inventory failed to account for ethnohistoric landscapes, historical architecture, traditional cultural properties, historic buildings, landforms and sacred areas. The Applicant focused the survey effort almost exclusively on archeological resources. Further, the Staff Assessment overtly failed to analyze the potential cultural significance of landforms. Table 5, a summary of the geoarchaeological sensitivity of landforms, indicates that “rock outcrops” have no geoarchaeological sensitivity.

However, it is well documented that many landforms have ascribed value in a cultural context. Numerous state and national parks exist because the landforms for which they are designated are nationally or regional significant, e.g. Devil’s Tower National Monument, also known as Bear Butte Lodge to tribes, and the City of Rocks National and State Park, known as a historic gathering place for wagon trains. The expressed bias overlooks the fact that what is significant is the human use of the landscape and associated environment over time. For example, the desert pavement and associated prehistoric cultural resources on the Project site are totally unique from a national perspective. There are no other geographic areas in the U.S. that had the types of cultural resources recorded in the project area. There are no less than eleven trail segments in the desert pavement identified within the project area. The trails evident in the desert pavement were created by thousands of steps of humans over time. At a recent BLM

sponsored meeting on the Programmatic Agreement, several tribal members stated they were extremely concerned about the destruction of the trail system. The Commission must evaluate the value of landforms in a cultural context.

Therefore, the legal requirements of a cultural resource analysis under CEQA, NEPA and Section 106 of the NHPA have not been fully met due to a limited and narrow field of collected cultural resources.

V. Failure to Identify Appropriate Mitigation for Significant Adverse Impacts

As noted above, appropriate mitigation measures for the Project's adverse impacts to each cultural resource have not been identified or considered and the formulation of these measures would occur in a future treatment plan drafted after project approval. CEQA Guidelines are explicit: "Preservation in place is the preferred manner of mitigating impacts to archaeological sites" (15126.4(b)2(A)).

The Staff Assessment acknowledges that CEQA's preferred mitigation for impacts to cultural resources (complete avoidance) will be a constrained and limited mitigation option once the Project is approved:

"The schedules for the agency processes and the likely schedule for the implementation of the stipulations in the PA, while constraining the avoidance options for the action, as presently proposed, do not preclude the ability of the applicant, on an admittedly more limited scale, to avoid cultural resources in general or to practice preservation in place for individual archaeological resources."(Staff Assessment 2010: C.3.-154)

However, there are many cases where preservation in place is the only appropriate mitigation because of the nature of an archaeological site's significance values. A well-known recent example of this is provided by the U.S. Army Corps of Engineer's Playa Vista project, in the City of Los Angeles. In a fashion similar to the Imperial Valley Project, the Corps failed to require test excavations prior to project approval, instead assuming that a PA and archaeological data recovery would serve as the appropriate mitigation for a known archaeological site, following project approval. The result was the discovery, removal and therefore destruction, of an early 19th century Tongva-Gabrielino tribal cemetery containing 386 burials, at an archaeological cost of greater than \$12 million.

Some of the prehistoric archaeological sites within the Project's area of potential impact appear to represent village sites and contain burials. Adequate determination of the appropriate mitigation measures for these and the other sites requires the identification of each site's significance values prior to project approval.

The Staff's proposed CEQA compliance, in this respect, is not based on the responsible stewardship and treatment of the cultural resources, but instead on the procedure that is most expedient for the Applicant.

VI. Staff Failed to Adequately Assess the Historical Significance of Known Resources

The staff assessment fails to comply with the Secretary of Interior Standards and Guidelines for Archeology and Historic Preservation, and as a result has failed to establish the context necessary to assess the historic significance of known resources. The Staff Assessment includes lengthy descriptions of the cultural setting and the identified cultural resources on the surface in the project area, however there is no link described between the cultural history of the geographic area and the identified 440 cultural resources. The link that is missing is historic context, "...an organized format that groups information about related historic properties based on a theme, geographic limits and chronological period. The historic context is the cornerstone of the planning process." (Secretary of Interior Standards and Guidelines for Archaeology and Historic Preservation 1980:5)

The Commission Staff did not identify a cultural context within which evaluations of significance and historic and/or prehistoric importance could be assessed. Staff also made no attempt to relate the identified resources to one another in terms of a cultural landscape. By simply identifying and listing the recorded resources, there is no cultural context within which the "important historic and cultural aspects of our national heritage" may be assessed in accordance with the Requirements of CEQA and Section 106 of NHPA.

For example, irrigation and subsequent farming in the southern California desert is a regional and nationally significant event that forever changed the economic and commerce model in this area of California. One sentence is devoted to the All-American Canal in the cultural setting section of the staff assessment. There are no less than seven canals and drainages briefly identified in the cultural resources inventory section. In accordance with the Secretary of Interior Standards, a historic context should be developed between the cultural setting and the historical significance of the identified irrigation system and how it relates to development in the project area in terms of farming and economic history. In order to comply with CEQA and Section 106 of NHPA, the historic context is necessary to be able to move from the required step of identification to the required step of evaluation of historical significance.

The CEC Staff must evaluate the historical significance of the identified resources to assess whether the project will cause a substantial adverse change in the significance of properties qualified for the California Register of Historical Resources (CRHR) and the National Register of Historic Places. Under both CEQA and NHPA, cultural resources must be evaluated to determine if they meet at least one of four specific criteria. The resource must also possess at

least one element of integrity of location, design, setting, materials, workmanship, feeling and association. This step of evaluation has not been done; therefore, an assessment of substantial adverse changes or adverse effects cannot yet be determined and the threshold of CEQA and NHPA cannot be met.

VII. Inappropriate Conditions of Certification

Staff's recommended Conditions of Certification CUL-1 essentially defers the remainder of the needed survey effort, the determination of significance of the resources and the formulation of mitigation, to the implementation of a Programmatic Agreement that proscribes the development of mitigation or "treatment plans" well after the Project is approved. The implied rationale for this extreme deferral of analysis and mitigation is to ensure that the Applicant can meet their funding timelines. This is a wholesale abandonment of the CEQA process.

Staff also relies on the incorrect rationale that the assessment could not have been done before Project approval. "The time required for formal evaluations of historic significance for the complete cultural resources inventory exceeds the statutory one-year licensing process" (C.3-107). This is simply not true. Had the Applicant presented complete and adequate surveys to the Commission at the data adequacy phase, as is required by Commission regulations, the determination of significance and formulation of mitigation could have been accomplished within the one year licensing process.

A "formal evaluation" of a cultural resource in Section 106 and 36 CFR Part 60 requires the federal agency to send the decision documents to the Keeper of the National Register in Washington D.C. for their concurrence or objection. The BLM makes the decisions and sends the documents to the SHPO. SHPO has 30 days to concur or object. This process requires much less time than one year. For example, I worked on a proposed reservoir project with 600 identified cultural resources located in the area to be inundated. The federal agency determined all 600 resources to be eligible for listing on the National Register; the SHPO agreed. The administrative paperwork was processed in less than a month. The remainder of the time prior to project approval was spent in consultation with all parties to determine what types of preservation and mitigation might be possible and acceptable. Thus, there is no valid or legal rationale for deferral of the analysis and mitigation until project approval.

Moreover, the type of PA selected for this project is for "complex and multiple undertakings." (36 CFR Section 800.14(b)(3).) This project is not complex nor are there multiple undertakings. With the available data, this approach is neither necessary nor appropriate, nor does it meet the intent of CEQA, NEPA or NHPA.

The Staff Assessment cites CEQA guidelines, "the formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project..."(C.3.154). The Staff Assessment is not explicit in stating what constitutes the "performance standards" in the PA;

however, if one assumes they are the Historic Preservation Treatment Plan and/or the Historic Preservation Management Plan, neither plan meets any specificity with regard to measures which might mitigate the significant effects. The Treatment Plan simply outlines that historic properties should be avoided *whenever possible*, and otherwise significant effects should be minimized or some type of mitigation should be conducted. This approach is unacceptable when a 100% survey of archaeological resources is already completed and there has been adequate time to develop a meaningful agreement document with relevant and specific options for mitigation.

VIII. Staff Incorrectly Concludes Anza Trail Remnants Are Needed for NRHP Eligibility

The National Park Service, administrator for the Anza Trail, has expressed the position that the proposed project will significantly affect the historic integrity and character of the trail as well as the visual landscape. There is no mitigation measure that would diminish the significant impact of the project on this nationally significant historic trail. There is no doubt that the project will affect the setting, feeling and association of the trail – those characteristics that qualify the trail for the National Register and CRHP.

In contrast, the Staff Assessment states: “...should no material evidence of the Anza Trail or activity related to the trail’s use be found, the designated trail corridor...would not...qualify for further consideration under either the NRHP or CRHR...because there would be no physical cultural resource present. Under such circumstances, the Anza Trail would not qualify for further consideration ...as a historic property or historical resource.” (C.3.134) This statement is patently false. According to 36 CFR Part 60, the Secretary of Interior Guidelines and multiple other resources and examples, it is possible to consider segments or portions of trails, roads, and other linear features even if no cultural material exists in that particular segment.

The fact that there are no material items indicating historic use of the Anza Trail corridor is not evidence that this section of the Anza Trail is not significant. With campsites on either end of the corridor, and a part of a nationally designated significant trail corridor on the Project site, it is not a requirement that every inch of the trail be littered with an artifact indicating the use of the trail. The majority of significant trails in the west have vast segments without any cultural material such as the Mormon Trail, the California-Oregon Trail, the Pacific Crest Trail, and so on, and yet all segments of the trails are considered significant.

The Staff assessment suggests “off-site” mitigation, a term that is not standard procedure in the assessment and management of historic properties. Off-site mitigation is also known as compensatory mitigation and is not often cited as an acceptable measure as all cultural resources are non-renewable. It is difficult to compare off-site mitigation, such as a sign posted at some other spot along the trail or perhaps a study that produces a layman’s book, with the

loss of a non-renewable resource – particularly one that has a designation and evaluation of national significance. Clearly the Commission should give more consideration to mitigating the impacts from the loss of the trail, regardless of whether there are known remnants on the Project site.

References Cited

Department of Interior 1980 Secretary of Interior Standards and Guidelines for Archaeology and Historic Preservation.

King, Thomas F. 2006 Mea Culpa: How I Infected Cultural Resource Management with Archaeobias. Society for California Archaeology Newsletter, Vol..40, No.3

URS Corporation 2010 Cultural Resources Technical Report for Imperial Valley Solar Project.

Wilke, P.J. 1978 Late Prehistoric Human Ecology at Lake Cahuilla, Coachella Valley, California. Contributions of the University of California Archaeological Research Facility, No. 38, Berkeley.

Claudia Nissley
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Present Positions

President - Nissley Environmental Consultants, Inc. 1999 to Present

Consultant in environmental review and cultural resource management. Provide practical strategies and solutions for federal, state and delegated local governments, tribes, Non Government Organizations and industry to navigate federal environmental requirements. Analyze and develop documents with recommendations for mitigation. Bring community consensus and mediate cross-cultural discussions for integration of environmental and cultural heritage laws. Identify potential issues under the National Environmental Policy Act (NEPA), Section 106 of National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act (ARPA) and Comprehensive Environmental Response, Compensation and Liability Act (Superfund). Oversight to bring legal processes to final decision and closure.

Contract projects for state and federal governments, institutions and private companies. Professional analysis of data, preparation of reports (EIS, EA, NOI, RODs, CIA, SIA) and final manuscripts for publication. Special custom training for clients in NEPA process, regulations and compliance requirements.

Clients include U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife, U.S.D.A. Forest Service, Bureau of Land Management, General Services Administration, U.S. Department of Justice, University of Colorado, State of Wisconsin and South Dakota, private companies and not-for-profit organizations.

Instructor – National Preservation Institute, 1999 to Present

Design and teach classes for national audiences on federal environmental and heritage laws and their implementing regulations. Classes targeted for professional practitioners, Continuing Legal Education (CLE), American Indian Tribes, federal and state employees and advocacy groups. Customized classes developed for Army National Guard, federally recognized Tribes, California and Texas State Departments of Transportation, U.S. Housing and Urban Development.

Classes include Introduction to Section 106, Integrating Cultural Resources in NEPA Compliance, Consultation with Indian Tribes on Cultural Resource Issues, Section 106 – How to Negotiate and Write Agreements, CERCLA and NHPA Coordination for Superfund Sites, Identification and Management of Traditional Cultural Properties, NAGPRA and ARPA: Applications and Requirements (www.npi.org)

Courses taught throughout U.S., including Alaska and Hawaii. Over 2200 participants in previous six years of classes.

Professional Employment History

State Historic Preservation Officer, Wyoming

Oversight for State Historic Preservation Office. Manage and allocate \$1 million program with 60 employees. Ensure compliance with federal laws and federal Historic Preservation Fund Grant. Program include statewide data base in the Cultural Records Office, State Archaeologist, State Curation facility, Review and Compliance Division for federal statutes and regulations under NHPA, NEPA and in conjunction with NAGPRA, National Register Program, Tax Act Incentives, Certified Local Government grants, and statewide contexts and planning projects. Majority of projects related to Congressional and Presidential Energy Development including oil and gas, coal, coal bed methane, wind and the associated infrastructure.

Director, Western Office, Advisory Council on Historic Preservation

Responsible for federal agencies' Section 106 compliance with the National Historic Preservation Act in the western half of the U.S. and the Pacific. Manage the Western Office, supervise staff of 10. Respond to Congressional inquiries, comment on proposed draft legislation and regulations. Develop preservation policy for land management issues and encourage its implementation. Focus on retention of historic

components in new development. Ensure integration of cultural diversity, with particular emphasis on Native Americans, including Native Hawaiians. Work with citizen coalitions and special interest groups to achieve more desirable outcomes for preservation concerns. Mediate with all involved parties and negotiate resolutions to development/preservation conflicts. Sole media contact. Taught course, "Federal Preservation Law" for groups up to 45 participants, four times per year.

Colorado State Museum and Museum of Northern Arizona

Inventory federal and tribal lands in New Mexico, Arizona and Utah for cultural resources to enhance research efforts. Supervised field and lab teams to ensure accuracy and consistency in acquisition and analysis of cultural material. Write reports and recommendations for future treatment and preservation. Collaborate and assist Department of Collections for annual Pueblo festivals, education and markets.

Integrate historic preservation concerns into comprehensive statewide planning, survey and National Register of Historic Places programs; develop and teach statewide training courses in cultural resource management, Colorado history and prehistory, archaeological field techniques and compliance with preservation legislation. Initiate statewide program of Avocational Archaeological Certification based on Arkansas model; conducted instruction in major modules throughout state. Develop international network for avocational organizations at Society for American Archaeology meeting, Vancouver, B.C. Assist Office of State Archaeologist in technical assistance to other state units, agencies and the public.

Forest Archaeologist, Willamette National Forest, U.S. Department of Agriculture, Eugene, OR

Primary responsibility for development, administration, and professional recommendations for a new forest-wide program for recognition and assessment of significant of cultural resources on National Forest Land. Technically trained and supervised 10 archaeologists and 35 technicians. Solicited and reviewed requests for proposals, evaluated contracts and contract bids and served as Contracting Officer's Representative for contract projects. Scheduled annual work plans. Coordinated with Timber Sale Program for five-year sale plans.

Education

MS, JD	Environmental Law - In Progress	Vermont Law School
ABD	Anthropology/Statistics	University of Oregon, Eugene
MA	Anthropology/Geology/Paleontology	University of Colorado, Boulder
BA	Anthropology/Philosophy	California State University, Long Beach

Recent Presentations

- 2008 Multi-Jurisdictional Energy Projects: Federal & Tribal Consultation Requirements, Continuing Legal Education, Denver, CO (2 day workshop)
- 2005 Petroleum Association of Wyoming, American Institute of Petroleum, Jackson, WY
- 2004 Environmental & Natural Resources Law on the Reservation, Phoenix, AZ
"Ethnographic Landscapes, Traditional Cultural Properties, and the National Historic Preservation Act – What You Need to Know." Continuing Legal Education
- 2004 Public Interest Environmental Law Conference, University of Oregon Law School
"The National Historic Preservation Act – The Art of Consultation "
- 2004 Wyoming Bureau of Land Management Protocol Meeting
"Cultural Landscapes and Historic Trails Context and Evaluation "
- 2003 Society for American Archaeology Meeting, Milwaukee, Wisconsin
"Traditional Cultural Properties and Case Law "
- 1997 Native American Consultation: Protocol and Process. SAA Annual Meeting.

New Publication

- 2010 Consultation and Negotiation. *In A Companion for Cultural Resource Management*, ed. Thomas F. King, Wiley-Blackwell, Malden, MA

Expertise Specific to Traditional Cultural Properties, Ethnographic and Ethnohistoric Landscapes

For the last 20 years, my work has focused on the dynamic and growing areas of concern related to those places and landscapes that are valued by communities and American Indian tribes called traditional cultural properties or culturally significant landscapes. Below are enumerated some of the more significant cases I have worked on, either on behalf of the tribe, a state, a corporation or an agency in the federal government. Some specific information is intentionally left out due to a client's position that the information is privileged and confidential.

U.S. Army Corps of Engineers and Environmental Protection Agency, New England Districts; VT Abenaki tribe (not federally recognized); private land – federal oversight; identified and consulted with tribe to determine traditional areas of significance; coordinated consultation and on-site meetings for with all mentioned parties to determine if any mitigation would work for protection of special areas.

Private utility company, Bureau of Land Management, U.S. Fish and Wildlife Service, Bureau of Reclamation, CA State Department of Toxic Substances, and 12 federally recognized tribes of the Lower Colorado River; CA; private and federal land; proposed and facilitated consultation between and among above-listed parties to identify and recognize a sacred landscape, a portion of which is already listed on the National Register of Historic Places as an archaeological district. This project is still on-going and consultation is continuing on what effects of the proposed project might be on the traditional cultural landscape. One tribe pursued litigation prior to my being hired. An agreement settlement was reached between the utility company and the tribe, however, it remains a contentious issue today.

U.S. Forest Service, Medicine Wheel Alliance, Medicine Wheel Coalition, federal land; a medicine wheel over 60 feet in diameter at 10,000 feet elevation in WY; traditional practitioners ascribing cultural and religious values; developed an agreement among all parties to prevent additional environmental and cultural degradation; monitoring system and interpretative text according to tribal members for the general public; by 2009, over 81 federally recognized tribes ascribe value to the area. A new twist to the issues was added in 2005 during a meeting of traditional ranchers and fifth generation families of the area also ascribing cultural value for traditional hunting, family camping and gathering areas.

U.S. Forest Service, federally recognized tribe, rock climbers; USFS developed a land management plan for Cave Rock, a cave ascribed traditional and religious significance by the tribe and a noted popular place for rock climbing adjacent to Lake Tahoe, CA. The plan eliminated climbing completely from the outcrop and cave as it was unacceptable to the tribe. Access Fund, a national climbing organization pursued litigation but did not gain access again. Cave Rock has a four-lane highway through the middle of the rock outcrop and one has to cross the highway to gain access to the cave. I provided expertise in reviewing the traditional cultural properties, the tribe's position and an analysis of the land management plan and accompanying environmental assessment.

Bureau of Land Management, federally recognized tribe, 65 miles of California coastline with ancestral lands and human remains with ascribed traditional significance and important for the tribe's cultural continuity. Over a number of years, the BLM was not responsive to the tribe's request under several federal laws. My role was to write an overview of the situation based on existing documents, make recommendations and facilitate in meetings with BLM State Director, Department of Interior solicitors, and the tribe's governor, attorney and tribal historic preservation officer. We were successful in reaching agreement and ultimately the tribe was able to fulfill their requests for specific actions to occur on federal lands.

Other issues of traditional culture and places of ascribed significance that I have participated in facilitation of various resolutions include the Pueblo of Sandia and the Rio Grande, NM; a traditional AK native village also an archaeological site; the State of SD and state and federal lands ascribed significance by multiple tribes; USFS Mt. Graham in AZ and multiple tribes; and other considerably less contentious issues on private and federal lands.


DECLARATION OF CLAUDIA NISSLEY
IMPERIAL VALLEY SOLAR PROJECT
Docket No. 08-AFC-5

I, Claudia Nissley, declare as follows:

1. I am a consultant in environmental review and cultural resource management. I provide practical strategies and solutions for federal, state and delegated local governments, tribes, Non Government Organizations and industry to navigate federal environmental requirements.
2. My clients have included the U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife, U.S.D.A., Forest Service, Bureau of Land Management, General Services Administration, U.S. Department of Justice, University of Colorado, State of Wisconsin and South Dakota, private companies and not-for-profit organizations.
3. I prepared the testimony attached hereto and incorporated herein by reference as it relates to the Supplemental Staff Assessment prepared for the project known as the Imperial Valley Solar Project.
4. It is my professional opinion that the attached testimony is true and accurate.
5. I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 13, 2010

Signed 

At: Longmont, Colorado

STATE OF CALIFORNIA
California Energy Commission

In the Matter of:

The Application for Certification for the
Imperial Valley Solar Project
(formerly known as SES Solar Two)

Docket No. 08-AFC-5

PROOF OF SERVICE

I, Bonnie Heeley, declare that on August 13, 2010, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY EXHIBIT 499S – REBUTTAL TESTIMONY OF CLAUDIA NISSLEY ON BEAHLF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON CULTURAL RESOURCES**. The original document, filed with the Docket Unit, 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/solartwo/Imperial_Valley_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 Unit via email and by U.S. Mail with first-class postage thereon, fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked “email preferred.” An original paper copy and one electronic copy, mailed and emailed respectively, were sent to the Docket Office.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on August 13, 2010.

_____/s/_____
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