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**File No. 10.437**

June 24, 2009

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**Re: Freedom of Information Act Request Regarding Cultural Documents and Materials Related to the Sunshine Powerlink Transmission Line Project**

Dear FOIA Coordinators Weitzel and Bell:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of Backcountry Against Dumps ("BAD"), Protect Our Communities Foundation ("POC"), East County Community Action Coalition ("ECCAC"), and Donna Tisdale for the following documents:

**All cultural documents or materials related, in any way, to the Sunrise Powerlink Transmission Line Project ("SPTP" or "Project"), prepared by or on behalf of, received, or in the possession of, the Bureau of Land Management ("BLM") from January 12, 2005 to the present, including but not limited to:**

- All background documents relating to, or resulting from, cultural surveys or studies related to the SPTP;
- All inventories, studies, memoranda, and plans regarding cultural surveys or studies related to the SPTP or within the Project area;
- All studies, memoranda, and plans regarding the potential impacts on cultural resources of the SPTP;
- All correspondence between BLM and any other party that discuss cultural surveys or studies pertaining to the SPTP. This includes but is not limited to, faxes, meeting notes or transcripts, hearing notes or transcripts, and notes from telephone conversations.
- All non-privileged emails from, between, or sent to, BLM staff including, but not limited to, emails from or to other agencies, government officials, organizations, or private parties, addressing, in any way, cultural surveys or studies related to the SPTP;

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- All data related to, or resulting from, cultural surveys or studies related to the SPTP. This includes, but is not limited to: maps, charts, tables, GPS data, GIS data, survey areas, survey notes, and any other information that relates to cultural surveys or studies with regard to the SPTP;
- All information collected as a result of cultural surveys or studies conducted in connection to the SPTP;
- All information, studies, memoranda, analyses, reports, correspondence, and plans related to the National Environmental Policy Act (NEPA) process for the SPTP with regard to cultural surveys or studies. This includes, but is not limited to, any data, information, memorandums, analyses, reports, or correspondence that was used to develop the Draft Environmental Impact Statement (EIS) or Final EIS, or any other document that is part of the NEPA process, pertaining to cultural surveys or studies.

In the event you determine that any of the documents requested above are privileged from disclosure under the Freedom of Information Act, please prepare a "privilege log" identifying the documents you have withheld from disclosure by 1) date, 2) subject matter, 3) author, 4) recipient, and 5) statutory or regulatory basis for the privilege asserted. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Additionally, if BLM finds that some or all of the requested documents are in possession of another agency within the Department of the Interior, BLM has an affirmative obligation to consult with that agency as to whether to release the documents, or to refer the pertinent part of the FOIA request to that agency for response. 43 C.F.R. § 2.22(a).

### **Request for Fee Waiver**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), we hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

Agencies should grant a fee waiver when disclosure of requested documents is in the public interest because it is (a) likely to contribute significantly to public understanding of the operations or activities of the government, and (b) not primarily in the commercial interest of the requester. 43 C.F.R. § 2.19(b).

All four parties on behalf of whom this request is being made meet the criteria for a fee waiver.

BAD is a community organization comprised of individuals and families residing in Eastern San Diego County who will be impacted should the SPTP proceed. BAD and its members are interested in the proper land use planning and management of BLM lands in order to maintain and enhance its ecological integrity, scenic beauty, wildlife, recreational amenities, watershed values and groundwater resources. Members of BAD have no commercial interest in the requested documents, nor will obtaining the requested documents confer any commercial

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benefit on BAD members. BAD members seek the requested documents solely because of their interests in seeing that public lands and cultural resources are properly managed for the benefit of the public.

POC is also a community organization comprising individuals and families residing in Eastern San Diego County who are directly affected by the approval of the SPTP. POC's purpose is the promotion of safe, reliable, economical, renewable, and environmentally responsible energy sources. POC's members use BLM lands for aesthetic, scientific, historic, cultural, recreational and spiritual enjoyment. POC's interest in obtaining the requested material is not for any commercial purpose or benefit, but is solely to ensure proper management of public lands.

ECCAC is a coalition of community groups with the common goal of preserving rural quality of life and natural resources. ECCAC and its members seek to maintain the ecological integrity, scenic beauty, wildlife, recreational amenities, watershed values and groundwater resources in Eastern San Diego County. ECCAC's members use BLM lands for aesthetic, scientific, historic, cultural, recreational and spiritual enjoyment. ECCAC's interest in obtaining the requested material is to ensure that public lands are being managed properly, and is in no way related to any commercial interest.

Donna Tisdale is an active member of multiple community groups, including BAD and POC, as well as a resident of San Diego County. Ms. Tisdale uses BLM lands that will be affected by the SPTP for recreational and spiritual activities. Ms. Tisdale's interest in obtaining the requested information stems from her concern over the proper management of public land, and is not related to any commercial interests.

Thus, this request is being made for the purpose of providing public information about government activities to concerned members of the public and assisting in the implementation of conservation laws, including the National Environmental Policy Act. The clients on whose behalf this request is being made have no commercial interest in the information obtained.

Additionally, disclosure of the requested documents is in the public interest because the requested materials concern a proposed project that will have a massive impact on cultural resources. The public will be benefitted by obtaining a full understanding of how decisions regarding the SPTP were made, whether they were made in compliance with relevant laws such as NEPA, and what the full impact of the Project will be.

Further, the requested documents will directly contribute to the public's understanding of operations and activities of the government because the requested documents will shed light on how the BLM and related agencies made decisions regarding the SPTP, and how these agencies address and value cultural surveys and cultural resources.

Disclosure of the requested materials is especially likely to benefit the public given the public outreach work in which BAD, POC, ECCAC, and Donna Tisdale are involved. All three groups circulate educational newsletters to their members and to the public. All three also hold public meetings to educate the public about public land management. For instance, on June 8, 2009, BAD, POC, and ECCAC held a legal rights workshop to inform citizens of their rights with regard to the SPTP. Members of these groups have been quoted in numerous articles on the

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SPTP appearing in San Diego-area newspapers and magazines over the past two years. Similarly, Donna Tisdale was extensively quoted in a Washington Post article on the SPTP. See Slevin, P. and Mufson, S. Alternative Energy Still Facing Headwinds. *Washington Post*, 2/17/09.

Therefore, information disclosed to the requesters will be disseminated to the public, helping the public to better understand the government's actions in supporting the SPTP, whether this Project complies with important laws such as NEPA, and what impact this Project will have on cultural resources.

Finally, disclosure of the requested documents is in the public interest because none of the requesters have a commercial interest in the requested documents; their sole concern is the preservation of cultural resources and compliance with laws such as NEPA. In pursuing these goals, it is to the benefit of both the public and the requesters to disclose the requested documents for informational and educational purposes.

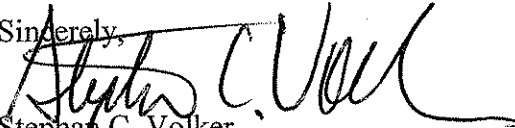
The fee waiver provision of FOIA was amended in 1987 "to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers," and therefore "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citations omitted).

Congress intended that non-profit public entities and community organizations such as the requesters herein should receive fee waivers when seeking documents under FOIA. *Better Government Ass'n v. Department of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). Please note further that the Council on Environmental Quality's NEPA regulations direct that federal agencies shall "make environmental impact statements, the comments received, and *any underlying documents available* to the public . . . without charge to the extent practicable . . ." 40 C.F.R. § 1506.6(f), emphasis added. Therefore, when requesting parties are public-interest organizations who seek information for public benefit, it is within the intent and spirit of FOIA to waive associated fees.

In the event you decide to deny our request for a waiver of copying fees, I affirm that we will promptly pay any estimated reproduction costs upon receipt of your estimate, without of course thereby waiving any right to appeal your decision.

Your prompt response to this request is appreciated. Thank you for your courtesy and cooperation. Do not hesitate to contact me if you have any questions regarding this request.

Sincerely,



Stephen C. Volker  
Attorney for BAD, POC, ECCAC,  
and Donna Tisdale

cc: Backcountry Against Dumps  
Protect Our Communities Foundation  
East County Community Action Coalition  
Donna Tisdale