

DOCKET
09-AFC-8

10-CRD-1

DATE JUL 04 2010

RECD. JUL 12 2010

Testimony of Michael E. Boyd

June 4, 2010

1
2
3
4
5
6 According to the April 29, 2010 letter from BLM “[t]he California Energy
7 Commission (CEC) has received a number of draft cultural resource reports
8 prepared for a number of solar projects on Bureau of Land Management (BLM)
9 administered lands. These draft cultural resource reports contain sensitive
10 location and other information that BLM does not make publicly available. The
11 BLM has recently been informed that some of these documents were docketed
12 with the CEC as part of its public file for the Imperial Valley solar facility, and that
13 a recent decision was made by the CEC Chief Counsel to release this
14 information.”

15
16 Further according to BLM CEC allowed an “Inappropriate Disclosure under
17 Federal Law: The documentation that has been docketed with the CEC for
18 decision making purposes has been made under an inappropriate disclosure
19 under federal law. The BLM has requested that this information be recalled and
20 secured by the entity that filed this information with the CEC. In addition, the BLM
21 has asked that the siting division of the CEC return any and all cultural resource
22 reports and other information, and all copies of the same, pending further
23 agreement between the BLM and the CEC as to the future protection of this
24 information.”

25
26 The BLM further states, “Property of the United States for which no authorization
27 has been granted: The above referenced cultural resource information is and
28 remains the property of the United States. As its steward, the BLM has not
29 approved the release of this information for purposes of docketing with the CEC.
30 The BLM has taken appropriate steps to secure the return of this information. It
31 has likewise contacted the CEC siting division and the state with the

1 understanding that an agreement regarding appropriate release conditions will be
2 reached in the very near future.”

3
4 I am providing this Testimony in support of the BLM and against the CEC and
5 Applicants’ mishandling of sensitive cultural resource information. It is my
6 testimony herein that such information disclosure is part of a pattern and practice
7 and a culture synergistic corruption between the CEC and large energy
8 corporations whom the CEC is purportedly supposed to regulate and review their
9 projects in an unbiased manner so as to protect the environment and public from
10 harm. Unfortunately this isn’t the first time the CEC has mishandled sensitive
11 cultural resource information.

12
13 As CARE’s local expert Alfredo Figueroa states¹ in his attached cover letter to
14 me and attached exhibits “[a]s you read my declaration your will see that the 3
15 (Blythe, Genesis, Palen Solar Projects) are all tied together and come from the
16 same source which are the Blythe Giant Intaglios and the Aztec Sun Stone
17 Calendar. You may use the following information against the proposed projects.

18
19 Enclose you will find:

- 20 1) Alfredo Acosta Figueroa's signed Declaration
- 21 2) Memorandum of Understanding with the Bureau of Land Management
- 22 3) Chemehuevi Tribe Resolution.
- 23 4) United Nation: Declaration on the Rights of Indigenous People. (See article
24 11)
- 25 5) President Clinton's Executive order: 13007
- 26 6) Copy of the letter to John Kalish (BLM)
- 27 7) Copy of letter to George Kline (BLM)
- 28 8) Flyer of Tribal Symposium in Palm Desert, Ca
- 29 9) Patrick Johnson Map
- 30 10) Quechan Indian Tribe position

¹ With a supporting Declaration from pilot Jeff Gatchell.

1 11) Declaration of the Pilot Jeff Gatchell from the Blythe Desert Air Ambulance
2 who took us to the sites. (When I receive more declaration letters I will e-mail
3 them to you so that they can be submitted before June 5, 2010).

4
5 [Alfredo also provided 12) an additional May 19, 2010 Declaration of Morris
6 Marsh.]

7
8 We hope that this material is beneficial in stopping these idiotic stimulus money
9 projects that are only proposed to put money in the solar company's wallet. As
10 you well saw on the declaration, we the tribes are determined at all cause to stop
11 the desecration of our Sacred Sites which are not only sacred to the indigenous
12 people but to all humanity.”

13
14 I also include this document as #13 Testimony and Declaration of Michael Boyd
15 and provide answers to the following CEC questions.

16
17 1. Who “owns” or controls the data at issue (e.g., BLM, the applicant, the
18 Energy Commission (CEC)?

19
20 *The cultural resource information or data is owned by the United States pursuant*
21 *to federal law. The term ‘Cultural Resources’ can apply to “those parts of the*
22 *physical environment – natural and built – that have cultural value of some kind*
23 *to some socio-cultural group.” This can include, spiritual places, historic*
24 *resources, archaeological resources, Native American cultural items, historical*
25 *objects, religious practices, cultural uses of the natural environment, community*
26 *values, or historical documents (from Cultural Resource Laws & Practice: An*
27 *Introductory Guide, King 1998:7,9)., These resources are protected for the rest*
28 *of humanity pursuant to the September 2007 United Nation Declaration on the*
29 *Rights of Indigenous Peoples regarding “their cultural, intellectual, religious and*
30 *spiritual property taken without their free, prior and informed consent or in*
31 *violation of their laws, traditions and customs”.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

BLM as an Agency of the United States should not share any data with any state agency like CEC that is involved in synergistic corruption with the project applicant and will disclose that information with the developer who could cause direct harm to cultural resources.

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?

If the CEC Staff and the Applicant have shared confidential cultural resource information in any way than they failed to comply with federal law since such information shouldn't be shared with the Applicant.

3. Who submitted the data to the Commission?

BLM submitted data to the Commission that was then shared with non-BLM approved recipients of confidential information related to cultural resources.

4. What is the data?

The data is confidential and public disclosure of what the data is, is confidential, and that information's disclosure would compromise the confidentiality of the data.

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

1 *Yes access is restricted to those persons authorized by the United States and*
2 *the affected tribes who have aboriginal rights to access. Also see Declaration of*
3 *Robbin Marsh regarding the project applicant and CEC staff trespassing on*
4 *private property under color of state law his Declaration is to “oppose all [ac]cess*
5 *violations. These ‘violations’ have been going on for the last 2.5 years in and*
6 *around the private property I manage and maintain...Trespassing on this*
7 *privately owned 160 acres has been a huge issue ever since the specialists of*
8 *plants, animals, rocks, and land surveyors have arrived.”*
9

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

12
13 *Yes but subject to a non-disclosure agreement between the tribal member and*
14 *BLM, and without the ability to remove the data from the lawful site of the data*
15 *repository.*
16

17 7. Which substantive law(s) govern the confidentiality of the data: federal cultural
18 resources statute(s) and regulation(s), state cultural resources statute(s) and
19 regulations?
20

21 *See 10) Quechan Indian Tribe position:*
22

23 *“This letter addresses concerns that the Quechan Indian Tribe of the Fort Yuma*
24 *Indian Reservation has with the ongoing evaluation of cultural resource impacts*
25 *associated with the First Solar Desert Sunlight, Palen Solar, Ford Dry Lake Solar*
26 *and Blythe Solar power projects. Specifically, the Tribe is concerned that the*
27 *current regulatory approval schedule, which calls for a Record of Decision to be*
28 *issued by September 2010, does not provide adequate time to conduct a*
29 *thorough and complete Section 106 consultation under the National Historic*
30 *Preservation Act (NHPA). BLM must ensure that it completes the Section 106*
31 *process, including identification of affected sites, consultation with affected*

1 *entities and tribes, and development of an appropriate treatment plan, before it*
2 *makes a final decision whether to grant approvals for each Project. It would be*
3 *inappropriate to defer consultation or decisions regarding cultural resource*
4 *protection and mitigation until after the final decision is made.”*

5
6 8. What restrictions do each of those laws put on access to the data?

7
8 *It is up to the tribes and the BLM to decide what data can be made public.*

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

11
12 *There are three predominant cultural resource issues associated with direct*
13 *impacts of the proposed projects.*

14
15 *This are according to CARE local expert Alfredo Figueroa first is the presence of*
16 *La Cuna De Aztlan (the cradle of the Aztec civilization) which is like Jerusalem to*
17 *the indigenous peoples of the American continent. As Alfredo explains in his*
18 *Declaration the mountains and desert are the canvas of native peoples of the*
19 *past whose Aztec calendar itself is made three dimensional in the surrounding*
20 *mountains and on the lake beds that nurtured the ancestors of all the Americas’*
21 *peoples before the European conquest the ethnically cleansed their culture from*
22 *the maps that had existed for thousands of years in the rocks all around you...if*
23 *you just open your eyes to see them. Therefore it is sacred to humanity pursuant*
24 *to the September 2007 United Nation Declaration on the Rights of Indigenous*
25 *People too. As Alfredo explains the monkey with his tongue sticking out in the*
26 *middle of the Aztec Calendar symbolizes what is the key to human survival; it is*
27 *communication with each other.*

28
29 *The other issue is the tribes hold all the desert wildlife as sacred to. Once again I*
30 *point to the Aztec Calendar that is inscribed on the back of the desert tortoise.*

31 *This tortoise is sacred because it holds the world on its back. The last issue is*

1 *the water. Another tribe in Arizona like those involved in these projects consider*
2 *water is very sacred since as I learned from CARE's Hopi expert Vernon*
3 *Masayesva we all came from the water so the use of ground water for non-*
4 *consumptive uses like these projects propose violates the natives peoples*
5 *relationship to water as a sacred resource. As Vernon explained when we die it*
6 *isn't our souls but water that leaves our body. According to Vernon when it rains*
7 *your relatives who passed on come back to visit you. Water is also an important*
8 *issue because the United States is supposed deliver 1.5 million acre feet of*
9 *Colorado River water to Mexico under a 1944 treaty with the Country and it*
10 *doesn't allow for these non-consumptive use projects.*

11

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

15

16 *See 7 above.*

17

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

21

22 *No this is required baseline information and it would be improper to approve any*
23 *application for certification without the necessary baseline information being*
24 *included. Also a determination of data adequacy for the purpose of filing the*
25 *application would become impossible therefore too.*

26

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

30

1 My only experiences are with the CEC miss-handling of confidential
2 cultural resource information on private land comes from the Metcalf Energy
3 Center located in San Jose California although the CEC allowing the Blythe I
4 project on a significant cultural trail (Riverside Drive) also demonstrates the
5 CEC's lack of concern and disrespect for protecting indigenous peoples cultural
6 resources too. Regarding the Metcalf Energy Center the project disturbed the
7 human remains of several indigenous individuals. CARE provided extensive
8 expert testimony from fully qualified archeologists² that both concluded the
9 presence of human remains was highly likely for the MEC project's site. The
10 Commission ignored this choosing to accept on good faith the applicant's claim
11 that such remains were unlikely. In June 2002 Calpine had graded the Metcalf
12 Energy Center site and raised the site above the flood plain. They had also
13 prepared the lay down area and had begun to receive some of the heavy
14 equipment. During the site preparation phase, 17 to 20 human burial remains
15 were discovered. 10 cultural artifacts were found too. In reviewing the events
16 surrounding the discovery and removal of the remains CARE discovered that the
17 CEC has not yet adopted a protocol to protect the civil constitutional and human
18 rights of the Most Likely Descendants (MLD). In this case the CEC allowed the
19 removal of the remains prior to notifying the MLD, then when the MLD was
20 contacted, the CEC and applicant failed to carry out the MLD's recommendation
21 for the remains which included, leaving the remains in place until the MLD could
22 examine the remains for removal to another MLD selected location for re-
23 interment. The MLD also recommended that the remains not be removed by the
24 applicants archaeologist Basin Research for research purposes, because of the
25 MLD's prior problems with the applicant's archaeologist's over their previous
26 handling of native remains. The CEC in fact allowed the applicant to remove the
27 remains and keep them in storage on the project site where they were than

² These and the following references to CARE's expert testimony and briefs before the CEC on the MEC project's impacts on Cultural Resources are incorporated by this reference as if fully set forth here. See http://www.energy.ca.gov/sitingcases/metcalf/documents/intervenors/2000-04-21_CARE.PDF

1 *presumably subject to research by Basin Research. The CEC had failed to*
2 *develop the appropriate protocols to protect the civil, constitutional, and statutory*
3 *rights of the MLD, and we expected nothing less than a guarantee that such*
4 *actions would not re-occur in the development of these projects. Eventually these*
5 *protocols were developed by the CEC and applicant but not until after the power*
6 *plants construction in 2006.³ This demonstrates a pattern and practice and a*
7 *culture synergistic corruption between the CEC and the Applicant in the Metcalf*
8 *case; Calpine and Bechtel Corp.*

9
10 13. What data are parties entitled to, under the Warren-Alquist Act, the CEC
11 regulations, CEQA, NEPA, the cultural resources laws, and the APA?

12
13 *Not much. The authority and directives for cultural resource management within*
14 *the BLM come from an integral set of laws: Antiquities Act (1906), Historic Sites*
15 *Act (1935), National Historic Preservation Act (1966), National Environmental*
16 *Policy Act (1969), Federal Land Policy and Management Act (1976), American*
17 *Indian Religious Freedom Act (1978), Archeological Resources Protection Act*
18 *(1979), Native American Graves Protection and Repatriation Act (1990), and*
19 *Executive Orders 11593, 13007 and 13175.*

20
21 14. If the CEC Staff has access to certain data, must some or all other parties
22 have access, under the Warren-Alquist Act, the CEC regulations, CEQA, NEPA,
23 the cultural resources laws, and the APA?

24
25 *Yes unless it is specifically exempted from disclosure under the California Public*
26 *Records Act and federal law.*

27
28 15. If the data is revealed to any party, including but not limited to the CEC

³ See http://www.energy.ca.gov/sitingcases/metcalf/calpine/figures/FIG_08-03-06.PDF
and
http://www.energy.ca.gov/sitingcases/metcalf/documents/applicant/Word_Documents/VOLUME%25202/AP%252008%25203A%2520Native%2520Am%2520Pln.doc

1 Staff, what appropriate nondisclosure agreements, if any, should be made?

2

3 *The NDA must comply with BLM requirement and be subject to a non-disclosure*
4 *agreement with the tribes and BLM (subject to their written authorization), and*
5 *viewing of the data would only be possible without the ability to remove the data*
6 *from the lawful site of the data repository.*

7

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

10

11 *Yes the Commission shouldn't have included this information in the first instance*
12 *without prior written authorization of the Tribes and BLM.*

13

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

17

18 *Access to cultural resource data must be subject to a non-disclosure agreement*
19 *with the tribes and BLM (subject to their written authorization), and viewing of the*
20 *data would only be possible without the ability to remove the data from the lawful*
21 *site of the data repository.*

22

23 18. Any closely related other matter necessary to resolve the issue.

24

25 *The CEC must be subject to a non-disclosure agreement with the tribes and BLM*
26 *(subject to their written authorization), and viewing of the data that would only be*
27 *possible without the ability to remove the data from the lawful site of the data*
28 *repository.*

29

30

31

1 I, Michael Boyd, declare as follows:

2 I am president of CALifornians for Renewable Energy (CARE) and have
3 personal knowledge of the information contained in the foregoing testimony.

4 I declare under penalty of perjury, under the laws of the State of California,
5 that the foregoing is true and correct to the best of my knowledge and that this
6 declaration was executed at Soquel, California on June 4, 2010.

Michael E. Boyd

7

8

9

Michael E. Boyd President

10

CALifornians for Renewable Energy, Inc.
(CARE)

11

12

5439 Soquel Drive

13

Soquel, CA 95073

14

Phone: (408) 891-9677

15

E-mail: michaelboyd@sbcglobal.net