EXHIBIT A

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May 14, 2014

VIA EMAIL ONLY

Mayor Cari Thomas and City Council Members
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Re: Supplemental Comments for the Aries Solar Project (LDP 13-05, CUP 13-04, MND 14-01 and Ordinance 524)

Dear Honorable Mayor Thomas and City Council Members:

We write on behalf of Coalition for Responsible Solar[1] regarding the City of Adelanto's consideration of the Aries Solar Project ("Project") proposed by Aries Solar Holdings, LLC ("Applicant"). On March 25, 2014 and April 14, 2014, we submitted comments regarding the Project's potentially significant direct and indirect impacts from hazardous materials and on public health, biological resources and land uses. We reviewed Staff's City Council Agenda Report, including the attachments, which recommends that the City Council approve the first reading of Ordinance 524 adopting a Development Agreement between the City and Applicant, adopt Resolution 14-18, adopt findings and approve Location and

[1] Coalition for Responsible Solar is a coalition of individuals and labor unions that may be affected by the Project's potential health and safety hazards and environmental impacts. The coalition includes Victorville area residents Artie Mann and Frank Sinohui, and California Unions for Reliable Energy ("CURE") and its members and their families (collectively, "Coalition"). The Coalition was formed to advocate for responsible and sustainable solar development in the region in order to protect public health and safety and the environment where the Coalition members and their families live, work and recreate.

Development Plan 13-05, Conditional Use Permit 13-04 and Mitigated Negative Declaration 14-01 for the Project. Based on our review, the City cannot follow Staff's recommendation because: (1) the Development Agreement violates the City's Municipal Code and ordinances, and (2) the Mitigated Negative Declaration ("MND") fails to identify the Project's potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level, as required by the California Environmental Quality Act ("CEQA").

I. THE DEVELOPMENT AGREEMENT VIOLATES THE CITY'S MUNICIPAL CODE AND CITY ORDINANCES BECAUSE A REDUCTION IN THE DEVELOPMENT IMPACT FEE IS NOT ALLOWED OR WARRANTED

The Development Agreement requires the Applicant to pay the City a "Fiscal Mitigation Impact Fee" (commonly called a development impact fee) of $570,432 to compensate the City for the "additional intensity of use resulting from the Project" and "the potential added wear and tear on the municipal infrastructure which will result from the Development Plan."[2] However, the $570,432 fee is just a fraction of the $6,120,260 development impact fee required by the City's Municipal Code, Ordinance No. 524 and Resolution No. 06-166. For starters, the City incorrectly based its calculation of the fee on a 192-acre project size, but the MND's Project description clearly states that the Project is 206 acres.[3] In fact, the City's April 15, 2014 development impact fee calculation is based on a 206-acre Project size.[4] Therefore, the impact fee is based on an incorrect Project size and miscalculated.

Further, even if the Project were only 192 acres (which it is not), the $570,432 fee is a ***90 percent reduction*** from the development impact fee required by the City's Municipal Code, Ordinance No. 425 and Resolution No. 06-166. The 90 percent reduction is not allowed and there is no evidence that it is warranted. Section 14.36.020 of the Municipal Code states that "[d]evelopment impact fees ***shall*** be required as a condition of issuance of a building permit for construction of all new buildings, or where a building permit is not required for any development or use of private property, other than permitted as a temporary use in Chapter 17.155

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[2] Development Agreement By and Between the City of Adelanto and Aries Solar Holding, LLC, May 7, 2014, p. 3.
[3] MND, pp. 1, 2.
[4] *See* **Attachment A**: City of Adelanto Development Services Department Planning Division, Draft Solar Fiscal Analysis Table, April 15, 2014.

of the Zoning Code." Section 14.36.040 of the Code and the City's adopting ordinance for certain development impact fees, Ordinance No. 425, establish Master Drainage Plan Development Impact Fees. For non-residential development, the fee is $11,900 per gross acre. City Council Resolution No. 06-166 adopted Fire Facilities Impact Fees and Transportation Facilities Impact Fees ($893 per acre and $16,917 per acre for non-residential development, respectively). Thus, the total required development impact fee for non-residential development is $29,710 per acre. Since the Project is 206 gross acres,, the Applicant is required to pay $6,120,260 in development impact fees, pursuant to Municipal Code section 14.36.040, Ordinance No. 425 and Resolution No. 06-166.

Nothing in the City's Municipal Code, Ordinance No. 425 or Resolution No. 06-166 allows for a reduction in development impact fees for the Project. Even if the Municipal Code were amended to allow a reduction, there is and would be no evidence that more than a 90 percent reduction in fees is warranted. Here, the City has enacted no exceptions to its current Municipal Code requirements. Therefore, the City cannot approve the Development Agreement with a reduction in development impact fees. The Development Agreement must be revised to require payment of $6,120,260 in development impact fees for the Project, as required by the Municipal Code.

II. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT PUBLIC HEALTH IMPACTS FROM VALLEY FEVER

We provided extensive written and oral comments to the City regarding the Project's potentially significant public health impacts from Valley Fever. Our comments included evidence from hazardous materials and air quality expert Matt Hagemann, which showed that a fair argument could be made that the Project may result in significant health impacts to construction workers and the public from exposure to C. immitis spores, which cause Valley Fever. The City has not provided any evidence to the contrary.

Mr. Hagemann reviewed Staff's report and conditions of approval, and provided us with additional comments regarding the Project's public health impacts

from Valley Fever.[5] In his attached comments, Mr. Hagemann again explains that Project construction, which includes earth moving activities,

> may liberate C. immitis which could be inhaled by Project workers and the nearby public, including [r]esidents...located as close as 0.9 miles southeast of the Project site, [i]nmates and workers at the Adelanto Federal Prison, located 100 feet north of the Project site, and [c]hildren at the West Creek Elementary School, located 0.5 miles south of the Project site. The Project could also impact the public on a broader scale from the non-selective raising of dust during Project construction which may carry the very small (1 to 3 microns) spores into non-endemic areas. Valley Fever spores have been documented to travel as much as 500 miles and, thus, dust raised during construction could expose a large number of people hundreds of miles away.[6]

Mr. Hagemann goes on to explain that no project design features, conditions of approval or mitigation measures have been required by the City that would mitigate the Project's health impacts from Valley Fever to a less than significant level. Mr. Hagemann provides an in-depth discussion of why the City's standard design features and condition of approvals (including the Mojave Desert Air Quality Management District's Rule 403.2) associated with dust control are insufficient to mitigate the Project's health impacts from Valley Fever to a less than significant level.

In short, Mr. Hagemann explains that conventional dust control measures are inadequate to address potentially significant impacts from exposure to Valley Fever spores because they focus on visible dust. According to Mr. Hagemann,

> visible dust is only an indicator that C. immitis spores may be airborne in a given area. Freshly generated dust clouds usually contain a larger proportion of the more visible course particles. However, these larger particles settle more rapidly and the remaining fine respirable particles may be difficult to see. Spores, whose size is well below the limits of human vision, may be present in air that appears relatively clear and dust free. Such ambient, airborne spores with their low settling rates can remain aloft for long periods and be carried hundreds of kilometers from their point of

[5] *See* **Attachment B**: Letter from Matt Hagemann to Rachael Koss re: Supplemental Comments on the Aries Solar Project, May 13, 2014.
[6] *Id.*, pp. 1-2 (citations omitted).

> origin. Thus, implementation of the proposed dust control measures only when visible dust is present will likely not provide sufficient protection for either construction workers or the general public.[7]

Mr. Hagemann concludes his comments with a strong recommendation that the City impose mitigation measures specific to preventing exposure to C. immitis spores. According to Mr. Hagemann, measures specific to preventing or reducing the risks of Valley Fever are "critical to the protection of construction workers and the public, nearby residents, prison guards and inmates, and schoolchildren."[8] Mr. Hagemann's original comment letter provided an extensive list of mitigation measures specific to preventing or reducing the risks of Valley Fever, which were developed by State and county agencies (including the California Department of Public Health, the California Department of Industrial Relations, the Kern County Public Health Services Department and the San Luis Obispo County Public Health Department) and based on scientific studies. In his attached comments, Mr. Hagemann provides additional measures to prevent exposure to C. immitis, including:

- Test the soils in the Project area for C. immitis spores prior to ground disturbance;
- Implement a program of medical surveillance, including skin tests on employees, and nearby inmates, prison guards and schoolchildren;
- Require consultation from an occupational safety officer and implement aggressive enforcement of respirator use for site construction workers under the occupational safety officer's supervision; and
- Require all work-related clothing to be left at the Project site and require facilities where clothing can be washed at the Project site.

Mr. Hagemann's attached comments provide additional evidence supporting a fair argument that the Project may result in significant health impacts from Valley Fever. The City must prepare an environmental impact report ("EIR") to disclose, analyze and mitigate the Project's potentially significant impacts from Valley Fever.

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[7] *Id.*, p. 4.
[8] *Id.*, p. 5.

III. CONCLUSION

The City cannot approve the Development Agreement with a reduction in development impact fees that are required by the City's Municipal Code. The Development Agreement must be revised to require payment of $6,120,260 in development impact fees for the Project. Further, we urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the Project's potentially significant impacts. By complying with State law, the City can ensure that the Project's significant environmental impacts are mitigated to the full extent feasible and required by law. Thank you for your attention to this matter.

Sincerely,

Rachael E. Koss

REK:clv

cc Via Email Only: Mark de Manincor, Senior Planner
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ATTACHMENT A

City of ADELANTO

Development Services Department
Planning Division

April 15, 2014

Subject: Draft Solar Fiscal Analysis Table

Project	Developer	Acres	Full DIF	DIF Agreement	DIF per Acre	Percent of DIF	Street Drainage Deferrals	Fiscal Mitigation Fee
LDP 10-04 CUP 10-06	Victor Phelan Solar One	160	$4,753,600	$347,258	$2,170	7.3%	Yes No	$658,800 or $4,118 per ac
LDP 11-03 CUP 11-04	Adelanto 10 Phase 1	10	$297,100	$80,723	$8,072	27%	Yes No	$16,940 or $847 per yr. $1,690 per ac
LDP 11-04 CUP 11-05	Native Sun Power	35	$1,039,850	$66,399	$1,897	6.3%	Yes No	$31,720 or $1,586 per yr $906 per ac.
LDP 13-01 CUP 13-01	Industry Solar	11	$326,810	$50,000	$4,545	15%	No No	$350,000 or $32,818 per acre
LDP 13-02 CUP 13-02	Silverado Power	17	$505,070	$0	$0	0%	No No	$0
LDP 13-05 CUP 13-04	Aries Solar Phase 1	155	$4,605,050	$460,505	$2,971	10%	Yes No	$651,000 or $4,200 per acre
LDP 13-05 CUP 13-04	Aries Solar Phase 2	51	$1,515,210	$151,521	$2,971	10%	Yes No	$214,200 or $4,200 per acre

Note: Development Impact Fees for Industrial Projects is **$29,710** per acre.

Mark de Manincor
Senior Planner
City of Adelanto

ATTACHMENT B

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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May 13, 2014

Rachael Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Supplemental Comments on the Aries Solar Project

Dear Ms. Koss:

Following review of the Staff Report and Conditions of Approval dated May 14, 2014, I have prepared supplemental comments on the January 2014 Initial Study/Mitigated Negative Declaration ("IS/MND") for the Aries Solar Holdings, LLC Project ("Project"). These comments, which supplement those submitted to you in a March 6, 2014 letter, show the Project may result in significant impacts from exposure of construction workers and the public to Valley Fever spores (C. immitis). Because the IS/MND does not adequately disclose, analyze or mitigate Valley Fever impacts, a fair argument can be made that health impacts will result from Project construction. An environmental impact report must be prepared to disclose, analyze and mitigate the impacts.

Impacts from Valley Fever are not evaluated in the IS/MND and no Project Design Features, Conditions of Approval or mitigation measures have been required by the City that would mitigate impacts from Valley Fever to a less than significant level. Project construction, which includes earth disturbing activities such as grading, may liberate spores of C. immitis which could be inhaled by Project workers and the nearby public, including:

- Residents, some located as close as 0.9 miles southeast of the Project site;
- Inmates and workers at the Adelanto Federal Prison, located 100 feet north of the Project site; and
- Children at the West Creek Elementary School, located 0.5 miles south of the Project site.

The Project could also impact the public on a broader scale from the non-selective raising of dust during Project construction which may carry the very small (1 to 3 microns) spores into non-endemic areas.[1,2]

[1] Schmelzer and Tabershaw, 1968, p. 110; D. Pappagianis and H. Einstein, Tempest from Tehachapi Takes Toll or Coccidioides Conveyed Aloft and Afar, West J. Med., v. 129, Dec. 1978, pp. 527-530.

[2] Pappagianis and Einstein, 1978, p. 527 ("The northern areas were not directly affected by the ground level windstorm that had struck Kern County but the dust was lifted to several thousand feet elevation and, borne on high currents, the soil and arthrospores along with some moisture were gently deposited on sidewalks and automobiles as "a mud storm" that vexed the residents of much of California." The storm originating in Kern County, for example, had major impacts in the San Francisco Bay Area and Sacramento).

Valley Fever spores have been documented to travel as much as 500 miles[3] and, thus, dust raised during construction could expose a large number of people hundreds of miles away.

Dust control measures that have been identified as Project Design Features include (IS/MND, p. 7):

- To reduce dust, the speed of motor vehicles involved in construction will be limited to 15 miles per hour (mph) while traveling on dirt roads or anywhere on the project site; and
- The proposed project will comply with the Mojave Desert Air Quality Management District (MDAQMD) Rule 401 "Visible Emissions," Rule 402 "Nuisance," Rule 403.2 "Fugitive Dust Control for the Mojave Desert Planning Area," and Rule 405 "Solid Particulate Matter Weight."

These dust control features will not be effective in abating the spread of spores of C. immitis, which are released when infected soils are disturbed. First, limiting the speed of vehicles will only "reduce dust," it will not eliminate dust. Thus, C. immitis spores could still spread. Notably, spores of C. immitis are 1 to 3 microns in diameter[4], generally far smaller in diameter than particles of dust, which measure 2.5 to 100 microns in diameter. A particle 50 microns in diameter is considered to be the smallest particle visible to the eye. Therefore, because spores of C. immitis are generally smaller than dust, they have the potential to spread, without detection by human eyesight, much farther in air than dust.

Second, the MDAQMD rules would be ineffective in limiting the spread of C. immitis spores. The limitations of the MDAQMD rules to control dust are identified below:

Rule 403.2, Section (C)(2):

(a) Requiring watering to "minimize visible fugitive dust emissions... during visible dusting episodes" is inadequate because C. immitis spores are not visible to the naked eye and are lighter than dust, so even if there is no visible dust, spores may be present in the air;

(b) Requiring action to prevent vehicle trackout off of the Project site is inadequate to protect workers onsite and does not prevent spreading of C. immitis spores by other means;

(c) Requiring that loads be covered during hauling offsite is inadequate to protect workers onsite and does not prevent spreading of C. immitis spores by other means;

(d) Requiring graded surfaces be stabilized if subsequent development will be delayed by at least 30 days is inadequate because the measure only requires soil stabilization in a very specific circumstance;

(e) Requiring trackout or spills be cleaned up within 24 hours is inadequate because C. immitis spores can spread in those 24 hours; and

(f) Requiring reduction in non-essential earth-moving activity under high wind conditions is inadequate because a "reduction" in soil disturbance is not enough to prevent spore dispersion; rather, construction must be halted and soil stabilized with a non-toxic binding agent.

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[3] David Filip and Sharon Filip, Valley Fever Epidemic, Golden Phoenix Books, 2008, p. 24.
[4] http://www.engr.psu.edu/iec/abe/database/fCoccil.htm

Rule 403.2, Section (C)(3):

> (a) Requiring the applicant to submit dust control plan is inadequate because there is no requirement that measures specifically address Valley Fever;
>
> (b) Requiring that stabilized access routes be provided prior to completion of construction is inadequate because roads must be stabilized at the onset of construction to prevent the spread of C. immitis spores;
>
> (c) Maintaining the natural topography of the Project site "to the extent possible" is inadequate because it does not commit the applicant to measureable outcomes;
>
> (d) Constructing parking lots and paved roads first "where feasible" is inadequate because it does not commit the applicant to measureable outcomes; and
>
> (e) Constructing upwind parts of the Project first "where feasible" is inadequate because it does not commit the applicant to measureable outcomes.

The following dust control measures that have been included as Conditions of Approval are also inadequate to reduce the Project's impacts from Valley Fever to a less-than-significant level:

> 31. Dust Control. The applicant shall apply water to the disturbed portions of the project site at least two times per day. On days where wind speeds are sufficient to transport fugitive dust beyond the working area boundary, the applicant shall increase watering to the point that fugitive dust no longer leaves the property (typically a moisture content of 10%), and/or the applicant shall terminate grading and loading operations.

This condition is inadequate to prevent the spread of C. immitis spores for two reasons. First, there is no data to support the conclusion that applying water twice a day, which is a process that in itself produces dust from mobile vehicles, will be effective in suppressing the spread of C. immitis spores, especially during drought conditions in the arid desert. Second, if wind speeds are sufficient to produce fugitive dust beyond the Project boundary, spores will have already spread by the time watering is increased.

> 32(d). Water trucks or sprinkler systems shall be used during clearing, grading, earth moving, excavation, or transportation of cut or fill materials to prevent dust from leaving the site and to create a crust after each day's activities cease. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.

This condition is inadequate to prevent the spread of C. immitis spores because there is no evidence that watering the site twice a day, which is a process that in itself produces dust from mobile vehicles, will be effective in suppressing the spread of C. immitis spores, especially during drought conditions in the arid desert.

> 33(c). During those periods when grading is being conducted, the contractor shall inspect the adjacent paved roadways at least two times per week, and shall sweep the street if visible dirt or dust, attributable to the project, can be seen on the roadway.

This condition is inadequate to prevent the spread of C. immitis spores because it focuses on visible dust. However, C. immities spores may be present in the air even when dust is not visible. Even if C.

immitis spores were visible to the naked eye, inspecting roads only two times per week is insufficient to detect C. immitis spores during the times between inspections. Finally, sweeping dust from roads may actually increase the spread of C. immitis spores by lifting spores into the air.

In short, conventional dust control measures are inadequate to address potential health risks posed by exposure to Valley Fever. Conventional dust control measures (like those included in the MDAQMD's Rule 403.2 and the City's conditions of approval) are not effective at controlling Valley Fever[5] because they largely focus on visible dust. While dust exposure is a primary risk factor for contracting Valley Fever and dust control measures are an important component of preventing infection, visible dust is only an indicator that C. immitis spores may be airborne in a given area. Freshly generated dust clouds usually contain a larger proportion of the more visible coarse particles. However, these larger particles settle more rapidly and the remaining fine respirable particles may be difficult to see. Spores, whose size is well below the limits of human vision, may be present in air that appears relatively clear and dust free. Such ambient, airborne spores with their low settling rates can remain aloft for long periods and be carried hundreds of kilometers from their point of origin. Thus, implementation of the proposed dust control measures only when visible dust is present will likely not provide sufficient protection for either construction workers or the general public.

This is particularly concerning because infections by C. immitis frequently have a seasonal pattern with infection rates that generally spike in the first few weeks of hot dry weather that follow extended milder rainy periods. Typically, the risk of catching Valley Fever begins to increase in June and continues an upward trend until it peaks during the months of August, September and October.[6] Drought periods can have an especially potent impact on Valley Fever if they follow periods of rain.[7] It is thought that during drought years the number of organisms competing with C. immitis decreases and the fungus remains alive but dormant. When rain finally occurs, the spores germinate and multiply more than usual because of a decreased number of other competing organisms. When the soil dries out in the summer and fall, the spores can become airborne and potentially infectious.[8] The current drought conditions in California, officially declared as a State of Emergency by Governor Brown on January 17, 2013,[9] may increase the occurrence of Valley Fever cases. Thus, major soil-disturbing construction activities should be timed to occur outside of a prolonged dry period. After soil-disturbing activities conclude, all disturbed soils should be sufficiently stabilized to prevent airborne dispersal of spores.

In addition, in the past few years, several incidences of severe dust storms and reported cases of Valley Fever occurred during construction of photovoltaic energy projects. For example, construction of First Solar's Antelope Valley Solar Ranch One ("AVSR1") was officially halted in April 2013 due to the company's failure to bring the facility in compliance with ambient air quality standards, despite required

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[5] *See, e.g.*, Cummings and others, 2010, p. 509; Schneider et al., 1997, p. 908 ("Primary prevention strategies (*e.g.*, dust-control measures) for coccidioidomycosis in endemic areas have limited effectiveness.").

[6] Kern County Public Health Services Department, What Is Valley Fever, Prevention, Valley Fever Risk Factors; http://kerncountyvalleyfever.com/what-is-valley-fever/risk-factors/, accessed March 16, 2014.

[7] Gosia Wozniacka, Associated Press, Fever Hits Thousands in Parched West Farm Region, May 5, 2013, citing Prof. John Galgiani, Director of the Valley Fever Center for Excellence at the University of Arizona; http://abcnews.go.com/m/story?id=19113795.

[8] Theodore N. Kirkland and Joshua Fierer, Coccidioidomycosis: A Reemerging Infectious Disease, Emerging Infectious Diseases, Vol. 3, No. 2, July-September 1996; http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2626789/pdf/8903229.pdf.

[9] State of California, Office of Governor Edmund G. Brown, Governor Brown Declares Drought State of Emergency, January 17, 2014; http://gov.ca.gov/news.php?id=18368 .

dust control measures.[10] A dust storm in Antelope Valley on April 8, 2013 was so severe that it resulted in multiple car pileups in the sparsely populated region, as well as closure of the Antelope Valley Freeway.[11] The company was issued four violations by the Antelope Valley Air Quality Management District.[12] Dust from the project, in general, has led to complaints of respiratory distress by local residents and a concern of Valley Fever.[13]

At two photovoltaic solar energy projects in San Luis Obispo County, Topaz Solar Farm and California Valley Solar Ranch, 28 construction workers contracted Valley Fever.[14] One man was digging into the ground and inhaled dust and subsequently became ill. A blood test confirmed Valley Fever.[15]

As I stressed in my initial comments on the IS/MND, mitigation measures specific to preventing exposure to C. immitis spores are critical to the protection of construction workers and the public, nearby residents, prison guards and inmates, and schoolchildren. In addition to those measures we identified previously, it is especially important to require mitigation measures in the following preventative areas in an EIR:

- Test the soils in the project area for C. immitis spores prior to ground disturbance;
- Implement a program of medical surveillance, including skin tests on employees, and nearby inmates, prison guards and schoolchildren;
- Require consultation from an occupational safety officer and Implement aggressive enforcement of proper respirator use for site construction workers under the occupational safety officer's supervision; and
- Require all work-related clothing to be left at the Project site and to require facilities where clothing can be washed at the Project site.

Please contact me with any questions.

Sincerely,

Matt Hagemann, P.G., C.Hg.

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[10] Herman K. Trabish, GreenTech Media, Construction Halted at First Solar's 230 MW Antelope Valley Site, April 22, 2013; http://www.greentechmedia.com/articles/read/Construction-Halted-At-First-Solars-230-MW-Antelope-Valley-Site.

[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid.*

[14] Julie Cart, Los Angeles Times, 28 Solar Workers Sickened by Valley Fever in San Luis Obispo County May 01, 2013; available at http://articles.latimes.com/2013/may/01/local/la-me-ln-valley-fever-solar-sites-20130501.

[15] *Ibid.*