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March 10, 2010

<b>DOCKET</b>
<b>08-AFC-5</b>
DATE <u>MAR 10 2010</u>
RECD. <u>MAR 11 2010</u>

California Energy Commission  
Attn Docket No. 09-AFC-8  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: Imperial Valley Solar Project; 08-AFC-5

Dear Docket Clerk:

Enclosed are an original and one copy of **CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION FOR INSPECTION AND COPYING OF RECORDS FOR THE IMPERIAL VALLEY SOLAR PROJECT**. Please docket the original, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Carol N. Horton

:cnh  
Enclosures

2218-084d

**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the  
IMPERIAL VALLEY SOLAR PROJECT

Docket No. 08-AFC-5

**CALIFORNIA UNIONS FOR RELIABLE ENERGY  
PETITION FOR INSPECTION AND COPYING OF RECORDS  
FOR THE IMPERIAL VALLEY SOLAR PROJECT**

March 10, 2010

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Attorneys for the CALIFORNIA UNIONS  
FOR RELIABLE ENERGY

## I. INTRODUCTION

Pursuant to section 2506 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy (“CURE”) petitions to inspect and copy the following documents regarding the *Imperial Valley Solar Project* (hereinafter referred to as the “*four enumerated filings*”):

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 Ground-truth task: Levels 1 and 2 Evaluations and Recommendations, Dated 6/4/2009, from M. Zentner to C. Meyer. Docket 51882.

CURE seeks to review the above four enumerated filings because they will enable CURE to evaluate the impacts to cultural resources related to the application for certification (“AFC”) for the Imperial Valley Solar Project (“Project”) and to develop comments and prepare expert testimony regarding the identification, avoidance and mitigation of cultural resources impacts associated with Project siting and development. CURE has retained cultural resources preservation expert Claudia Nissley to assist in the review of these materials.<sup>1</sup>

CURE is an active intervenor in this siting proceeding and a formal consulting party in the National Historic Preservation Act Section 106 consultation process. As such, CURE will be working with the Bureau of

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<sup>1</sup> Claudia Nissley’s resume is attached as Exhibit A.

Land Management, the Energy Commission, the State Historic Preservation Office, the Advisory Council on Historic Preservation, the tribes and other consulting parties in developing a programmatic agreement for protection of the cultural resources on the Project site, pursuant to the National Historic Preservation Act, 16 U.S.C. § 470f. In order to ensure confidentiality, CURE proposes to enter into a nondisclosure agreement with Imperial Valley Solar, LLC. A proposed nondisclosure agreement is attached as Exhibit B.

## **II. DISCUSSION**

On October 8, 2008, the Commission accepted the AFC as data adequate. Since that time, Imperial Valley Solar, LLC, formerly SES Solar Two, (“Applicant”) has filed a number of documents under confidential cover relating to the cultural resources on the Project site. The Project contains hundreds of cultural resource sites including cremation sites, habitation sites, trails, and lithic and pottery scatters. However, detailed information about these historic resources has been deemed confidential.

The Applicant submitted an initial request for confidential designation of cultural resource information on June 23, 2009.<sup>2</sup> Specifically, the Applicant requested confidential designation for the cultural resource reports on the grounds that the information is “exempt from disclosure under Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3(a)).<sup>3</sup> The Applicant also stated that public access to the location of prehistoric and

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<sup>2</sup> Application for Confidentiality, SES Solar Two Project (08-AFC-5) (Dated June 23, 2009).

<sup>3</sup> *Id.*

historic resources on Bureau of Land Management land may allow the vandalism of sensitive resources to occur.<sup>4</sup> As such, the Applicant argued that the information should be protected from public disclosure because the National Historic Preservation Act (“NHPA”) authorizes the Energy Commission to keep the records confidential.<sup>5</sup> The Commission granted the application.<sup>6</sup>

CURE petitions to inspect and copy the four enumerated filings to enable CURE to review the cultural resources technical reports and prepare expert testimony regarding strategies for identification, avoidance and mitigation of cultural resources impacts associated with Project development.

On December 11, 2009, CURE requested to become a consulting party to the Section 106 consultation process. On February 18, 2010, BLM granted CURE’s request to be a consulting party in the National Historic Preservation Act Section 106 consultation process. BLM agreed with CURE that it was entitled to consulting party status due to CURE’s clear interest in the historic properties on the Project site and CURE’s legal and technical expertise that may be beneficial to the consultation process.<sup>7</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Melissa Jones, Executive Director, California Energy Commission to Michael Trotta, LSA Associates Inc, Re: Cultural Resources: Application for Confidentiality, Solar Two Project, Docket No. 08-AFC-5 (July 23, 2009).

<sup>7</sup> Letter from Daniel Steward, Acting BLM Field Manager, to Loulena Miles, Adams, Broadwell Joseph and Cardozo, February 18, 2010.

CURE has retained cultural resources preservation expert Claudia Nissley to assist in the review of these materials.<sup>8</sup> CURE will sign a nondisclosure agreement with Imperial Valley Solar, LLC to further protect sensitive information relating to the resources. The purpose of the nondisclosure agreement is to ensure that the requested materials will remain confidential and will not be used except as necessary to participate in the proceeding and the NHPA Section 106 consultation process. CURE's counsel and consultants have routinely been parties to nondisclosure agreements in CEC and CPUC proceedings and are experienced at protecting confidential, sensitive information from public disclosure.

CURE is a coalition of unions whose members construct and operate power plants in California. CURE intervened in this proceeding, because the Project directly affects the union members' economic and environmental interests.<sup>9</sup> Specifically here, without proper avoidance and/or mitigation, destruction of cultural resources in one solar proceeding may jeopardize the approval of future development in the region due to either significant individual and/or cumulative impacts on these irreplaceable resources. Additionally, union members live in and around this community and have a direct interest in protecting cultural and other historic resources. CURE's ability to exercise its rights as an intervenor in the CEC proceeding is

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<sup>8</sup> Resume of Claudia Nissley is attached as Exhibit A.

<sup>9</sup> Petition to Intervene by California Unions for Reliable Energy, In the Matter of the Application for Certification for the SES Solar Two Project, Docket No. 08-AFC-5 (November 11, 2008).

dependent on thorough review of the cultural resources information in the four enumerated filings.

### III. CONCLUSION

Because CURE seeks to protect the cultural resources on the Project site as an Intervenor in the CEC proceeding, CURE has retained a cultural resources preservation expert, and is willing to enter into a non-disclosure agreement with the Applicant, CURE requests that the Commission grant CURE's petition to inspect and copy the four enumerated filings above. The requested information is necessary for CURE to fully exercise its rights as a party in this proceeding.

Dated: March 10, 2010

Respectfully submitted,

/s/

Loulena A. Miles  
Tanya A. Gulesserian  
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Attorneys for the CALIFORNIA UNIONS  
FOR RELIABLE ENERGY

EXHIBIT A

**Claudia Nissley**  
11623 Wasatch Road, Longmont, CO 80504  
Email: cnissleyenviro@gmail.com phone: 303 776 7603  
Website: c nec-inc.com

## **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](http://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 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.

**EXHIBIT B**

**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the  
IMPERIAL VALLEY SOLAR PROJECT

Docket No. 08-AFC-5

**NON-DISCLOSURE AGREEMENT REGARDING  
CONFIDENTIALITY OF IMPERIAL VALLEY  
SOLAR PROJECT CULTURAL RESOURCE  
DOCUMENTS**

1. This Non-Disclosure Agreement (NDA) is entered into between Imperial Valley Solar, LLC (Imperial) and California Unions for Reliable Energy (CURE, as defined herein). This NDA shall govern access to and the use of all Confidential Records of Imperial in California Energy Commission (Commission or CEC) Docket No. 08-AFC-5, as hereinafter defined. Notwithstanding any order terminating this docket, this NDA shall remain in effect unless lifted by Imperial pursuant to paragraph 12 below.
2. **Definitions** –
  - a. The term “Project” shall mean the Imperial Valley Solar Project as described in Docket 08-AFC-5.
  - b. The term “redacted” refers to situations in which confidential information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. The term “un-redacted” refers to situations in which confidential information in a document, whether in paper or electronic form, has not been covered, masked or blocked out.
  - c. The term “Confidential Records” means the confidential information contained in the Imperial Valley Solar Project docket, specifically limited to the information in the following four filings:
    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 Ground-truth task: Levels 1 and 2 Evaluations and Recommendations, Dated 6/4/2009, from M. Zentner to C. Meyer. Docket 51882.

“Confidential Records” shall also include: (A) any information contained in or obtained from the materials described in the preceding paragraph; (B) any testimony requested to be treated as confidential by Imperial and filed in the matter of the Application for Certification for the Imperial Valley Solar Project, Docket No. 08-AFC-5; (C) any other materials that are made subject to this NDA by the Commission, the Committee, or any designee of such, pursuant to applicable regulations, or by any court or other body having appropriate authority. Imperial, when creating any Confidential Records, shall physically mark such records on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as “CONFIDENTIAL RECORDS,” or with words of similar import as long as one or more of the terms “Confidential Records” or “Confidential” is included in the designation to indicate that the materials in question are Confidential Records.

Confidential Records shall not include: (A) any information or document contained in the public files of the CEC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this NDA.

- d. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto as Appendix A by which persons shall be granted access to the Confidential Records. Such persons shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this NDA, and that such persons have read such NDA and agree to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by Imperial.
- e. The term CURE shall refer to California Unions for Reliable Energy. By executing this NDA, CURE represents (1) that it is not an entity that engages in the vandalism, harm or collection of cultural resources, or an

association comprised of entities that engage in such activities, or any affiliate of such an entity or association; (2) that it is an entity seeking to preserve the cultural resources on the Project site; and (3) that it is not an entity engaged in consulting or advising other entities in where cultural resources are located on BLM land.

- f. The term “CURE Reviewing Representative” shall mean a person who is
1. An officer of CURE whose duties involve assisting CURE in preparing for or participating in Docket 08-AFC-5 and the related National Historic Preservation Act Section 106 consultation process; or an attorney, paralegal, consultant or employee of a consultant retained by CURE for the purpose of advising, preparing for or participating in Docket 08-AFC-5 and the related National Historic Preservation Act Section 106 consultation process; and
  2. Approved by Imperial pursuant to the following process:
    - a. CURE shall identify its proposed Reviewing Representatives to Imperial.
    - b. Upon request by Imperial, CURE shall provide a *curriculum vitae* of any particular candidate.
    - c. Imperial shall advise CURE in writing if Imperial objects to any proposed Reviewing Representative, setting forth in detail the reasons therefore.

Access of CURE Reviewing Representatives to Confidential Records shall be granted only pursuant to the terms of this NDA.

3. Confidential Records shall be treated as confidential by each CURE Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 2.e and 6 hereof. Confidential Records shall not be used except as necessary for the conduct of Docket No. 08-AFC-5 and the related National Historic Preservation Act Section 106 consultation process, and shall not be disclosed in any manner to any person except other CURE Reviewing Representatives who are engaged in this proceeding or the 106 process and need to know the information in order to carry out their responsibilities.
4. In the event CURE is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential

Records, CURE agrees to oppose disclosure on the grounds that the requested information has been designated as Confidential Records subject to this NDA and therefore may not be disclosed. CURE shall also immediately inform Imperial of the request, and Imperial may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and CURE shall cooperate with Imperial to the maximum extent practicable to either oppose the disclosure of the Confidential Records consistent with applicable law, or obtain confidential treatment of Confidential Records by the entity that wishes to receive the Confidential Records prior to any such disclosure.

5. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Confidential Records in a manner that could reveal any part of the Confidential Records, or (ii) any model that relies upon Confidential Records for algorithms or other computation(s) critical to the functioning of the model, shall also be considered Confidential Records subject to this NDA. However, models that merely use Confidential Records as inputs will not themselves be considered Confidential Records. It shall also be a rebuttable presumption that where the inputs to studies or models include Confidential Records, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Confidential Records, such inputs and/or outputs shall be considered Confidential Records subject to this NDA, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of Imperial. Unless the Commission, Committee, or Designee issues a ruling holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any model or study devised or performed by CURE that incorporates, uses or is based upon Confidential Records shall also be Confidential Records subject to the terms of this NDA.
6. No CURE Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Confidential Records pursuant to this NDA unless such CURE Reviewing Representative has first executed a Non-Disclosure Certificate and it has been delivered to Imperial. Upon request, Imperial shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as CURE Reviewing Representatives shall ensure that persons under their supervision or control comply with this NDA.
7. In the event that a CURE Reviewing Representative to whom Confidential Records are disclosed ceases to be engaged in proceedings in this docket, then access to Confidential Records by that person shall be terminated. Even if no longer engaged in such proceedings, every such person shall continue to be bound by the provisions of this NDA and the Non-Disclosure Certificate.

8. All documents containing Confidential Records that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this NDA. Such documents shall be marked with the words “**CONFIDENTIAL RECORDS**” or one of the other, similar terms set forth in paragraph 2.d hereof, and shall be served upon all CURE Reviewing Representatives and persons employed by or working on behalf of the CEC who are eligible to see the Confidential Records.
9. Nothing in this NDA shall be construed as limiting the right of Imperial or CURE from objecting to the use of Confidential Records on any legal ground, such as relevance or privilege.
10. All Confidential Records filed with judicial or administrative bodies other than the Commission, whether in support of or as part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Confidential Records that are subject to this NDA.
11. Neither Imperial nor CURE waives its rights to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Confidential Records.
12. Imperial may agree at any time to remove the “Confidential Records” designation from any material if, in Imperial’s sole opinion, its confidentiality is no longer required. In such a case, Imperial will notify CURE of the change of designation.
13. Review of and use of the Confidential Records by CURE and any CURE Reviewing Representative is solely for the purpose of participating in the Application for Certification for the Imperial Solar Energy Project and the related National Historic Preservation Act Section 106 consultation process, and any other use or disclosure of the Confidential Records is a breach of this NDA.

Dated March \_\_\_, 2010, at South San Francisco, California.

BY: \_\_\_\_\_  
On Behalf of Imperial Valley  
Solar LLC

BY: \_\_\_\_\_  
On Behalf of California  
Unions for Reliable Energy

**APPENDIX A**  
**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the IMPERIAL VALLEY SOLAR PROJECT

Docket No. 08-AFC-5

**NON-DISCLOSURE CERTIFICATE**

I, \_\_\_\_\_, have been asked by \_\_\_\_\_ (California Unions for Reliable Energy (CURE)) to inspect certain materials that have been designated as “Confidential Records” under Paragraph 2 of the Non-Disclosure Agreement (NDA) entered into between Imperial Valley Solar LLC (Imperial) and CURE dated \_\_\_\_\_, 2010.

1. I hereby certify my understanding that access to Confidential Records is provided to me pursuant to the terms and restrictions of the NDA, that I have been given a copy of and have read the NDA, and that I agree to be bound by it. I understand that the contents of the Confidential Records, any notes or other memoranda, or any other form of information that copies or discloses Confidential Records shall not be disclosed to anyone other than in accordance with the NDA.

2. I understand that my review of Confidential Records is solely for the purpose of participating in the above-captioned matter and the related National Historic Preservation Act Section 106 consultation process and that any other use or disclosure of Confidential Records by me is a violation of the NDA.

3. I hereby agree to submit to the exclusive jurisdiction of the California Energy Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order.

Dated:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

## DECLARATION OF SERVICE

I, Carol N. Horton declare that on March 10, 2010, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION FOR INSPECTION AND COPYING OF RECORDS FOR THE IMPERIAL VALLEY SOLAR PROJECT** dated March 10, 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/solartwo>.

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.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California on March 10, 2010.

*/s/*

\_\_\_\_\_  
Carol N. Horton

CALIFORNIA ENERGY  
COMMISSION  
Attn: Docket No. 08-AFC-5  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)  
VIA EMAIL ONLY

JEFFREY D. BYRON  
Commissioner and Presiding Member  
California Energy Commission  
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