

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

In the Matter of: )  
 )  
Holtec International ) Docket No. 72-1051  
 )  
(HI-STORE Consolidated Interim Storage Facility )  
for Interim Storage of Spent Nuclear Fuel) )

**PETITION TO INTERVENE AND REQUEST FOR HEARING**

**I. Introduction**

Pursuant to 10 C.F.R. § 2.309 and the hearing notice published by the Nuclear Regulatory Commission (“NRC” or “Commission”) at 83 F.R. 32919 (July 16, 2018), Petitioner Alliance for Environmental Solutions (“Petitioner” or “AFES”) hereby requests a hearing and petitions to intervene in this proceeding regarding Holtec International’s (“Applicant” or “Holtec”) application for a license allowing Holtec to construct and operate the HI-STORE Consolidated Interim Storage (CIS) Facility, in Lea County, New Mexico. Holtec proposes to store up to 8,680 metric tons of uranium of commercial spent nuclear fuel in the HI-STORM UMAX Canister Storage System for a 40-year license term.

Petitioner’s standing to intervene is described in Section II, *infra*. In Section III, Petitioner sets forth its contentions.

**II. Petitioner’s Standing to Intervene**

***A. Description of Petitioner***

Petitioner is an environmental group whose members are or principally are located in the area of the proposed Holtec storage site in Lea and Eddy County. *See generally* AFES Mission Statement, attached hereto as **Exhibit 1**. AFES is a nonprofit, nonpartisan membership

organization. It is

a group of citizens from Eddy, Lea, Otero and Chaves counties concerned about the future of our Southern New Mexico Communities. We are working together to create awareness about environmental and health issues in our communities and to build a **VOICE of NO CONSENT** toward the small group of economic elites “the one percent”), who have gone unchallenged, as they seek to impose their personal economic agendas on the backs of the economically vulnerable people of Southern New Mexico.

Our scope is, to identify issues and educate our communities while forging an ever-greater alliance of those concerned about environmental and health issues related to oil, gas, uranium mining, radioactive waste transportation, disposal or storage and nuclear enrichment and processing.

*Id.* AFES has members in Lea, Eddy, Chaves, and Otero counties, and supporters in Bernalillo County and other areas of New Mexico.

### ***B. Standing to Intervene***

Pursuant to 10 C.F.R. § 2.309(f), a request for a hearing must address (1) the nature of the petitioner’s right under the Atomic Energy Act (“AEA”) to be made a party to the proceeding, (2) the nature and extent of the petitioner’s interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner’s interest. The Atomic Safety and Licensing Board summarized these standing requirements as follows:

In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983) (*citing Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2)*, CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant)*, LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm

to its organizational interests, or in a representational capacity by demonstrating harm to its members. See *Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120)*, LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. See *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds, CLI-98-13*, 48 NRC 26 (1998).

*In the Matter of Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation)*, 56 N.R.C. 413, 414 (Dec. 2, 2002)

Petitioner's standing to participate in this proceeding is demonstrated by the declarations of the following members of AFES, who have authorized Petitioner to represent their interests in this proceeding.

Rose Gardner

Rose Gardner is a resident of Eunice, New Mexico, in Lea County, New Mexico. See generally Affidavit of Rose Gardner, attached hereto as **Exhibit 2**. She has resided in Lea County for sixty years, with the exception of four years of military duty.

Ms. Gardner's residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017. Specifically, Ms. Gardner resides at 1402 Avenue A, Eunice New Mexico, which is approximately within 37 miles of the proposed Holtec site.

Ms. Gardner also has a business in Eunice NM, in Lea County. She has had this business for almost seventeen years. Specifically, Ms. Gardner owns a floral shop at 1700 Main Street and 1402 Avenue A I in Eunice New Mexico. She is presently doing business at both locations, which are within approximately 37 miles of the Holtec site. She also runs oil field related businesses and an animal feed business, also within approximately 37 miles of the proposed

Holtec site.

Ms. Gardner uses the road between Hobbs and Carlsbad (US 62-180) on an occasional basis, due to her business and due to family presently living in Carlsbad.

Ms. Gardner asserts the following potential injury from the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Plant, currently located east of Carlsbad.

In my experience, the location of the WIPP site in Carlsbad has already been damaging to the property values and general social welfare of the communities in Lea County and Eddy County, due to the risks associated with WIPP and due to the actual explosion that occurred on February 14, 2014. The community received the same reassurances by WIPP as are currently being provided by Holtec, with the result that there is great distrust and dread in the community already concerning the location of a similar site in the future. Waste Control Specialists now store waste barrels that should be at WIPP. These should be down in that WIPP hole, not 5 miles from my home. Some 100 barrels or more are here so close to my home and business that could potential[ly] explode as happened underground WIPP in 2014. My experience with what people say is why is that waste still here? They should take it away. *We don't want to be known as a waste dump city.*

**Exhibit 2** (emphasis added).

Ms. Gardner is particularly concerned that the lack of an adequate emergency response plan in the application for the location of the Hi-Store CIS Facility in Lea and Eddy County by Holtec may cause injury to her, because of the spread of any fire sparked at the site and/or the release of toxic matter into the air, land, or water, and the limited alerts or notice to the community provided by the emergency response plan.

Ms. Gardner is Mexican American, which means that she is considered to be the member of a minority group for purposes of both (1) the environmental justice (“EJ”) objections raised herein, and (2) any analysis of the potential disparate impact of safety and health problems with the Holtec site on the local minority population.

Ms. Gardner is a registered voter for purposes of elections in Eunice, Lea County, and the State of New Mexico, yet local officials never asked her opinion regarding the siting of Holtec's Hi-Store CIS Facility near her business or residence. She never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site. Had she been asked, she would have told local officials the following:

I do not consent to allowing the transport or storage of high level nuclear waste in my State of New Mexico or near my town of Eunice NM. Eunice is already a home to low level nuclear waste dump (WCS) and a uranium enrichment factory (Urenco USA). The dry arid environment they brag about is subject to grass wildfires and some temperature and weather extremes. The railroads in the plan seem to be inadequate for the transport of high level nuclear material, not just in New Mexico but in Texas as well. In the past few years there have been several derailments of train cars in Lea County near Jal NM(2015) as well as Odessa TX 2018, train collision in Monahans TX in 2018, derailment Kermit TX (2018) and these are just a few to list.

**Exhibit 2.**

Ms. Gardner is a member of the Alliance for Environmental Strategies ("AFES") and she has authorized AFES to represent her in objecting to the Holtec site.

Lorraine Villegas

Lorraine Villegas has resided in Hobbs, New Mexico, in Lea County, for more than twenty years. *See generally* Affidavit of Lorraine Villegas, attached hereto as **Exhibit 3**. Her residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017. Specifically, she resides at 401 East Yucca Drive, Hobbs, NM 88240, which is within 39 miles of the Holtec site.

Ms. Villegas is employed in the oil and gas industry in Hobbs, in Lea County. She has

had this job for six months. The job includes driving around much of Eddy and Lea County. Specifically, she is employed at Titan Lansing Transloading, LLC, 44 Buffalo Grass Road, Loco Hills, NM 88255, which is 10 miles from the Holtec site.

Ms. Villegas uses the main road (US 62-180) between Hobbs and Carlsbad on a regular basis, often several times a day, which is within 0.52 miles of the Holtec site, according to the Environmental Report, page 31.

Ms. Villegas asserts potential injury from the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Plant, currently located east of Carlsbad, including the perception and self-perception of her local minority community that Lea and Eddy County are becoming a national dumping ground for industrial and nuclear waste.

Ms. Villegas is particularly concerned about the potential ill effects on her employer, due to potential fires and radiation exposure, as well as the potential decrease in the quality of her life. In addition, Ms. Villegas asserts that the disparate impact of discriminatory site selection, based on race and ethnicity, will have an ill effect on her because of the perception and self-perception that people like her do not have political power.

Ms. Villegas is Hispanic, which means that she is considered to be the member of a minority group for purposes of both (1) the environmental justice objections raised herein, and (2) any analysis of the potential disparate impact of non-EJ safety and health problems with the Holtec site on the local minority population. Ms. Villegas also describes herself and her family as low income.

Local officials never asked Ms. Villegas' opinion regarding the siting of Holtec's Hi-Store CIS Facility near her place of employment or residence. She never received notice of any

public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site.

Had Ms. Villegas been asked to express an opinion or attend a meeting, she would have said the following:

I do not consent to the Holtec site. There hasn't been adequate public outreach and there's been no effort to educate the public. The Holtec facility is not isolated from a lot of oil and gas facilities and many people that travel along U.S. Highway 62-180. If there were a breach that affected me, I would not know what to do.

**Exhibit 3.**

Ms. Villegas is member of the Alliance for Environmental Strategies ("AFES") and she has authorized AFES to represent her in objecting to the Holtec site

Noel V. Marquez

Noel V. Marquez is a resident of an unincorporated area of Eddy County. *See generally* Affidavit of Noel V. Marquez, attached hereto as **Exhibit 4**. He has resided in Eddy County for ten years.

Mr. Marquez' residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017. Specifically, Mr. Marquez resides at 635 N. 13<sup>th</sup> Street, Lake Arthur, New Mexico, 88253, which is approximately within 48 miles of the proposed Holtec site.

Mr. Marquez also has a business in the unincorporated area of Eddy County, at the same location as his residence. He has had this business for over thirty years. Specifically, Mr. Marquez a business as a community artist and operates a small farm.

Mr. Marquez uses the road between Hobbs and Carlsbad (US 62-180) on a regular basis.

Mr. Marquez asserts the following potential injury from the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Plant, currently located in Carlsbad: potential decrease in the value of his real property and his business, including the construction of a studio on his property.

Mr. Marquez is a Chicano, which means that he is considered to be the member of a minority group for purposes of both (1) the environmental justice objections raised herein, and (1) any analysis of the potential disparate impact of non-EJ safety and health problems with the Holtec site on the local minority population.

Mr. Marquez is a registered voter for purposes of elections in Artesia, New Mexico, and Eddy County, yet local officials never asked his opinion regarding the siting of Holtec's Hi-Store CIS Facility near his business or residence. He never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site. Had he been asked, he would have told local officials the following:

We are overburdened with toxic [e]ffects on our water, lands, and air with a failed WIPP site, the Navajo refinery, oil and gas fracking causing depletion of limited water resources in our desert lands. We do not need a radioactive dump for further contamination.

**Exhibit 4.**

Mr. Marquez is a member of the Alliance for Environmental Strategies ("AFES") and he has authorized AFES to represent him in objecting to the Holtec site.

Nicholas R. Maxwell

Nicholas R. Maxwell is a resident of an unincorporated area of Lea County. *See generally* Affidavit of Nicholas R. Maxwell, attached hereto as **Exhibit 5**. He has resided in Lea



County for almost ten years.

Mr. Maxwell's residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017. Specifically, Mr. Maxwell resides at 3505A West Alabama Street, Hobbs, New Mexico, 88242, which is within thirty-five miles of the Holtec site.

Mr. Maxwell uses the road between Hobbs and Carlsbad (US 62-180) on a regular basis.

Mr. Maxwell is a registered voter for purposes of elections in Lea County, yet local officials never asked his opinion regarding the siting of Holtec's Hi-Store CIS Facility near his residence. He never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site. Had he been asked, he would have told local officials the following:

WIPP has already had a major incident contrary to what the public was promised by public officials prior to establishment. An incident involving the spent nuclear fuel rods at, or during transport to, the proposed Holtec site, would likely bring irreparable and catastrophic harm to the public, which is not a risk that I wish for my elected public representatives to create on my behalf. I do not consent to the addition of a high-level nuclear waste site in Lea County. I do not consent to the prior "open" meetings held by the Eddy Lea Energy Alliance LLC, a regional government body in New Mexico subject to sunshine laws, which were often held at inconvenient times with little or no public notice.

Mr. Maxwell is particularly concerned that the residents of Lea and Eddy County, and in particular he himself was excluded from meetings held by the Eddy Lea Energy Alliance in violation of the New Mexico Open Meetings Act. In addition, Mr. Maxwell contends that as a result of the violation of the Open Meetings Act and other issues, Holtec will not be able to show that it has a legal right to obtain the project site. See **Exhibit 5** at ¶¶ 16-22.

Mr. Maxwell is a member of the Alliance for Environmental Strategies ("AFES") and he has authorized AFES to represent him in objecting to the Holtec site.

The attached declarations demonstrate that Petitioner's members live near the proposed Holtec site, i.e., within at most 50 miles, and would be adversely affected by an accident at the proposed site, and are adversely affected by any fire or unanticipated release of radiation caused by the transport to or storage of commercial spent nuclear fuel at the Holtec site. In addition, several members travel regularly on the road between Clovis and Hobbs, which is within half a mile of the proposed Holtec site. Further, Petitioner seeks to object to the potential negative impact of the site selection process on the local minority and low income community, both *per se* as a result of the cumulative impact of locating waste dumps generally and nuclear waste dumps specifically in this geographic area, and as a result of particular impact on minority and low income communities of any potential but unanticipated fire or release of radiation.

Petitioner seeks to ensure that no storage license is issued by the NRC unless Holtec demonstrates full compliance with federal laws, including laws that require Holtec to consider alternative sites that do not impermissibly burden minority and low income communities in Lea and Eddy County.

In addition, Petitioner's members, and therefore Petitioner as their representative, have presumptive standing by virtue of their location within 50 miles of a nuclear plant that may be operated on the site. *In the Matter of Florida Power & Light Company*, 53 NRC 138, 2001 WL 664172 \* 7 (Feb. 21, 2001)(recognizing "proximity presumption" that is "not based on the type of proceeding *per se* but on whether the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences")(citations and internal punctuation omitted). Here, Petitioner submits that the proposed facility creates a "significant source of radioactivity."

### III. Contentions

***Contention 1: As a Matter of Law, The Applicant Has Not Performed a Sufficient Investigation and Has Not Done a Sufficient Analysis to Support that the Holtec Site Will Not Have a Disparate Impact on the Minority and Low Income Population of Lea and Eddy County***

Petitioner contends that Holtec, as the applicant, has the burden to demonstrate that it has sufficiently investigated enough sites, as alternatives to the present site in Lea and Eddy County, to support a finding by the Nuclear Regulatory Commission that the selected site will not have a disparate impact on the minority population of Lea and Eddy County. As a matter of law, Holtec has not carried its burden. Therefore, Petitioner contends that Holtec must conduct an investigation of alternative sites and amend its application to comply with federal law, prior to any shifting of the burden to Petitioner to demonstrate that the site selection process impermissibly burdens the local minority and low income population.

In *In the Matter of Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, LBP-97-8, Docket No. 70-3070-ML (ASLBP No. 91-641-02-ML) (Special Nuclear Material License), 45 N.R.C. 367, 1997 WL 458771 (May 1, 1997) (“*Louisiana Energy 45*”), the Nuclear Regulatory Commission Atomic Safety and Licensing Board (“Licensing Board”) addressed in detail what a licensing applicant must do to ensure that the site selection process to possess and use nuclear material is free from impermissible discrimination as to minority and low income populations. In part, the Licensing Board mandated that the NRC staff investigate or review whether the applicant intentionally discriminated against minority / low income populations. However, in *In the Matter of Louisiana Energy Servs., L.P. (Claiborne Enrichment Ctr.)*, CLI-98-3, Docket No. 70-3070-ML, 47 N.R.C. 77, 1998 WL 191134 (Apr. 3, 1998) (“*Louisiana Energy 47*”), the Nuclear Regulatory Commission rejected the Licensing Board’s direction to the

staff with regard to addressing any allegation of *intentional* discrimination. At the same time, the NRC agreed in part with the Licensing Board, with regard to the need to review the potential disparate impact of the site selection process on the minority population, regardless of the existence of discriminatory intent or lack thereof.

Therefore, the Licensing Board's decision, *Louisiana Energy 45*, still provides important guidance as to the proper analytical framework to decide environmental justice issues that arise in nuclear licensing proceedings, including the need to avoid or mitigate any discriminatory *effect* of the original site selection process.

Moreover, the ER does not reflect consideration of the fact that the plant is to be placed "in the dead center o[f] a rural black community consisting of over 150 families." The proposed siting of the CEC in a minority community follows a pattern noted in a 1987 study by the United Church of Christ, "Toxic Wastes and Race In the United States, A National Report on the Racial and Socio-Economic Characteristics of Communities With Hazardous Waste Sites." The study found that "[r]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities. This represented a consistent national pattern." It also found that "In communities with one commercial hazardous waste facility, the average minority percentage of the population was twice the average minority percentage of the population in communities without such facilities (24 percent vs. 12 percent)." The ER does not demonstrate any attempts to avoid or mitigate the disparate impact of the proposed plant on this minority community.

*In the Matter of Louisiana Energy Servs., L.P. (Claiborne Enrichment Ctr.) ("Louisiana 45")*, 45 N.R.C. 367, 372-73 (May 1, 1997).

The Licensing Board did not invent the requirement that environmental justice concerns must be addressed in the licensing process. Indeed, in Executive Order 12898, 3 C.F.R. 859 (1995), and an accompanying Memorandum for the Heads of All Departments and Agencies, 30 Weekly Comp.Pres.Doc. 279 (Feb. 14, 1994), President Clinton confirmed existing law regarding the incorporation of environmental justice concerns into *all* federal agency decisions.

In so construing existing federal law, President Clinton, in effect, mandated that in the application process for a license to store nuclear waste, the Applicant must support and the NRC must consider whether the siting process so precipitously narrowed the selection of the site that the process in effect targeted minority communities, regardless of the Applicant's intention. While the Executive Order does not create any new rights, it provides critical guidance concerning the application of existing law against the exclusion of the interests of minority populations from the licensing process – in this instance, the exclusion of the interests of the minority population in Lea and Eddy County from the site selection process.

The President's order, titled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," contains a number of provisions but two are most pertinent here. In subsection 1–101 under the heading "Agency Responsibilities," the President directs that

[t]o the greatest extent practicable and permitted by law . . . each Federal agency *shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.*

3 C.F.R. at 859. Further, in section 2.2, the President orders that

[e]ach Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner *that ensures such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.*

*Id.* at 861.

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The President's memorandum accompanying the order states that the

Executive Order is designed “to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities *with the goal of achieving environmental justice*” and “to promote nondiscrimination in Federal programs substantially affecting human health and the environment.” 30 Weekly Comp.Pres.Doc. at 279. To accomplish these goals, the Presidential memorandum specifically states that, in conducting analyses required by NEPA, “[e]ach Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities.” *Id.* at 280.

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Although Executive Order 12898 does not create any new rights that the Intervener may seek to enforce before the agency or upon judicial review of the agency's actions, the President's directive is, in effect, a procedural directive to the head of each executive department and agency that, “to the greatest extent practicable and permitted by law,” it should seek to achieve environmental justice in carrying out its mission by using such tools as the National Environmental Policy Act. Pursuant to the President's order, there are two aspects to environmental justice: first, each agency is required to identify and address disproportionately high and adverse health or environmental effects on minority and low-income populations in its programs, policies, and activities; and second, each agency must ensure that its programs, policies, and activities that substantially affect human health or the environment *do not have the effect of subjecting persons and populations to discrimination because of their race, color, or national origin.* Thus, whether the Executive Order is viewed as calling for a more expansive interpretation of NEPA . . . or as merely clarifying NEPA's longstanding requirement for consideration of the impacts of major federal actions on the “human” environment . . . , *it is clear the President's order directs all agencies in analyzing the environmental effects of a federal action in an EIS required by NEPA to include in the analysis, “to the greatest extent practicable,” the human health, economic, and social effects on minority and low-income communities.*

*In the Matter of Louisiana Energy Servs., L.P. (Claiborne Enrichment Ctr.)*, 45 N.R.C. 367, 374–76 (May 1, 1997)(emphasis added; footnotes omitted).

By voluntarily agreeing to implement the President's environmental justice directive, the Commission has made it fully applicable to the agency and, until that commitment is revoked, the President's order, as a practical matter, applies to the NRC to the same extent as if it were an executive agency. The NRC is obligated, therefore, to carry out the Executive Order in good faith in implementing its programs, policies, and activities that substantially affect human

health or the environment. Further, because NRC licensing actions are activities that substantially affect human health and the environment, the Executive Order is applicable to licensing [applications].

Thus, in carrying out the additional obligation the Commission has placed upon us in the hearing order (i.e., to ensure that the Staff's environmental review is adequate and in compliance with section 102(2)(A), ( C ), and (E) of NEPA), we necessarily also must ensure agency compliance with the President's environmental justice directive. . . .

*Louisiana Energy 45*, 45 N.R.C. 367, 376 (emphasis added).

In *Louisiana Energy 45*, the Licensing Board cited several problematic factors in the site selection process that could result in a site that targeted minority communities. These factors included the precipitous “narrowing of the site selection process,” 45 N.R.C. 367, 386, the applicant’s “eyeball assessment” of conditions in the community, particularly the location or concentration of minority populations, rather than any true demographic study, 45 N.R.C. 367, 386-87, an over-emphasis on “quality of life” factors, which tended to direct a selection towards low income minority communities and tended to select out upper income white communities, 45 N.R.C. 367, 388, the applicant’s decision not to place the site near institutions such as schools, hospitals, and nursing homes, which again tended to select in low income minority communities and select out upper income communities, 45 N.R.C. 367, 388, and an overly narrow definition of the affected “community,” which in turn influenced the defined parameters of “community support.”

In the circumstances presented in this licensing action, however, by limiting its consideration to a facial review of the information in the Applicant's ER, the Staff has failed to comply with the President's directive. As we discuss more fully below, *a thorough and in-depth investigation of the Applicant's siting process by the Staff is essential to ensure compliance with the President's nondiscrimination directive if that directive is to have any real meaning. . . .*

Racial discrimination in the facility site selection process cannot be uncovered with only a cursory review of the description of that process appearing

in an applicant's environmental report. If it were so easily detected, racial discrimination would not be such a persistent and enduring problem in American society. . . .

*Louisiana Energy 45*, 45 N.R.C. at 390–91 (emphasis added).

The worst lapse by the applicant, as viewed by the Licensing Board, was its failure to address the negative impact of decreasing property values on minority, low income populations in the local area of the proposed site.

Thus, the Staff apparently has not considered the economic impact on property values of siting the CEC in the midst of these neighboring minority communities, qua minority communities. Indeed, the exploration of this matter would likely be another circumstance that merits scrutiny under Executive Order 12898.

*Louisiana Energy 45*, 45 N.R.C. at 410; *see also id.* at 405-07.

In *Louisiana Energy 47*, the Nuclear Regulatory Commission reviewed the decision of the Licensing Board in *Louisiana Energy 45*. The NRC agreed that “[u]nder NEPA, agencies are required to consider not only strictly environmental impacts, but also social and economic impacts ancillary to them.” *Louisiana Energy 47*, 47 N.R.C. at 101. This mandate includes an “examination of a proposed project’s impacts on minority and disadvantaged communities.” *Id.* at 102. However, the NRC drew the line on requiring a secondary inquiry as to whether an act with a discriminatory effect resulted from actual racial bias. *Id.* This inquiry, which the NRC described as a “further . . . investigation into racial discrimination,” was not within the parameters of the NRC’s licensing authority. *Id.*

At the time, this was a critical distinction, but it is not a distinction that has an effect on Petitioner’s objection herein. Thus in *Louisiana Energy 47*, the NRC emphasized that NEPA focuses on discriminatory impacts of an applicant’s decision making, rather than the underlying motives of any applicant. For example, the draft guidance for President Clinton’s executive



order focuses “on identifying and adequately assessing the impacts of the proposed actions on minority populations, low-income populations, and Indian Tribes,” rather than the potential intent underlying the proposed actions. “An agency’s environmental impact statement ‘must be evaluated for *what* it is, not for *why* the drafter may have made it so.’” *Louisiana Energy 47*, 47 N.R.C. at 102, *citing City of Grapevine v. DOT*, 17 F.3d 1502, 1507 (D.C.Cir.1994)(emphasis added), *cert. denied*, 513 U.S. 1043 (1994).

Here, Petitioner objects to Holtec’s site selection process, which entirely fails to account for *alternative sites* for the Holtec dump site. This precipitous narrowing of potential alternatives to a single site in southeastern New Mexico, a border state, is directly contrary to both President Clinton’s Executive Order and the mandate of *Louisiana Energy 45* and *Louisiana Energy 47*. This is so, *regardless of Holtec’s intent*. Thus in *Louisiana Energy 47*, the NRC indicated that while the federal government “may accord substantial weight to the preferences of the applicant . . . in the siting . . . of the project,” the applicant’s environmental impact statement must nonetheless “[r]igorously explore . . . all reasonable alternatives.” *Louisiana Energy 47*, 47 N.R.C. at 103 (emphasis in original), *quoting* 40 C.F.R. § 1502.14(a).

By the same token, once the site is selected, the applicant must also study and report, and the NRC must review, unique impacts on the local minority population. For example, in *Louisiana Energy Services*, the minority community faced “unique burdens,” such as the lack of private transportation, lack of plumbing, lack of education, and “housing barriers” that white residents did not face. *Louisiana Energy 47*, 47 N.R.C. at 77. The NRC indicated that the Licensing Board should consider all of these factors when it reviewed the impacts of the site and mitigation measures, in order to “arrive[] at the ultimate decision on the cost/benefit balance.” *Id.* In particular, the NRC cited the applicant’s failure to consider the diminution of property

values caused *in particular* by the location of the site in a low income, minority community. *Id.*

Here, Holtec's site selection process is described in Section 2.3 of its Environmental Report, Rev. 0, beginning on page 42 of its March 2017 Report (ADAMS Accession No. ML17139C535), which is not changed in Rev. 1 of December 2017 (ADAMS Accession No. ML18023A904). In Section 2.3, Holtec candidly admits that there was, in fact, *no site selection process for the Holtec site*, other than a cursory review of a report on a different site selection process. This earlier report, on the GNEP nuclear facilities site, was conducted twelve years ago by a cabal of county officials, known as Eddy Lea Energy Alliance ("ELEA"). The precipitous and premature "narrowing" of the selection site decried in *Louisiana Energy 45* is therefore even worse in this case. Thus instead of an independent review of several potential sites for radioactive dumping, Holtec relied entirely on a *prior* report by unidentified "county officials" for Eddy and Lea County, submitted twelve years earlier, *in support of a different project* involving "evaluation study contracts." March 2017 report, Section 2.3, page 42.

In considering the most appropriate site for the proposed CIS Facility, Holtec reviewed the site selection process and outcome described above for the GNEP nuclear facilities and determined that the selected site in the process (Site 1) *would also be the best site for the CIS Facility.*

March 2017 report, Section 2.3, page 43 (emphasis added). This is *ipse dixit* logic inside *ipse dixit* logic selected – the site was best for the GNEP nuclear facilities because ELEA said so; it is now best for Holtec because ELEA said so for GNEP. In other words, Holtec looked at the ELEA report on a different project, and agreed with ELEA's self-serving assessment that locating a different project in Eddy and Lea County was a good idea.

Holtec reports that county officials, acting under the acronym ELEA, "educat[ed] local leaders and gain[ed] community support" for the project, but there is absolutely no support in the

Holtec Application for this bald-faced assertion – either with regard to alleged “community outreach” or alleged “community support.” Neither does any support for either assertion appear in ELEA 2007, Appendix 2C to Holtec’s Environmental Report, even though Holtec assures the NRC that Appendix C will provide all details concerning the site selection. ELEA 2007, Appendix 2C actually documents a report done twelve years ago, for a different project. In ELEA 2007, there is no discussion of *any* environmental justice concerns. And no wonder – environmental justice was assigned “a low weighting factor” in site selection. Indeed, as to “environmental justice,” all six alternative sites are listed and described identically, as having “low population density,” as though “low population density” translated as “nothing to see here” for purposes of taking environmental justice factors into concern in the site selection process. Appendix 2C ELEA GNEP Screening Criteria and Process, at page 6 (ADAMS Accession No. ML17310A230). Most egregiously, all six sites are located in Lea and Eddy County.

Holtec has thus failed to conduct even the most minimal environmental justice investigation, relying instead on the unsupported opinions of unidentified local politicians. There are several problems with this approach.

First, the *only* site considered by Holtec was Lea and Eddy County. Outside of these isolated, low income communities, there has been absolutely no review of other sites, even in New Mexico, much less outside of New Mexico. The very factor that was treated as “positive” by Holtec in terms of environmental justice – that unnamed local officials had already asked to be considered as a possible site – is, in fact, negative. Thus Holtec appears to believe that because this geographic area was previously targeted for industrial and nuclear dumping, this provides an “all clear” for additional dumping, when, in fact, the reverse is true – the targeting of rural, impoverished, low income communities in a border state is precisely the sort of *de facto*

result of the institutional racism embedded in prevailing dump site selection processes nationwide that was decried over thirty years ago in the United Church of Christ study cited by the Licensing Board in *Louisiana Energy 45*. See *Toxic Wastes and Race In the United States, A National Report on the Racial and Socio–Economic Characteristics of Communities With Hazardous Waste Sites,*” cited with approval in *Louisiana 45*, 45 N.R.C. at 372–73.

Rather than a careful study of potential alternative sites, Holtec relies entirely on the study by ELEA, which in turn failed to address any sites but Lea and Eddy County. Within Lea and Eddy County, the sole criterion for ELEA, in terms of the “environmental justice” factor, was low population density, a factor which also targets rural impoverished communities, as the Licensing Board pointed out in *Louisiana Energy 45* when it noted that a purposeful “selection out” of populated and popular areas has the *de facto* result of dumping waste on minority, low income, isolated rural communities. *Louisiana Energy 45*, 45 N.R.C. at 387-88.

Holtec’s circular reasoning is perfectly illustrated by Section 3.8.5 of its Environmental Report, which compares the percentage of minority and low income populations inside the Holtec site with the population of surrounding counties. Holtec does not even compare the proposed site with the percentage of minority and low income populations in New Mexico, much less with the populations inside the United States.

Holtec’s failure to compare the population of Lea and Eddy County with the population of the United States – choosing instead basically to compare the area of the proposed site with narrow geographic area of both counties – is directly contrary to the detailed scoping comments provided in this case by the Environmental Protection Agency, which specifically incorporated the EPA’s Promising Practice Report in the EPA’s recommendations with regard to further action by Holtec. The Promising Practice Report specifically rejects Holtec’s method of

identifying environmental justice populations by comparing the area of the site with the immediately surrounding area, rather than casting a wider comparative net. *See* “Promising Practices for EJ Methodologies in NEPA Reviews, March 2016 at V, “Identifying Minority Populations.”

When conducting the Meaningfully Greater analysis agencies can benefit by being sensitive to situations where a large percentage of residents is comprised of minority individuals. In selecting the appropriate reference community, it is important to capture relevant demographic information. *A larger scale reference community (e.g., municipal, state, or regional) may be required under this circumstance to obtain results that accurately reflect the existence of a minority population in the geographic unit of analysis (e.g., census block) being analyzed.*

*Id.* (emphasis added).

In this contention, Petitioner’s argument is that the site selection process *per se* was inadequate to carry Holtec’s burden, thereby mandating the preparation of a new environmental report that both *studies* and *addresses* alternative sites nationwide, why such sites are rejected, and what impact the selected site will have on minority and low income local populations. As part of its studies, Holtec should be required to reach out to minority and low income communities, rather than relying on unnamed politicians who purportedly speak for the community.

Petitioner asserts this objection as a matter of law. While Petitioner therefore is not required as part of this contention to refute the implication that there is “community” support for the Holtec site, two factual points are worth mentioning. First, there is nothing in the current record to support that any outreach to the minority low income population of Lea and Eddy occurred – quite the opposite, according to the declarations submitted by all four AFES members. Second, the City of Jal, which has a population of 2,121, and is located in Lea County, has passed a resolution expressing its opposition to the Holtec site. *See* City of Jal Resolution

2018-22, attached hereto as **Exhibit 6**. Jal specifically cites its environmental justice concerns that “small, rural communities with largely aging populations and few resources to fight back are being targeted to host the radioactive waste dumps, an example of extreme environmental injustice.” *Id.*

***Contention 2: As a Matter of Fact and Expert Opinion,  
the Siting Process Will Have a Disparate Impact  
on the Minority and Low Income Population of Lee and Eddy County***

Petitioner attaches the expert opinion of Professor Myrriah Gomez, Ph.D., as **Exhibit 7**, in support of Contention 2.

In particular, Dr. Gomez provides expert support for Petitioner’s position that New Mexico has been targeted for the dumping of nuclear waste, resulting in a *per se* discriminatory impact on New Mexico’s minority population, in comparison with the rest of the country. *See Exhibit 7* at pages 1-2. This *de facto* discrimination is exacerbated by both the historical failure to include members of the minority population in decision making regarding the location of nuclear sites in New Mexico, and the specific failure of ELEA to include members of the local Lea and Eddy County minority population in decision making related to the siting of the GNEP facility, which has been used in turn and “whole cloth” to support the siting of the Holtec facility. *Id.* at pages 3-5. Specifically, Dr. Gomez reports and highlights that “all eight voting members of the Eddy-Lea Energy Alliance (ELEA) in addition to its three administrative staff members are all ethnically White.” *Id.* at page 5. Dr. Gomez also highlights the high minority population of Lea and Eddy County, in particular in rural areas. *Id.* at page 6. Of course, the “majority minority” population of this part of New Mexico contrasts sharply with the population of the United States, which is 60.7 % White, non-Hispanic. *See id.* at page 6.

As additional support for Contention 2, Pctitioner incorporates **Exhibit 7** herein by

reference.

***Contention 3: There Is No Factual Support for Holtec’s Primary Site Selection Criterion, which Is Community Support***

In Section 2.4.2, Holtec provides the following statement in support of its rejection of any other “location alternatives,” even though it does not list any other “location alternatives.”

*The site proposed for the CIS Facility in Lea County, New Mexico was identified through the process described in Section 2.3. Holtec supports the Blue Ribbon Commission’s recommendation to only site a CIS Facility in a state and community willing to host such a facility. ELEA’s success in proposing the Lea County site for the GNEP program was predicated on the tremendous support provided by New Mexico, the regional and local communities in southeastern New Mexico and Eddy and Lea counties. Holtec agrees with the findings of the Blue Ribbon Commission (BRC 2012, Chapter 6) that many of the failures to site nuclear and radioactive waste disposal facilities, including the proposed repository at Yucca Mountain, Nevada, are directly attributable to the failure to garner the support of the host state and local communities. Accordingly, Holtec adopted a site selection process geared to identify a [region of influence] focused upon states and communities that have expressed their willingness to host nuclear facilities.*

*As an indication of the community support for a project like the proposed CIS Facility in southeastern New Mexico, Holtec recognizes the following nuclear facilities located within the general proposed area: WIPP, NEF, and the International Isotopes Fluorine Production (IIFP) facility. All three of these facilities are located in southeastern New Mexico within approximately 40 miles of the proposed CIS Facility site.*

Section 2.4.2, page 45, HI-2167521, Rev.0 (March 2017 Environmental Report)(emphasis added).

While community support *per se* is not material to the findings the NRC must make to issue a license, Holtec has made community support a material issue in two respects.

First, Holtec attempts in Section 2.4.2 to substitute “community support” for any site selection project that actually takes environmental justice concerns into account. Holtec cannot have it both ways. The basis for Holtec’s assumption that the NRC will or should give the site

selection process the same cursory nod to environmental justice issues that Holtec has given to environmental justice is that the community of Lea and Eddy County has allegedly expressed “tremendous support” for another nuclear waste dump. If so – if, in fact, environmental justice concerns “don’t matter” because ELEA says that they don’t – then Holtec must provide factual support that its premise is correct that ELEA speaks for the community, rather than an elite group of non-minority residents who seek a business opportunity regardless of the effect on the quality of life of local residents. In fact, as demonstrated by the declarations of all AFES members, as well as specifically by the declaration of Mr. Maxwell, the residents of Lea and Eddy County were never consulted about the location of an additional nuclear waste dump in their community. Indeed, meetings concerning the siting of yet another dump in southeastern New Mexico were held in violation of the New Mexico Open Meetings Act. *See Exhibit 5* at ¶¶ 14-22, and exhibits attached to Maxwell Affidavit, incorporated herein by reference.

Second, Holtec cannot even demonstrate that the land under the site is “controlled” by Holtec. *See* Section 2.2.1, page 31, HI-2167521, Rev.0 (March 2017 Environmental Report). The lynchpin of Holtec’s entire application is that it controls the site, which is directly contradicted by the declaration and documents submitted by Mr. Maxwell. *See Exhibit 5* at ¶¶ 14-22, and exhibits attached to Maxwell Affidavit, incorporated herein by reference.

#### **IV. Conclusion**

For the foregoing reasons, Petitioner’s contentions should be admitted and Petitioner should be admitted as a party to this proceeding.



Respectfully submitted:

THE LAW OFFICES OF NANCY L. SIMMONS, P.C.

By: *Nancy L. Simmons*  
Nancy L. Simmons

120 Girard SE  
Albuquerque, NM 87106  
(505) 232-2575  
Counsel for the Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via electronic submission on this 12<sup>th</sup> day of September, 2018, to counsel of record.

*Nancy L. Simmons*  
Nancy L. Simmons

## Southern New Mexico Alliance for Environmental Strategies

We are a group of citizens from Eddy, Lea, Otero and Chaves counties concerned about the future of our Southern New Mexico Communities. We are working together to create awareness about environmental and health issues in our communities and to build a **VOICE of NO CONSENT** toward the small group of economic elites ("the one percent"), who have gone unchallenged, as they seek to impose their personal economic agendas on the backs of the economically vulnerable people of Southern, New Mexico.

Our scope is, to identify issues and educate our communities while forging an ever-greater alliance of those concerned about environmental and health issues related to oil, gas, uranium mining, radioactive waste transportation, disposal or storage and nuclear enrichment and processing.

### *No Suelten el Dragon Radioactivo*



**Do Not Unleash the Radioactive Dragon**



STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF Lea )

AFFIDAVIT

1. I, Rose Gardner, am over the age of 18.
2. I swear to the following under penalty of perjury.
3. I currently reside in Eunice, NM, in Lea County , New Mexico. I have resided here for 60 years and 3 months years / months. Of that 4 years military duties in the United States.
4. My residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility (“Holtec site”), described in Figure 3.8.1 of Holtec’s Environmental Report, dated December 2017, attached hereto as Exhibit A.
5. Specifically, I reside at 1402 Avenue A, Eunice New Mexico , which is approximately within 37 miles of the Holtec site.
6. I have a business in Eunice NM, in Lea County / Eddy County (circle one), New Mexico. I have had this business for 16years 10 months.
7. Specifically, I have a business located at 1700 Main Street and 1402 Avenue A I in Eunice New Mexico. Presently making plans to move floral shop to new location at the 100 block of South Main Street Eunice NM Still doing business at both locations, which are within approximately 37 miles of the Holtec site.
8. The nature of my business is follows:  
Floral Shop at 1700 Main moving in near future to the 100 block of Main Street, Eunice NM



(convenience to my family and babies).

Rental(oil field related) business, retail animal feed business, at home contract oil field pumping business. These are business that are run from my home at 1402 Avenue and and other properties I own.

9. I use the main road between Hobbs and Carlsbad on an occasional basis due to my floral business and I have family living in Carlsbad.
10. I will or reasonably may be injured by the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Project, currently located in Carlsbad. In my experience, the location of the WIPP site in Carlsbad has already been damaging to the property values and general social welfare of the communities in Lea County and Eddy County, due to the risks associated with WIPP and due to the actual explosion that occurred on February 14, 2014. The community received the same reassurances by WIPP as are currently being provided by Holtec, with the result that there is great distrust and dread in the community already concerning the location of a similar site in the future. (Waste Control Specialists now store waste barrels that should be at WIPP. These should be down in that WIPP hole, not 5 miles from my home. Some 100 barrels or more are here so close to my home and business that could potential explode as happened underground WIPP in 2014. My experience with what people say is why is that waste still here? They should take it away. We don't want to be known as a waste dump city.
11. I will or reasonably may be injured by the ill effects of the location of the Holtec site in

the area described in the application for the site, which is also described in Exhibit A, attached hereto.

12. I am a member of a minority group: Mexican-American.
13. The disparate impact of discriminatory site selection, based on race and ethnicity, will have an ill effect on me, my family and friends, in terms of self-esteem and self-worth.
14. I would not describe myself as low income.
  
15. I will or reasonably may be injured by the lack of an adequate emergency response plan in the application for the location of the Hi-Store CIS Facility in Lea and Eddy County by Holtec. Specifically I will or reasonably may be injured by the spread of any fire sparked at the site and/or the release of toxic matter into the air, land, or water, and the limited alerts or notice to the community provided by the emergency response plan.
16. I am allowed to vote in elections in the following communities: Eunice General Elections Lea County and State of NM.
17. Local officials never asked my opinion regarding the siting of Holtec's Hi-Store CIS Facility near my business or residence.
18. I never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site.
19. Had I been asked to express an opinion or attend a meeting, I would have said the following: I do not consent to allowing the transport or storage of high level nuclear waste in My State of New Mexico or near my town of Eunice NM. Eunice is already a

home to low level nuclear waste dump (WCS) and a uranium enrichment factory (Urenco USA). The dry arid environment they brag about is subject to grass wildfires and some temperature and weather extremes. The railroads in the plan seem to be inadequate for the transport of high level nuclear material, not just in New Mexico but in Texas as well. In the past few years there have been several derailments of train cars in Lea County near Jal NM(2015) as well as Odessa TX 2018, train collision in Monahans TX in 2018, derailment Kermit TX (2018) and these are just a few to list.

- 20. I am a member of the Alliance for Environmental Strategies (“AFES”) and I authorize AFES to represent me in objecting to the Holtec site.
- 21. FURTHER AFFIANT SAYETH NAUGHT.

Rose M. Gaudin

SUBSCRIBED AND SWORN TO before me this 6 day of September, 2018.



**OFFICIAL SEAL**  
**MANDI LUNA**  
NOTARY PUBLIC - State of New Mexico

My Commission Expires 7/25/21

Mandi Luna  
Notary Public

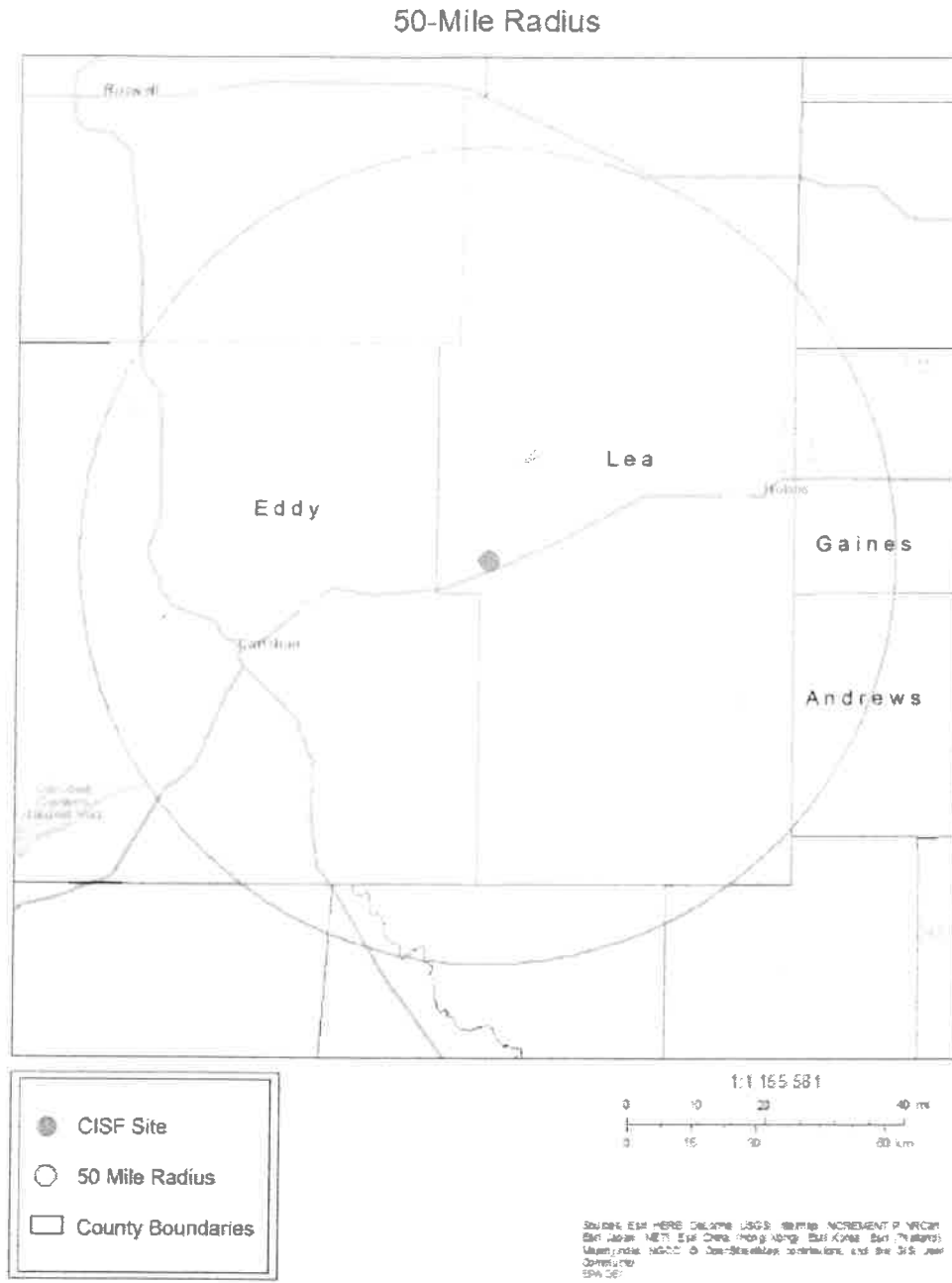
(SEAL)  
My Commission Expires:

TRANSLATOR'S CERTIFICATE

I, \_\_\_\_\_, fluent in English and Spanish, hereby certify that this document is a true and accurate translation of the Spanish original which was recounted

to me by \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_



Source: EJScreen 2016.

**Figure 3.8.1: REGION OF INFLUENCE WITHIN A 50-MILE RADIUS OF THE CIS FACILITY**

HOLTEC INTERNATIONAL COPYRIGHTED MATERIAL	
HI-2167521	Rev. 1





STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF LEA )

AFFIDAVIT

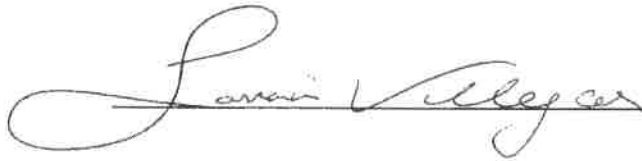
1. I, Lorraine Villegas, am over the age of 18.
2. I swear to the following under penalty of perjury.
3. I currently reside in Hobbs, in Lea County, New Mexico. I have resided here for more than 20 years of my life.
4. My residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility (“Holtec site”), described in Figure 3.8.1 of Holtec’s Environmental Report, dated December 2017, attached hereto as Exhibit A.
5. Specifically, I reside at 401 East Yucca Drive, Hobbs, NM 88240, which is within 39 miles of the Holtec site.
6. I am employed in the oil and gas industry in Hobbs, Lea County. I have had this job for six months. The job includes driving around much of the Eddy and Lea County.
7. I use the main road (US 62-180) between Hobbs and Carlsbad on a regular basis, often several times a day, which is within 0.52 miles of the Holtec site, according to the Environmental Report, page 31. I often go to and from Titan Lansing Transloading, LLC, 44 Buffalo Grass Road, Loco Hills, NM 88255, which is 10 miles from the Holtec site.
8. I will or reasonably may be injured by the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Plant, currently located east of Carlsbad. In my experience, the location of the WIPP site has already been damaging to the property values and



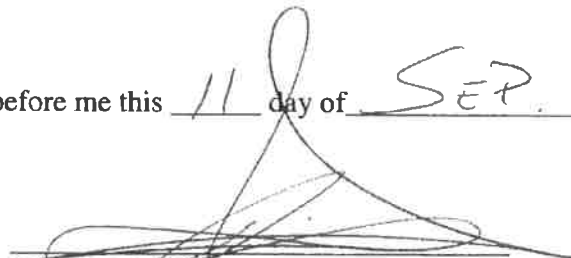
general social welfare of the communities in Lea County and Eddy County, due to the risks associated with WIPP and due to the actual explosion that occurred on February 14, 2014. The community received the same reassurances by WIPP as are currently being provided by Holtec, with the result that there is great distrust and dread in the community already concerning the location of a similar site in the future.

9. I will or reasonably may be injured by the ill effects of the location of the Holtec site in the area described in the application for the site, which is also described in Exhibit A, attached hereto.
10. The effects on me include the potential negative effect on my employer because of the proximity to Holtec site, which could affect my employment, and result in an overall decrease in my quality of life.
11. I am a member of a minority group: Hispanic Woman.
12. The disparate impact of discriminatory site selection, based on race and ethnicity, will have an ill effect on me, because of the perception that people like me do not have political power.
13. I would describe myself as low income. My family (my mother, my sister, and my niece) are also low-income.
14. I will or reasonably may be injured by the lack of an adequate emergency response plan in the application for the location of the Hi-Store CIS Facility in Lea County by Holtec. Specifically, I will or reasonably may be injured by the spread of any fire sparked at the site and/or the release of toxic matter into the air, land, or water, and the limited alerts or notice to the community provided by the emergency response plan.

15. Local officials never asked my opinion regarding the siting of Holtec's Hi-Store CIS Facility near my place of employment or residence.
16. I never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site.
- Had I been asked to express an opinion or attend a meeting, I would have said the following: I do not consent to the Holtec site. There hasn't been adequate public outreach and there's been no effort to educate the public. The Holtec facility is not isolated from a lot of oil and gas facilities and many people that travel along U.S. Highway 62-180. If there were a breach that affected me, I would not know what to do.
17. I am a member of the Alliance for Environmental Strategies ("AFES") and I authorize AFES to represent me in objecting to the Holtec site.
18. FURTHER AFFLIANT SAYETH NAUGHT.



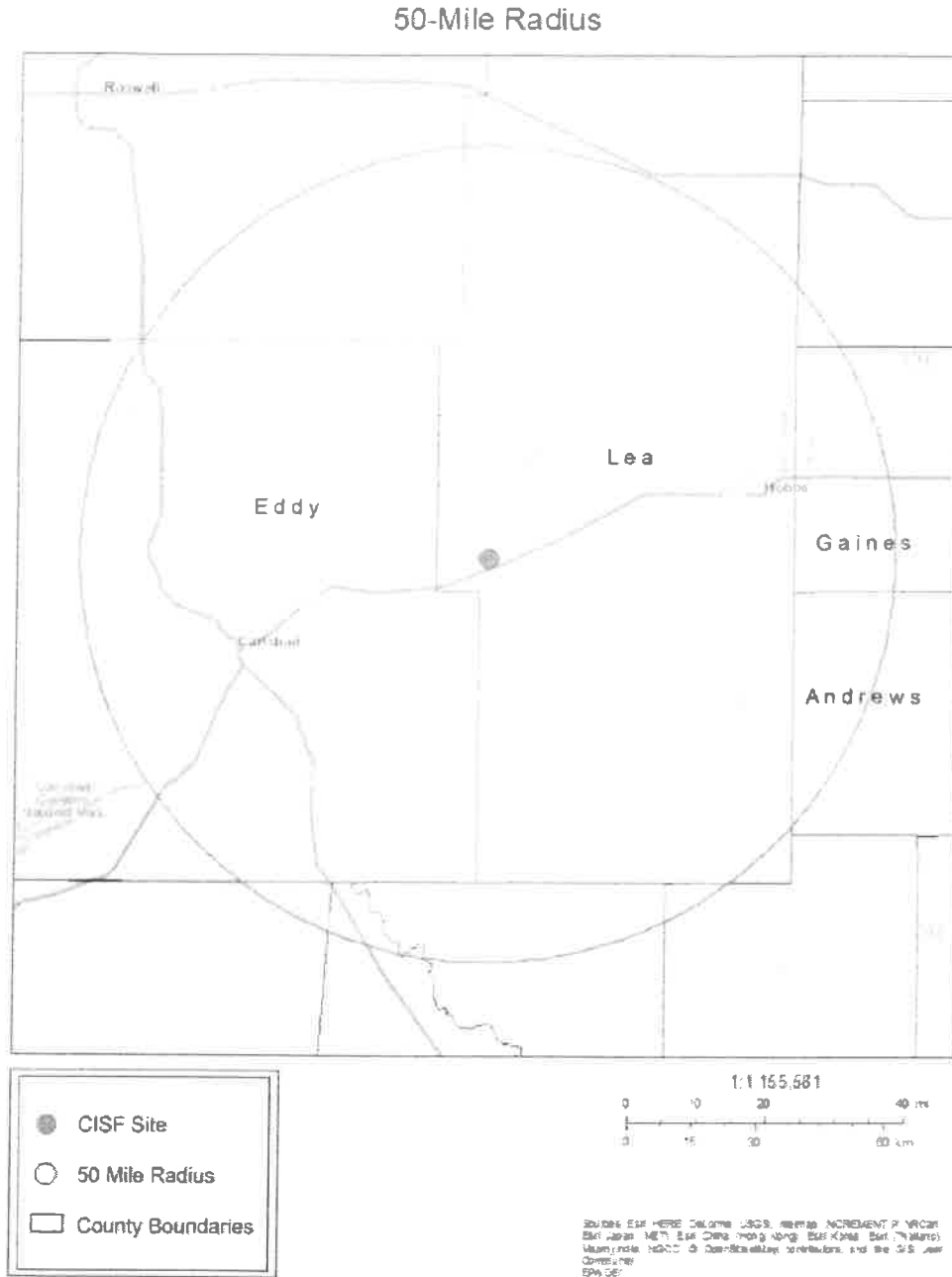
SUBSCRIBED AND SWORN TO before me this 11 day of SEP,  
2018.



Notary Public

(SEAL)  
My Commission Expires:

05/08/2021



Source: EJScreen 2016.

**Figure 3.8.1: REGION OF INFLUENCE WITHIN A 50-MILE RADIUS OF THE CIS FACILITY**

HOLTEC INTERNATIONAL COPYRIGHTED MATERIAL		
HI-2167521	3-102	Rev. 1



STATE OF NEW MEXICO

COUNTY OF

Eddy

)  
) ss  
)

AFFIDAVIT

1. I, Noel V. Márquez

am over the age of 18.

2. I swear to the following under penalty of perjury.

3. I currently reside in "unincorporated area" (name city or town, or say "unincorporated area"), in Lea County (Eddy County) (circle one), New Mexico. I have resided here for 10 (years) months.

4. My residence is within the 50 mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017, attached hereto as Exhibit A.

5. Specifically, I reside at

635 N. 13<sup>TH</sup> ST.  
Lake Arthur, N.M. 88253

which is within 48 miles of the Holtec site.

6. I have a business in "unincorporated area" (name city or town, or say "unincorporated area"), in Lea County (Eddy County) (circle one), New Mexico. I have had this business for OVER 30 (years) months.

7. Specifically, I have a business located at

635 N 13<sup>TH</sup> ST.  
Lake Arthur NM 88253



which is within 48 miles of the Holtec site.

8. The nature of my business is follows:

1. COMMUNITY ARTIST,  
MURALS & SCULPTURE  
& DRAWINGS WITH PUBLIC ARTWORK  
IN HOBBS, CARLSBAD, ARTESIA, LAKE ARTHUR ....
2. We operate a SMALL FARM  
(10 ACRES) PECANS, FRUIT TREES  
& PLANT OUR OWN GARDEN FOR FOOD,

9. I use the main road between Hobbs and Carlsbad on a regular basis.

10. I will or reasonably may be injured by the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Project, currently located in Carlsbad. In my experience, the location of the WIPP site in Carlsbad has already been damaging to the property values and general social welfare of the communities in Lea County and Eddy County, due to the risks associated with WIPP and due to the actual explosion that occurred on February 14, 2014. The community received the same reassurances by WIPP as are currently being provided by Holtec, with the result that there is great distrust and dread in the community already concerning the location of a similar site in the future.

11. I will or reasonably may be injured by the ill effects of the location of the Holtec site in the area described in the application, for the site, which is also described in Exhibit A, attached hereto.

12. The effects on me include the potential decrease in the value of my property, including

(mark an "X" where appropriate):

a. My real property   X  

b. The value of my business   X  

c. Employment related (describe) STUDIO CONSTRUCTION ON PROPERTY

13. I am a member of a minority group:

  CHICANO   (describe).

14. The disparate impact of discriminatory site selection, based on race and ethnicity, will have an ill effect on me, in terms of self-esteem and self-worth.

15. I would describe myself as low income. (Provide additional information if you wish.)

16. I will or reasonably may be injured by the lack of an adequate emergency response plan in the application for the location of the Hi-Store CIS Facility in Lea and Eddy County by Holtec. Specifically I will or reasonably may be injured by the spread of any fire sparked at the site and/or the release of toxic matter into the air, land, or water, and the limited alerts or notice to the community provided by the emergency response plan.

17. I am allowed to vote in elections in the following communities (list counties or cities where you are allowed to vote for officials such as – for example – county commissioner

or mayor): Federal & STATE ELECTIONS: ONLY

ARTESIA, New Mexico

EDDY COUNTY

18. I am not allowed to vote in the following communities:

LAKE ARTHUR, NEW MEXICO

ARTESIA, NEW MEXICO

19. Local officials never asked my opinion regarding the siting of Holtec's Hi-Store CIS Facility near my business or residence.

20. I never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site.

21. Had I been asked to express an opinion or attend a meeting, I would have said the following:

We are overburdened with TOXIC AFFECTS ON OUR WATER, LANDS & AIR WITH A FAILED WIPP SITE, THE NAVAJO REFINERY, OIL & GAS FRACKING

CAUSING Depletion of Limited water resources IN OUR DESERT LANDS. WE DO NOT NEED A RADIOACTIVE DUMP FOR FURTHER CONTAMINATION!



22. I am a member of the Alliance for Environmental Strategies ("AFES") and I authorize AFES to represent me in objecting to the Holtec site.

23. FURTHER AFFIANT SAYETH NAUGHT.

Noel V. Marquez

SUBSCRIBED AND SWORN TO before me this 6<sup>th</sup> day of September 2018.

Adrianna Jorgensen  
Notary Public

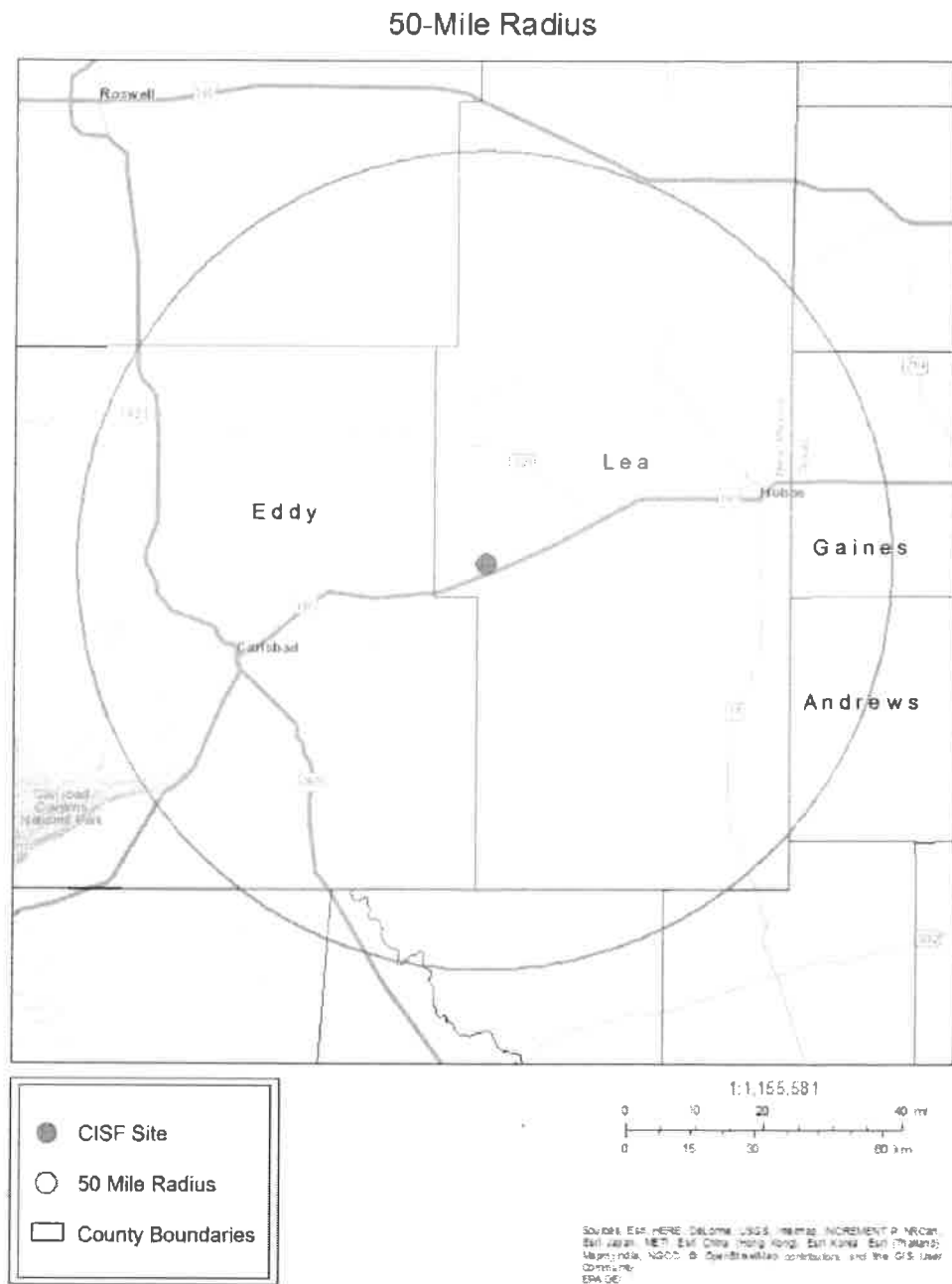
(SEAL)  
My Commission Expires:



OFFICIAL SEAL  
ADRIANNA JORGENSEN  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 7/25/21

TRANSLATOR'S CERTIFICATE

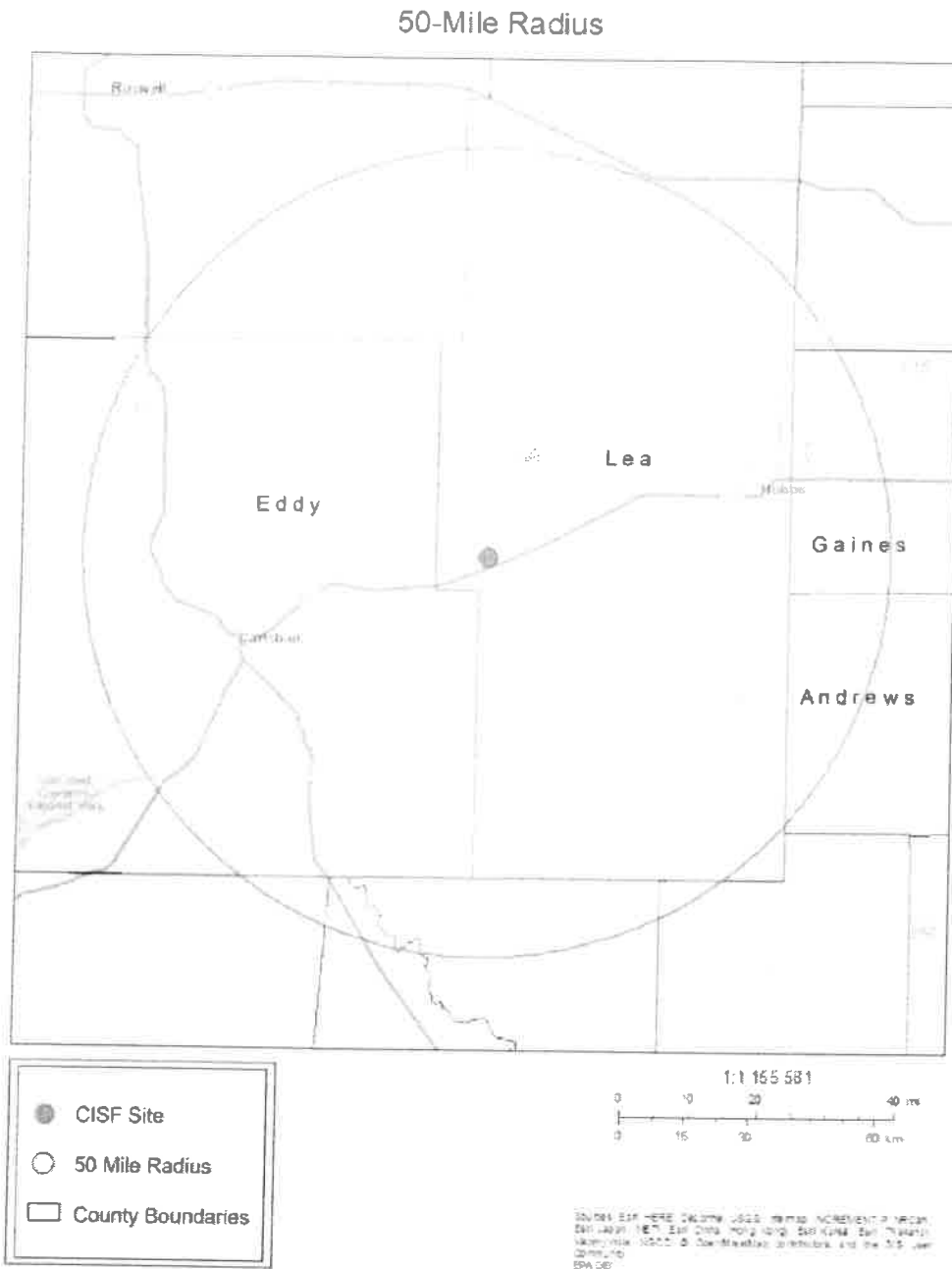
I, \_\_\_\_\_, fluent in English and Spanish, hereby certify that this document is a true and accurate translation of the Spanish original which was recounted to me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.



Source: EJScreen 2016.

**Figure 3.8.1: REGION OF INFLUENCE WITHIN A 50-MILE RADIUS OF THE CIS FACILITY**

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HI-2167521		Rev. 1
3-102		



Source: EJScreen 2016.

**Figure 3.8.1: REGION OF INFLUENCE WITHIN A 50-MILE RADIUS OF THE CIS FACILITY**

HOLTEC INTERNATIONAL COPYRIGHTED MATERIAL		
HI-2167521	3-102	Rev. 1

**EXHIBIT**

4A

ALL-STATE LEGAL®

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF LEA )

AFFIDAVIT

1. I, Nicholas R. Maxwell, am over the age of 18.
2. I swear to the following under penalty of perjury.
3. I currently reside in an unincorporated area in Lea County, New Mexico. I have resided here for nine (9) years and nine (9) months.
4. My residence is within the fifty (50) mile radius of the future site of the Holtec International Hi-Store CIS Facility ("Holtec site"), described in Figure 3.8.1 of Holtec's Environmental Report, dated December 2017, attached hereto as Exhibit A.
5. Specifically, I reside at 3505A West Alabam Street, Hobbs, NM 88242, Lea County, USA, which is within thirty-five and a quarter (35.25) miles of the Holtec site.
6. I use the main road between Hobbs and Carlsbad on a regular basis.
7. I will or reasonably may be injured by the ill effects of the impact of the cumulative location of industrial sites in Lea County and Eddy County, including the future Holtec site and Waste Isolation Pilot Project ("WIPP"), currently located in Eddy County. In my experience, the location of the WIPP site in Eddy County has already been damaging to the property values and general social welfare of the communities in Lea County and Eddy County, due to the risks associated with WIPP and due to the actual



explosion that occurred on February 14, 2014. The community received the same reassurances by WIPP as are currently being provided by Holtec, with the result that there is great distrust and dread in the community already concerning the location of a similar site in the future.

8. I will or reasonably may be injured by the ill effects of the location of the Holtec site in the area described in the application for the site, which is also described in Exhibit A, attached hereto.
9. The disparate impact of discriminatory site selection, based on race and ethnicity, will have an ill effect on me, in terms of self-esteem and self-worth.
10. I would describe myself as low income and I own no real estate.
11. I will or reasonably may be injured by the lack of an adequate emergency response plan in the application for the location of the Hi-Store CIS Facility in Lea County and Eddy County by Holtec. Specifically, I will or reasonably may be injured by the spread of any fire sparked at the site and/or the release of toxic matter into the air, land, or water, and the limited alerts or notice to the community provided by the emergency response plan.
12. I can vote in elections in the following community: Lea County.
13. I cannot vote in the following communities: City of Hobbs, City of Lovington, City of Eunice, City of Jal, Town of Tatum, City of Carlsbad, City of Artesia, Village of Loving, Village of Hope, and Eddy County.
14. Local officials never asked my opinion regarding the siting of Holtec's Hi-Store CIS Facility near my residence.

15. I never received notice of any public meeting by local officials to address whether to express the community's wish to be the site of another industrial waste site.
16. Had I been asked to express an opinion or attend a meeting, I would have said the following: WIPP has already had a major incident contrary to what the public was promised by public officials prior to establishment. An incident involving the spent nuclear fuel rods at, or during transport to, the proposed Holtec site, would likely bring irreparable and catastrophic harm to the public, and is not a risk that I wish for my elected public representatives to create on my behalf. I do not consent to the addition of a high-level nuclear waste site in Lea County. I do not consent to the prior "open" meetings held by the Eddy Lea Energy Alliance LLC, a regional government body in New Mexico subject to sunshine laws, which were often held at inconvenient times with little or no public notice.
17. I believe the directors of the Eddy Lea Energy Alliance LLC ("Energy Alliance") violated the Open Meetings Act of New Mexico on September 26, 2016 when it established a quorum for an open meeting ("Invalid Meeting") to adopt binding public policy - specifically, a resolution memorializing final changes to the Land Purchase Option Agreement, wherein the Energy Alliance promises a conditional sale of land to Holtec, and according to that agreement, "Holtec will need to present evidence to the NRC that Holtec has a legal right to obtain the Project site". The Land Purchase Option Agreement is attached hereto as Exhibit B.

18. I believe the Land Purchase Option Agreement is an invalid agreement because its final changes were not authorized by the Energy Alliance at an open meeting held in compliance with the Open Meetings Act; and, on May 3, 2018, my written notice and demand was served to the Energy Alliance regarding the Invalid Meeting, and is attached hereto as Exhibit C.
19. On September 6, 2018, my second written notice and demand was served to the Energy Alliance regarding the Invalid Meeting, among other enumerated grievances, and is attached hereto as Exhibit D.
20. I believe the Land Purchase Option Agreement is an invalid agreement because it wasn't signed by either the Secretary or the Treasurer of the Energy Alliance pursuant to page eleven (11) of the Amended and Restarted Operating Agreement/Joint Powers Agreement For Eddy-Lea Energy Alliance LLC, hereby referred to as the "Operating Agreement" and attached hereto as Exhibit E.
21. I believe Holtec will not be able to present a valid Land Purchase Option Agreement to the NRC, which is Holtec's purported evidence of a legal right to obtain the project site; and, I believe this because:
  - a. the final changes to the Land Purchase Option Agreement were authorized by the Energy Alliance at the Invalid Meeting and not during an open meeting held pursuant to the Open Meetings Act; and,
  - b. the Land Purchase Option Agreement does not include the signature of the Treasurer nor the Secretary of the Energy Alliance pursuant to the Operating Agreement and is therefore an invalid contract.

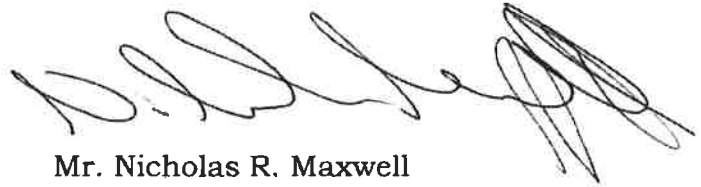
22. I believe the directors of the Energy Alliance did not exercise care and loyalty as fiduciaries of the public trust; and, I believe this because:

a. An important and permanent public record of the Energy Alliance has been unexplainably misplaced. Specifically, the misplaced public record is the minutes of a meeting held by the Energy Alliance on February 16, 2009 ("Misplaced Minutes"), according to the earliest available minutes. I believe the Misplaced Minutes are the only record of discussion, actions and votes taken by the directors of the Energy Alliance regarding a public procurement of one million dollars (\$1,000,000.00) of land which eventually became part of the Land Purchase Option Agreement, wherein recital C states as such. The earliest available minutes of the Energy Alliance is attached hereto as Exhibit F.

b. According to the earliest available minutes of the Energy Alliance, the Misplaced Minutes were recovered by the directors in 2010 after the untimely death of Mr. Larry Hanna who had served as the attorney for Lea County and held public records of the Energy Alliance; however, the Misplaced Minutes are no longer available for public inspection pursuant to state law because they have been misplaced since they were once recovered. The request to inspect the missing minutes of the Energy Alliance from between 2006 to 2009, or alternatively identified as from between the inception of the Energy Alliance to the date of the Misplace Minutes, and answer are attached hereto as Exhibit G.



23. I am a member of the Alliance for Environmental Strategies ("AFES"), and I authorize AFES to represent me in objecting to the Holtec site.
24. FURTHER AFFIANT SAYETH NAUGHT.



Mr. Nicholas R. Maxwell  
P.O. Box 1064  
Hobbs, NM 88241

SUBSCRIBED AND SWORN TO before me this 6<sup>th</sup> day of September, 2018.



  
Notary Public

(SEAL)  
My Commission Expires: 10/31/2021



8-10

**03033**

**LAND PURCHASE OPTION AGREEMENT**

This Land Purchase Option Agreement (this "Agreement") is entered into as of December 9, 2016 between Eddy-Lea Energy Alliance Limited Liability Company, a New Mexico limited liability company ("ELEA"), and Holtec International, a Delaware corporation ("Holtec").

RECITALS

A. ELEA is a New Mexico limited liability company organized under a joint powers agreement between Eddy County, Lea County, the City of Carlsbad and the City of Hobbs (collectively, the "Members") for the purpose of promoting energy-related economic development for the benefit of the residents of the Members.

B. Holtec has developed a system for monitored retrieval storage of spent nuclear fuel ("SNF") and high-level waste ("HLW"), which it calls the Holtec International Storage Module Underground Maximum Capacity, or "HI-STORM UMAX" system.

C. In 2009, ELEA purchased a parcel of undeveloped property in Lea County (the "Property") for \$1 million with the intent of donating the Property to a private party, pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 ("LEDA"), for use as a Global Nuclear Energy Partnership ("GNEP") facility. The Property comprises approximately 960 acres, and is more specifically described in Exhibit A hereto.

D. The GNEP program was subsequently cancelled, and ELEA has now determined that its economic development mission would be best served by selling the Property to Holtec for no less than fair market value, contingent upon Holtec achieving the Option Start Date (as defined below) or exercising the Early Option (as defined below) to purchase the Property.

E. It is Holtec's intent to obtain a license from the Nuclear Regulatory Commission (the "NRC") and upon successful completion of an agreement with the Department of Energy and/or one or more utility companies to store spent nuclear fuel, construct and operate the HI-STORM UMAX system on the Property (the "Project").

F. In order to secure an NRC license, Holtec will need to present evidence to the NRC that Holtec has a legal right to obtain the Project site.

G. Pursuant to NMAC 1.5.23.9, this Agreement was approved by the State Board of Finance (the "SBOF") on July 19, 2016, subject to certain contingencies that have been incorporated into this Agreement.



## AGREEMENT

### Section 1. Effective Date; Option Price.

(a) This Agreement shall not be effective until, and shall be immediately effective upon, Holtec's giving notice to ELEA that Holtec has completed to its satisfaction its due diligence with regard to any mineral rights owners of the Property. ELEA agrees to assist Holtec by providing sufficient information regarding the current mineral right owners of the Property.

(b) Holtec shall pay the sum of \$747.00 (the "Annual Option Price") to ELEA on the Effective Date and each anniversary of the Effective Date thereafter, until the earliest of (i) the Closing, pursuant to Section 5, (ii) the Early Purchase, pursuant to Section 6(a), or (iii) the termination of this Agreement, pursuant to Section 7 (each an "Option Price Cessation Date"). If an Option Price Cessation Date does not occur on an anniversary of the Effective Date, then ELEA shall refund to Holtec a sum equal to the Annual Option Price multiplied by (i) 365 minus the number of days from the last anniversary of the Effective Date to the Option Price Cessation Date, divided by (ii) 365.

### Section 2. Licensing; Storage Contracts.

(a) Promptly following the Effective Date, Holtec shall commence preparation of a site-specific license application (the "NRC Application") under the provisions of the Code of Federal Regulations (CFR) Chapter 10, Part 72 for a license (the "License") to operate the Property as an interim storage facility (the "Facility"), and to obtain a favorable draft Safety Evaluation Report pursuant to NRC regulations (the "Draft SER"). Holtec shall use best efforts to cause the NRC to expeditiously issue the Draft SER. No later than three years following the Effective Date, Holtec shall submit the NRC Application to the NRC, and shall thereafter use its best efforts to obtain issuance of the License.

(b) Holtec will use reasonable efforts to negotiate an agreement with the Department of Energy ("DOE") for the interim storage of HLW and/or SNF at the Facility (the "DOE Agreement") and/or negotiate an agreement with one or more power utilities for the storage of HLW and/or SNF at the Facility (the "Utility Agreement", and together with the DOE Agreement, the "Storage Agreements").

(c) The date on which Holtec has (i) obtained the License, (ii) entered into either the DOE Agreement or the Utility Agreement, and (iii) in Holtec's sole judgment, secured financing for the initial construction of the Project, shall be the "Option Start Date". Holtec shall cause the Option Start Date to occur not later than thirteen years after the Effective Date unless otherwise extended by the parties.

Section 3. Property Purchase Option. Upon the occurrence of the Option Start Date, Holtec shall have the option to purchase the Property. Holtec shall exercise the purchase option by delivering written notice thereof (the "Option Exercise Notice") to ELEA no later than 90 days after the Option Start Date.

Section 4. Property Purchase Price.

(a) Within 60 days after delivery of the Option Exercise Notice, ELEA and Holtec shall select an MAI appraiser who has also qualified as a "general certified appraiser" pursuant to NMAC 1.5.23.7(E) (a "Qualified Appraiser"). Such appraiser shall determine the fair market value of the land portion of the Property, plus all improvements not made by Holtec (the "Land Value"). The Land Value shall exclude the value of (i) any improvements made by Holtec with the consent of ELEA, (ii) the value of the License, and any other intangible rights of Holtec or created by Holtec relating to or associated with the Property, and (iii) all other alterations made to the Property by Holtec with the consent of ELEA. If ELEA and Holtec are unable to agree upon the appraiser, each will select its own Qualified Appraiser (who shall be paid by that party), and such appraisers shall each independently determine the Land Value. If the lower appraisal is at least 90% of the higher appraisal, the "Land Value" shall be the average of such two appraisals. If the lower appraisal is not at least 90% of the higher appraisal, the two appraisers shall select a third Qualified Appraiser, and the third appraiser shall determine the Land Value. The cost of either the agreed upon appraiser or the third appraiser shall be shared equally by the parties.

(b) The purchase price for the Property (the "Purchase Price") shall be the greater of (i) \$1 million or (ii) the Land Value.

(c) ELEA shall submit to the SBOF Director no later than 15 days after the determination of the Purchase Price, 30 days prior to the Closing (as defined in Section 5) (i) a survey of the Property showing improvements on the Property, (ii) an identification of which improvements were made by Holtec with the consent of ELEA, (iii) a form of quitclaim deed by which the Property will be conveyed to Holtec, and (iv) a copy of the appraisal(s) produced pursuant to Section 4(a) for the purpose of determining the Land Value.

Section 5. Property Purchase Closing. The closing of the purchase of the Property (the "Closing") will occur within 90 days of the determination of the Purchase Price. The Purchase Price shall be paid at closing, in cash or a cash equivalent. ELEA shall convey the Property to Holtec by quitclaim deed.

Section 6. Early Purchase Option.

(a) Holtec shall have the option to purchase the Property at any time prior to the Option Start Date (the "Early Option") by delivering written notice thereof (the "Early Option Notice") to ELEA. Within 60 days after delivery of the Early Option Notice, the parties shall proceed to have the Purchase Price determined using the procedure described in Section 4, and shall transfer the Property for the Purchase Price (the "Early Purchase") as provided in Section 5.

(b) If, following the Early Purchase, Holtec in its sole discretion determines that completion of the Project is not feasible, then ELEA shall have the option of purchasing the Property, including all improvements thereon, for the Purchase Price that was paid by Holtec for the Early Purchase (the "Repurchase Price"), subject, however, to such environmental and other

investigations as ELEA may reasonably require. The cost of such investigations may be deducted from the Repurchase Price.

Section 7. Termination.

(a) This Agreement shall automatically terminate if Holtec has not delivered the Option Exercise Notice no later than 90 days after the Option Start Date.

(b) Holtec may, by written notice to ELEA, terminate this Agreement at any time prior to Closing.

(c) Unless terminated as provided in Subsection 7(a) or Subsection 7(b), or terminated as the result of a breach, this Agreement shall continue so long as the Property is used for the Facility.

Section 8. Assignment. With the consent of ELEA (which consent shall not be unreasonably refused), Holtec may assign this Agreement to a third party.

Section 9. Amendments. This Agreement may be amended only by a written instrument signed by all the parties, and then only to the extent of such instrument. Any amendment shall not be effective without the prior consent of the State Board of Finance.

Section 10. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon ELEA and Holtec, and their respective successors and assigns.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided, however, that if enforcement of this Agreement absent such invalid or unenforceable provisions would destroy an essential purpose of this Agreement, then this Agreement shall be deemed modified to the extent necessary to make it valid or enforceable consistent with the true intent hereof.

Section 12. Recording. This Agreement and every assignment and modification hereof, or an appropriate and sufficient memorandum thereof, and each deed or instrument of conveyance contemplated hereunder, shall be recorded in the office of the County Clerk of Lea County, New Mexico.

Section 13. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 14. Notices. All notices required under this Agreement shall be deemed to be properly sent if in writing, signed by the party or agent sending them, and (i) delivered personally, (ii) sent by registered or certified mail, or (iii) sent by a recognized overnight express courier service, addressed to ELEA or Holtec, as the case may be, at the following addresses, and such notices shall be effective on the date of receipt thereof:

If to ELEA: Eddy-Lea Energy Alliance  
c/o Lea County  
100 N. Main  
Lovington, NM 88260  
Attn.: County Manager  
Phone: (575) 396-8601  
Fax: (575) 396-2093

with a copy to: Rodey Law Firm  
201 Third St., Suite 2200  
Albuquerque, NM 87102  
Attention: Alan Hall  
Phone: (505) 768-7203  
Fax: (505) 768-7395

If to Holtec: Holtec International  
1001 N US Highway 1  
Jupiter, FL 33477  
Attn.: Pierre Oneid  
Phone: (561) 745-7772  
Fax: (856) 797-0922

with a copy to: Holtec International  
One Holtec Drive  
Marlton, NJ 08053  
Attn.: Andrew R. Ryan, Esq.  
Phone: (856) 797-0900  
Fax: (856) 797-0922

Any party may, by notice to the other party, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 15. Title: Headings. The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and will not modify or restrict any of the terms or provisions of this Agreement.

Section 16. Applicable Law. The validity, construction and effect of this Agreement will be governed by New Mexico law applicable to agreements made and to be performed in New Mexico, without regard or effect given to conflict of law principles or rules that would require the application of the laws of any other jurisdiction.

Section 17. Further Actions. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement. ELEA shall, upon the request of Holtec, execute and deliver such instruments as Holtec may reasonably request, including but not limited to amendments to this Agreement, to obtain or renew the License or

any consent of any other governmental authority for the operation of the Facility, or to maintain Holtec's compliance with such government requirements or the DOE Agreement and/or the Utility Agreement; provided, however, that such instruments do not materially adversely affect ELEA's rights under this Agreement.

Section 18. Event of Default; Remedies. A failure by a party to perform any of its obligations under this Agreement for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the breaching party by the non-breaching party, or, if such failure cannot reasonably be remedied within 30 days, failure by the breaching party to commence the remedy within such period and to pursue the same diligently to completion, shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the non-breaching party may exercise any and all remedies available at law.

Section 19. No Pecuniary Liability of ELEA. Holtec shall bear all of the expense, direct, indirect and contingent, of the licensing, construction and operation of the Facility. Neither ELEA nor any of its Members shall have any liability for any costs or obligations pertaining to or arising out of the licensing, construction or operation of the Facility.

Section 20. Release and Indemnification.

(a) Holtec releases ELEA, ELEA's members, and all officials, officers, employees and agents of the ELEA and ELEA's members (collectively, the "Indemnitees") from, agrees that the Indemnitees will not be liable for, and agrees to indemnify and hold the Indemnitees harmless from and against any and all liabilities, claims, suits, costs and expenses that are or may be imposed upon, incurred or asserted against the Indemnitees on account of: (i) any loss or damage to property or injury to or death of or loss by any person caused by Holtec's willful misconduct or negligence in investigating the Property prior to the Closing; (ii) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation, use or demolition of the Facility (iii) any storage activities at, on, in, under or about the Property; (iii) any other loss, claim, damage, penalty, liability, disbursement, litigation expense, attorneys' fees, experts' fees or court costs arising out of or in any way relating to clauses (i) and (ii); and (iv) any claim, action or proceeding brought with respect to the matters set forth in clauses (i), (ii) and (iii) above.

(b) Holtec releases the Indemnitees from, agrees that the Indemnitees shall not be liable for, and agrees to indemnify and hold the Indemnitees harmless from and against any and all claims, suits, judgments, fines, penalties, assessments, natural resource damages, response costs (such as the cost of any testing, sampling, medical or other monitoring, cleanup, or other required response action), costs necessary to bring the Property or the Facility into compliance with Environmental Laws (as defined below) and other liabilities, together with attorneys' fees and experts' fees, costs and expenses which are or may be imposed upon, incurred by, or asserted against the Indemnitees resulting from or in any way connected with the use, handling, mixing, generation, storage, manufacture, refining, release, transportation, treatment, disposal or other release or presence, at, in, on, under or from the Property, of any Hazardous Material (as defined below), SNF, other radioactive substance, oils, asbestos in any form or conditions, or any pollutant or contaminant or hazardous, dangerous or toxic chemicals,



materials or substances within the meaning of the Environmental Laws, or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing liability or standards of conduct concerning any Hazardous Material, hazardous, toxic or dangerous waste, substance or materials, all as now in effect or hereafter amended from time to time.

(c) As used in this Section 20, (i) "Environmental Laws" means any laws, statutes, regulations, orders or rules pertaining to health or the environment that are applicable from time to time to the Property or the Facility, and the construction, installation, operation, use and decommissioning of, and storage at, the Property or the Facility, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Water Quality Act of 1987, the New Mexico Water Quality Act, the New Mexico Hazardous Waste Act, the New Mexico Air Quality Control Act and the New Mexico Radiation Protection Act, and (ii) "Hazardous Material" means (A) "hazardous materials," "hazardous substances," and "hazardous wastes" as defined in the Environmental Laws, and (B) any other material regulated under the Environmental Laws.

(d) If a claim is made or any action is brought against one or more of the Indemnitees based upon the matters described in Subsections 20(a) or (b) above and in respect of which indemnity is sought against Holtec pursuant to Subsections 20(a) or (b) above, the Indemnitee seeking indemnity shall, within ten days of being notified of an action against it, notify Holtec, in writing, and Holtec shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by Holtec and approved in writing by the Indemnitee (provided that such approval by the Indemnitee shall not be unreasonably withheld or delayed), the payment of the reasonable expenses of such counsel, and the right of the Indemnitee to participate in negotiations and to consent to settlement. If any Indemnitee is advised in a written opinion of independent counsel (i) that there may be legal defenses available to such Indemnitee that are adverse to or in conflict with those available to Holtec, or (ii) that the defense of such Indemnitee should be handled by separate counsel, Holtec shall not have the right to assume or cause the assumption of the defense of such Indemnitee, and Holtec shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnitee, provided such counsel is approved in writing by Holtec (which approval shall not be unreasonably withheld or delayed), in assuming its own defense. If Holtec shall have failed to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Indemnitee within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnitee shall be paid by Holtec. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnitees shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnitee or Indemnitees unless the employment of such counsel has been specifically authorized in writing by Holtec. Holtec shall not be liable for any settlement of any such action effected without the written consent of Holtec, but if settled with the written consent of Holtec, or if there is a final judgment for the plaintiff in any such action with or without consent, and after all appeals have been taken and final orders or dismissals entered, Holtec agrees to

indemnify and hold harmless the Indemnitees from and against any loss or liability by reason of such settlement or judgment.

(e) The indemnifications set forth in this Section 20 are intended to and will include the indemnification of all Indemnitees. The indemnification is intended to and will be enforceable by the Indemnitees to the full extent permitted by law.

(f) No release or indemnity is given under this Section 20 due to the exercise by any of ELEA's members of its police powers or in the performance of any essential governmental function; and provided further that there shall be excluded from the scope of this release and indemnity any liability, claims, costs and expenses imposed upon, incurred or asserted against an Indemnitee to the extent resulting from or arising out of the willful misconduct or negligence of the Indemnitee.

(g) If a court of competent jurisdiction determines that the provisions of Sections 56-7-1 or 56-7-2 NMSA 1978, as amended, are applicable to this Agreement or any claim arising under this Agreement, then any agreement in this Agreement to indemnify, hold harmless, insure, or defend another party will not extend to (i) liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents. Notwithstanding anything in this Lease to the contrary, this Lease shall be subject to all other limitations of Sections 56-7-1 and 56-7-2 NMSA 1978.

Section 21. No Water Rights. The parties acknowledge and agree that the sale of the Property hereunder shall not include the sale of any water or mineral rights.

Section 22. Survivals. Sections 6 through 22 of this Agreement shall survive the Closing. Sections 19 and 20 shall survive the termination of this Agreement.

(signature page follows)



Exhibit A

Legal Description of the Property

- A. The surface estate only of Section 13, Township 20 South, Range 32 East, N.M.P.M.
- B. Tract I: The surface estate only of a tract of land located in the Southwest Quarter of Section 17, Township 20 South, Range 33 East, N.M.P.M. and more particularly described as beginning at the Southwest corner of said Section 17, thence S89°59'E, 1322.50 feet; thence N0°3'W, 1320 feet; thence N89°59'W, 1322.50 feet; and thence S0°3'E, 1320 feet to the point of beginning; and
- Tract II: The surface estate only of Lots 2, 3 and 4; the East Half of the West Half (E 1/2 W 1/2); and the South Half of the Southeast Quarter (S 1/2 SE 1/4), all in Section 18, Township 20 South, Range 33 East, N.M.P.M.

03033

STATE OF NEW MEXICO  
COUNTY OF LEA  
FILED  
At 11:57 o'clock 11 M

MAR 06 2017

Recorded in Book \_\_\_\_\_ Page \_\_\_\_\_  
Keith Manes, Lea County Clerk  
By Walter Cole Deputy



# DECLARATION, NOTICE AND DEMAND

SERVED IN-PERSON TO *Mr. John Heaton, President,*

## EDDY LEA ENERGY ALLIANCE LLC

**WHEREAS** representative government is dependent upon an informed electorate, the public policy of New Mexico is declared to be that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them; and

**WHEREAS** no resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1 of the Open Meetings Act; and,

**WHEREAS** every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1; but, for public meetings where this is shown not to be the case, no action taken by the public body shall be valid; and,

**WHEREAS** a public body that receives written notice of a claimed violation of the Open Meetings Act has fifteen days from the day it receives the notice to cure the violation if the public body decides the claim is valid.

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**COMES NOW** the claimant, Nick Maxwell, one of the people of New Mexico, hereinafter referred to as "Nick", who claims a violation of the Open Meetings Act hereby this written notice to *EDDY LEA ENERGY ALLIANCE LLC*, a public body in New Mexico, hereinafter referred to as "the Alliance"; to wit, Nick claims the notice of the regular meeting held by the board of directors of the Alliance on September 26, 2016 (hereinafter the "invalid meeting") was not given in accordance with the requirements of NMSA 1978, Section 10-15-1, specifically Nick was not given a notice of the invalid meeting at least seven days in advance:

1. For many consecutive years, up to, including, and beyond the year of the claimed violation, which is 2016, the Alliance did not annually determine what notice for a public meeting was considered reasonable when applied to itself; however, it is reasonably noted that several years prior to the invalid meeting, the Alliance did determine for the purpose of regular meetings that notice requirements are met if the notice of the date, time, place, and general subject matter to be discussed is placed in newspapers of general circulation in both Lea County and Eddy County; and, the Alliance determined this same notice shall be given to the public at least seven days in advance. See *EXHIBIT-A*.



2. The notice for the invalid meeting was placed in THE LOVINGTON LEADER, a newspaper of general circulation in Lea County, once on September 20, 2016, only six days in advance of the invalid meeting and contrary to the Alliance's determination that notice to the public shall be given at least seven days in advance for regular meetings of its board of directors. See EXHIBIT-B.

3. Nick did not receive reasonable notice of the invalid meeting, resulting in injury, specifically Nick's loss of his substantive right to reasonable notice of public meetings; and, Nick herein argues that a valid meeting with the same legal notice would have been held on September 27, 2016. See EXHIBIT-C.

4. No resolution, rule, regulation, ordinance or action of the Alliance taken at the invalid meeting shall be valid because the Alliance did not hold the meeting in accordance with the requirements of the Open Meetings Act, specifically NMSA 1978, Section 10-15-1(D). See EXHIBIT-D.

**WHEREFORE** Nick demands that the Alliance remedy his claimed violation of the Open Meetings Act, which resulted in injury to Nick, by declaring all of the actions taken at its regular meeting of its board of directors on September 26, 2016, including the following actions as recorded in the minutes, to be invalid within fifteen calendar days of service of this notice and demand, or show cause why Nick's demand should not be enforced in a Court of record in New Mexico:

1. Approval of the agenda
2. Approval of the minutes from July 18, 2016
3. A "Motion to approve payment of bills"
4. "A motion not to consider the Insurance "Terrorism" provision purchase"
5. Approval of "Resolution Memorializing contract changes" [w/Holtec Intl.]
6. Actions closing/reopening the meeting for/from executive session
7. "A motion to reject" a "Request by Delaware Energy, LLC of Midland to put disposal wells on Sections 13 and 18"
8. "A motion to approve Modified Lease Contract LOI from Crown Castle"

BE IT WITNESSED THIS MAY 3<sup>RD</sup>, 2018 THE ALLIANCE HAS BEEN SERVED:

ATTEST:



CLAIMANT:



Mr. Nick Maxwell

P.O. Box 1064

Hobbs, NM 88241

Enclosed Exhibits:

EXHIBIT-A - 2012 Open Meetings Act Resolution for the Alliance

EXHIBIT-B - Insufficient legal notice for the invalid meeting of the Alliance

EXHIBIT-C - Nick's argument and an example of a proper legal notice

EXHIBIT-D - Agenda and minutes for the invalid meeting of the Alliance

## EXHIBIT - A

### EDDY-LEA ENERGY ALLIANCE, LLC RESOLUTION 12 MARCH - 001

**WHEREAS**, Open Meetings Act, NMSA 1978, Section 10-15-1(B) (2009), states that, except as may be otherwise provided in the Constitution or in the provisions of the Open Meeting Act, all meetings of a quorum of members of any board, council, commission or other policy making body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

**WHEREAS**, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

**WHEREAS**, Open Meetings Act, Section 10-15-1(C), requires the Eddy-Lea Energy Alliance, LLC to determine annually what constitutes reasonable notice of its public meetings.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. All meetings shall be held as indicated on the meeting notice as to date, time and place.
2. There are no set annual or regular meetings. Notice of regular meetings shall be given at least seven days in advance.
3. Special meetings may be called by the Chairperson or upon written or emailed request of any Governing Board Director within 24 hours' notice.
4. Emergency meetings will be called only under circumstances which demand immediate action. Emergency meetings may be called by the Chairperson or a majority of the Directors upon 12 hours' notice, unless a threat of personal injury, property damage or substantial financial loss requires less notice.
5. For the purpose of regular meetings described in paragraph 2 of this resolution, notice requirements are met if the notice of the date, time, place, and general subject matter to be discussed is placed in newspapers of general circulation in both Counties who are members of the Alliance. In addition, written or emailed notice shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written or emailed request for notice of public meetings. Notice may also be posted on the official website of any member.
6. For the purpose of special meetings and emergency meetings described in paragraphs 3 and 4 of this resolution, notice requirements shall be met by posting notices in the office of the Manager/Mayor of all the Members, who shall also provide telephonic or emailed notice to those broadcast stations licensed by the Federal Communications Commission

## EXHIBIT-A

and newspapers of general circulation which have made a written or emailed request for notice of public meetings.

7. The Alliance Governing Board may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under the Open Meetings Act, Section 10-15-1(H).
  - a. If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Directors taken during the open meeting. Authority for the closure and the subject(s) to be discussed shall be stated in the motion for closure and the vote on closure of each individual Director shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting; and
  - b. Except as provided in Open Meetings Act, Section 10-15-1(H), any action taken as a result of discussions in a closed meeting shall be made by vote of the Governing Board in an open public meeting.
8. A final agenda will be available 24 hours in advance of regular meetings from the office of the County Manager/City Manager/Mayor of all members. In addition, the agenda shall be posted on the ELEA website ([www.eddyleaenergyalliance.com](http://www.eddyleaenergyalliance.com)) and sent to all news media agencies and organizations in Lea and Eddy counties 24 hours prior to such meeting. The agenda will indicate the date, time, place and specific items to be discussed during the meeting, except for emergency matters. The Governing Board shall take action only on items appearing on the agenda.
9. All persons, agencies or organizations who desire to discuss public business or matters with the Governing Board, must make their request to the Chairman prior to the commencement of the meeting. The request may be oral, emailed or written and must include the name of the person making the request and the subject on which they wish to address the Governing Board. The presentations by such persons addressing the Governing Board may be limited as determined by the Chairman; provided, however, each person will have at least three minutes to speak. All persons, agencies or organizations that require an extended time to discuss public business or matters with the Governing Board, must make their request, in writing, at least seven days prior to the meeting. Such persons addressing The Governing Board will be allowed an appropriate time to present, at the discretion of the Chairman.
10. Informal work sessions may be called by the Governing Board with notice to the news media. Informal work sessions shall always be open to the public. The Governing Board shall not formulate public policy or take action by vote at informal work sessions. In addition, the Governing Board herewith serves notice to the public that, during any meeting the Governing Board may adjourn into an informal work session for the purpose of lunch or dinner. During the meal, the informal work session may be conducted, provided that no public policy shall be formulated nor conducted by vote. The media and public are invited to attend these sessions at their own expense.



EXHIBIT-A

11. Telephonic or Video Participation

- a. A member of the ELEA Board may participate in a meeting by telephone or video communications if:
  - i. It is "difficult or impossible" for that member to attend the meeting in person; and
  - ii. Each member participating telephonically or by video can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the board who speaks during the meeting.


12. The Governing Board may, by resolution, adopt rules and regulations regarding conduct of the meetings of the Eddy-Lea Energy Alliance, LLC.

13. The terms used in this resolution shall be defined in the Operating Agreement/Joint Powers Agreement of the Alliance.

PASSED, APPROVED AND ADOPTED IN OPEN MEETING, on this 4<sup>th</sup> day of June, 2012.

  
Chairman

  
Secretary/Treasurer

  
Vice-Chairman

  
Director

EXHIBIT-B

**Affidavit of Publication**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF LEA )

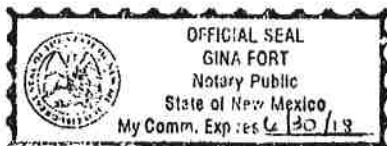
Joyce Clemens being first duly sworn on oath deposes and says that she is Advertising Manager of THE LOVINGTON LEADER, a thrice a week newspaper of general paid circulation published in the English language at Lovington, Lea County, New Mexico; that said newspaper has been so published in such county continuously and uninterruptedly for a period in excess of Twenty-six (26) consecutive weeks next prior to the first publication of the notice hereto attached as hereinafter shown; and that said newspaper is in all things duly qualified to publish legal notices within the meaning of Chapter 167 of the 1937 Session Laws of the State of New Mexico.

That the notice which is hereto attached, entitled Legal Notice was published in a regular and entire issue of THE LOVINGTON LEADER and not in any supplement thereof, for one (1) day(s), beginning with the issue of September 20, 2016 and ending with the issue of September 20, 2016.

And that the cost of publishing said notice is the sum of \$ 18.24 which sum has been (Paid) as Court Costs.

Joyce Clemens  
Joyce Clemens, Advertising Manager  
Subscribed and sworn to before me this 10th day of October, 2016.

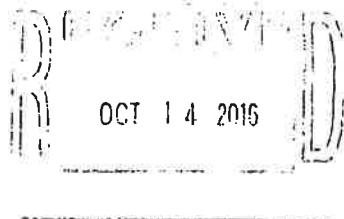
Gina Fort  
Gina Fort  
Notary Public, Lea County, New Mexico  
My Commission Expires June 30, 2018



**LEGAL NOTICE**

The Directors of the EDDY-LEA ENERGY ALLIANCE, LLC will hold its regular September meeting on Monday September 26, 2016 at 9:30 a.m. at the EDC of Lea County, 200 East Broadway Street, Hobbs, NM 88240. A copy of the amended agenda will be available at [www.eddyleaenergyalliance.org](http://www.eddyleaenergyalliance.org) within 24 hours of the meeting. Individuals with disabilities needing assistance to participate may contact the Carlsbad Development of Development at (575) 887-8582. EDDY-LEA ENERGY ALLIANCE, LLC, John Heaton, President.

Published in the Lovington Leader September 20, 2016



## EXHIBIT-C

Nick's argument

At least seven days in advance of September 26, 2016 is September 19, 2016 because:

At least one day in advance of September 26, 2016 is September 25, 2016; and,

At least two days in advance of September 26, 2016 is September 24, 2016; and,

At least three days in advance of September 26, 2016 is September 23, 2016; and,

At least four days in advance of September 26, 2016 is September 22, 2016; and,

At least five days in advance of September 26, 2016 is September 21, 2016; and,

At least six days in advance of September 26, 2016 is September 20, 2016; and,  
conclusively,

At least seven days in advance of September 26, 2016 is September 19, 2016.

Considering the notice was posted in the Tuesday edition of the newspaper on September 20, 2016 (*See Exhibit-B*), the invalid meeting of the Alliance instead should have been held on September 27, 2016 to meet the reasonable notice determination of the Alliance and the statutory requirements of the state's Open Meetings Act.

In addition to the time deficiency surrounding the invalid meeting, the newspaper notice erroneously identifies the Alliance's website as [www.eddyleaenergyalliance.org](http://www.eddyleaenergyalliance.org). The proper location is [www.eddleeaenergyalliance.com](http://www.eddleeaenergyalliance.com). Although the Alliance did publish the final agenda nearly a full six days in advance of the invalid meeting, the newspaper notice erroneously indicates that a copy of an amended agenda could have been made available within 24 hours of the meeting, contrary to the statutory requirement within the Open Meetings Act requiring a final agenda to be published at least 72 hours prior to public meetings in the case of a public body that does not ordinarily meet more than once per week.

A compelling example of a recently-issued legal notice by a Member of the Alliance which was provided to the public in a reasonable manner compliant with the Open Meetings Act, as well as that Member's Open Meetings Act resolution with some emphasis added, are attached to the next section of this exhibit.

Signed:



Nick Maxwell

P.O. Box 1064  
Hobbs, NM 88241

## EXHIBIT - C

### LEGAL NOTICE

The **LEA COUNTY BOARD OF COUNTY COMMISSIONERS** will hold a **Regular Meeting** on Thursday, **May 3, 2018** at 9:00 A.M. at the Lea County Courthouse in the Commission Chambers located at 100 North Main Avenue, Lovington, New Mexico. A copy of the agenda can be obtained from the Lea County Website [www.leacounty.net](http://www.leacounty.net) or the County Manager's Office at 575.396.8602 seventy-two (72) hours prior to the meeting. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Lea County Manager's office located in the Lea County Courthouse in Lovington, New Mexico at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Lea County Manager's Office at the Lea County Courthouse if a summary or other type of accessible format is needed.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS  
Ron R. Black, Chair

---

Lea County Billing Code: 01

- Publish in the Hobbs News-Sun (P.O. No. 202216) Thursday, April 26, 2018
- Publish in the Lovington Leader (P.O. No. 202217) Thursday, April 26, 2018

Please send certification of publication to:

Kelli Ferguson, Accounts Payable Specialist  
Lea County Finance Department  
Lea County Courthouse  
100 North Main Avenue, Suite 11  
Lovington, New Mexico 88260

#### **Emailed 04/23/2018**

Press [ter1@hobbsnews.com](mailto:ter1@hobbsnews.com); [lovingtonleader@yahoo.com](mailto:lovingtonleader@yahoo.com)  
County Manager's Office [sstout@leacounty.net](mailto:sstout@leacounty.net); [mgallagher@leacounty.net](mailto:mgallagher@leacounty.net)  
Clerk's Office [kwilliams@leacounty.net](mailto:kwilliams@leacounty.net); [thassen@leacounty.net](mailto:thassen@leacounty.net); [kmanes@leacounty.net](mailto:kmanes@leacounty.net)  
Legal Dept [jcaldwell@leacounty.net](mailto:jcaldwell@leacounty.net)  
IT Dept [riathrop@leacounty.net](mailto:riathrop@leacounty.net); [dkline@leacounty.net](mailto:dkline@leacounty.net)

Posted to the LC Website on 04/23/2018 by sjsb.

EXHIBIT - C

STATE OF NEW MEXICO  
COUNTY OF LEA  
RESOLUTION NO. 18-JAN-017R

**OPEN MEETINGS ACT REQUIREMENTS AND PROCEDURES FOR LEA COUNTY**

**WHEREAS**, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission or other policy making body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

**WHEREAS**, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

**WHEREAS**, the Open Meetings Act, NMSA 1978, Section 10-15-1(D), requires the Board of County Commissioners of Lea County ("County Commission") to determine annually what constitutes reasonable notice of its public meetings; and

**WHEREAS**, NMSA 1978, Section 4-38-12 as amended, allows the County Commission to establish rules and regulations to govern the transaction of county business in these meetings.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. All meetings of the Board of County Commissioners will be held at the Commission Meeting Room at the Lea County Courthouse, Lovington, New Mexico, at 9:00 a.m. or as otherwise indicated in the meeting notice.
2. Unless otherwise noticed, there will be two regular meetings each month held on the date announced at the prior meeting. Notice of regular meetings will be given at least seven days in advance. The agenda will be available at least seventy-two (72) hours in advance of regular Commission Meetings from the office of the County Manager located on the fourth floor of the Lea County Courthouse, Lovington, New Mexico 88260 and posted on the Lea County website ([www.leacounty.net](http://www.leacounty.net)). In addition, a meeting agenda will be sent to all broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have provided a written request for such notice. The agenda will indicate the time, date, place and specific items to be discussed during the County Commission meeting. The County Commission shall take action only on items appearing on the agenda.
3. In addition to the Board's regular meetings, work sessions and special meetings may be called at the discretion of the Chair or upon the request of two Commissioners upon seventy-two (72) hours notice, in accordance with paragraph 5. The final agenda for work sessions

## EXHIBIT - C

and special meetings shall be available at least seventy-two (72) hours in advance of the work session or special meeting.

4. Emergency meetings will be called only under unforeseen circumstances that, if not addressed immediately by the County Commission, will likely result in injury or damage to persons or property or substantial financial loss to Lea County. The County Commission will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chair or any two Commissioners upon twenty-four hours (24) notice, unless a threat of personal injury, property damage or substantial financial loss requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the County Commission shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.
5. For the purposes of regular meetings described in paragraph two of this resolution, notice requirements are met if notice of the date, time, place and agenda or information on how the public may obtain a copy of such an agenda is posted on the Lea County website and provided to all broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have provided a written request for such notice.
6. For the purposes of emergency meetings described in paragraph three of this resolution, notice requirements shall be met if notice of the date, time, place and agenda is posted on the outermost doors of the Courthouse and in the offices of the County Manager, who shall also provide telephonic notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.
7. In addition to the information specified above, all notices shall include the following language:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Lea County Manager's office located in the Lea County Courthouse in Lovington, New Mexico at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Lea County Manager's Office at the Lea County Courthouse if a summary or other type of accessible format is needed.
8. The County Commission may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirements under the Open Meetings Act, Section 10-15-1(H) NMSA 1978 Comp.
  - A. If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the County Commission taken during the open meeting. The authority for the closure and the subjects to be discussed shall be stated in the

## EXHIBIT - C

motion for closure and the vote on closure of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting.

- B. If a closed meeting is conducted when the County Commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.
- C. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.
- D. Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commission in an open public meeting.

9. The notice requirements set forth above in paragraphs two, three, and four shall apply to all Boards and Committees appointed by the County Commission.

- 10. All persons, agencies or organizations who desire to discuss public business or matters with the County Commission at a County Commission meeting, must make their request to the County Manager prior to the commencement of the County Commission meeting.
- 11. The request may be oral or written and must include the name of the person making the request and the subject on which they wish to address the County Commission. Such persons addressing the County Commission will be limited to three (3) minutes.
- 12. All persons, agencies or organizations that require additional time to discuss public business or matters with the County Commission, must make their request, in writing, at least seven (7) days prior to the County Commission meeting. Such persons addressing the County Commission will be allowed up to fifteen (15) minutes in the discretion of the Chairman.
- 13. The County Commission may, by Resolution, adopt additional rules and regulations regarding the conduct of the meetings of the County Commission and any of its subordinate Boards or Committees.

**PASSED, APPROVED AND ADOPTED IN OPEN MEETING on this 11<sup>th</sup> day of January, 2018.**

EXHIBIT-C

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Ron R. Black  
Ron R. Black, Chair  
Voted:  Yes No Abstain

Rebecca Long  
Rebecca Long, Vice Chair  
Voted:  Yes No Abstain

Dean Jackson  
Dean Jackson, Member  
Voted:  Yes No Abstain

Jonathan Sena  
Jonathan Sena, Member  
Voted:  Yes No Abstain

Richard Don Jones  
Richard Don Jones, Member  
Voted:  Yes No Abstain

**ATTEST:** Keith Manes  
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: Tryon Hassen  
Tryon Hassen, Deputy

John W. Caldwell  
John W. Caldwell, County Attorney





EXHIBIT-D

**AGENDA FOR REGULAR MEETING  
FOR THE BOARD OF DIRECTORS OF THE  
EDDY-LEA ENERGY ALLIANCE**

**Monday September 26 at 9:30 AM at the EDC of Lea County, 200 East  
Broadway Street, Hobbs, NM 88240**

1. Call to Order
2. Roll Call to establish a Quorum
3. Approval of the agenda Action Item
4. Approval of the minutes from July 18, 2016 Action Item
5. Financial Report – Chip Low Information
6. Presentation and Approval of Accounts Payable – Chip Low Action Item
7. Consideration of Insurance “Terrorism” provision purchase -Heaton Action Item
8. Insurance acquisition status – Chip Low Information
9. Consideration and approval of Resolution Memorializing contract changes  
by NM State Board of Finance Action Item
10. Executive Session pursuant to Section 10-15-1 (H)(6) NMSA 1978  
(Disposition of Real Property) in reference to 1,000 acre ELEA property
11. Request by Delaware Energy, LLC of Midland to put disposal wells on  
Sections 13 and 18 Action Item
12. Review & Consideration of Modified Lease Contract LOI from Crown  
Castle –Heaton/Cobb Action Item
13. Update on status of the project – Heaton Information
14. Adjourn

Posted 20<sup>th</sup> day of September, 2016

Eddy Lea Energy Alliance

Time: 1:00 p. m.

jw

EXHIBIT-D

MINUTES FOR MEETING  
FOR THE BOARD OF DIRECTORS OF THE  
EDDY-LEA ENERGY ALLIANCE

On September 26, 2016, 9:30 A.M. At 200 E. Broadway St., Suite A201 Hobbs, NM

**Members Present:**

John Heaton (telephone)  
Chip Low (telephone)  
Johnny Cope (telephone)

Susan Crockett(telephone)  
Jack Volpato (telephone)  
Jason Shirley (telephone)

Sam Cobb  
Jason Shirley(telephone)

**Staff Members Present:**

John Waters (telephone)  
Sally Tomar, EDCLC

**Others Present:**

Mike Stone

**Call meeting to order:**

Meeting called to order at 9:30 am by **John Heaton**.

**Roll call:**

Roll Call established a Quorum.

**Approval of the agenda:**

**John Heaton** requested a motion to approve the agenda. The agenda was approved following a motion by **Sam Cobb**, second **Susan Crockett**. Motion carried.

**Approval of the minutes from July 18, 2016:**

**John Heaton** requested a motion to approve the minutes dated July 18, 2016. The minutes were approved following a motion by **Johnny Cope**, second **Jason Shirley**. Motion carried.

**Financial Report:**

**Chip Low** presented the financial report. Total expenditures for period ending September 23, 2016 \$7,774.52. Motion to approve payment of bills was made by **Johnny Cope**, second **Jack Volpato**. Motion carried.

**Consideration of Insurance "Terrorism" provision purchase:**

A motion not to consider the Insurance "Terrorism" provision purchase was made by **Johnny Cope**, second **Jack Volpato**. Motion carried.

## EXHIBIT-D

### Insurance acquisition status:

**Chip Low** presented the Insurance acquisition status. The insurance is extra through Leavell Insurance at \$2,800/year. Mike Stone concurred to proceed with the insurance.

### Consideration and approval of Resolution Memorializing contract changes:

**John Heaton** presented for Consideration and Approval of a Resolution Memorializing Contract Changes by NM State Board of Finance. Proposed contract condition changes:

- Charging Holtec fee for option agreement with the State Board of Finance
- Delete term of "review" under discussions from document

**Sam Cobb** pointed out the intent for Fair Market Value on the surface. **Johnny Cope** requested communications be distributed to the board upon motion to approve Resolution by Cobb & seconded by Cope, motion passed unanimously.

### Executive Session pursuant to Section 10-15-1 (H)(6) NMSA 1978 (Disposition of Real Property) in reference to 1,000 acre ELEA property

The board went into formal Executive Session at 9:47 a.m. pursuant to Section 10-15-1 (H)(6) NMSA 1978 (Disposition of Real Property) in reference to 1,000 acre ELEA property.

Regular executive session commenced at 9:55 a.m. Stated by **John Heaton**, no action or discussion other than that of the ELEA property occurred during Executive Session.

### Request by Delaware Energy, LLC of Midland to put disposal wells on Sections 13 and 18

Heaton presented a request by Delaware Energy, LLC of Midland to put disposal wells on Section 13 and 18.

A motion to reject by **Sam Cobb**, second **Jack Volpato**. Motion carried.

### Review & Consideration of Modified Lease Contract LOI from Crown Castle:

Review & Consideration of Modified Lease Contract LOI from Crown Castle. Discussed adding four more 5 year terms to the contract with a \$6000 signing bonus. A 20% amount of the contract received if any new tenants were added to the cell tower. Holtec has no objection. **Sam Cobb** noted in paragraph 2A LOI a return date of August 31, 2016. The decision was to cross out August 31, 2016 and change the return date to September 30, 2016. A motion to approve Modified Lease Contract LOI from Crown Castle from **Sam Cobb**, second **Jack Volpato** and unanimously passed.

EXHIBIT-D

Update on status of the project:

**John Heaton** reported concern for delay. The contract terms between Holtec and the State Land Office are being completed. Holtec hired an environmental consulting firm. They intend to have their application in by end of March.

**John Heaton** adjourned the meeting at 10:00 a.m.

*Dec 1, '16*

Minutes Approved



Chairman

Mayor Sam D. Cobb,  
Chairman,  
EDDY LEA ENERGY ALLIANCE LLC,  
200 E Broadway St,  
Hobbs, NM 88240

VIA EMAIL ONLY

NOTICE AND DEMANDS FOR VIOLATIONS OF THE OPEN MEETINGS ACT  
EDDY LEA ENERGY ALLIANCE LLC

September 6, 2018

MAYOR SAM D. COBB:

You, chairman, are hereby notified of violations of the Open Meetings Act of New Mexico as caused by the board of directors of the EDDY LEA ENERGY ALLIANCE LLC, whose violations are enumerated in part below:

1. On September 26, 2016, the directors of EDDY LEA ENERGY ALLIANCE LLC established a quorum for an open meeting and took actions that were binding on the public, including approving a resolution memorializing contract changes with the NRC license applicant, without giving the public due notice prior to the meeting as required by state law.

EDDY LEA ENERGY ALLIANCE LLC was served a notice regarding this violation on May 3, 2018 to Mr. John Heaton, past-chairman; and, is hereby notified once again that all board actions which took place during the September 26, 2016 meeting are invalid. I once again hereby demand EDDY LEA ENERGY ALLIANCE LLC to declare all actions taken during the September 26, 2016 meeting as invalid because the board did not notify the public of the open meeting in a manner compliant with the Open Meetings Act. I suffered injury to one of my substantive rights as a result of this violation as more fully described in the original notice.

2. The minutes of the July 25, 2014 meeting of the board of directors of the EDDY LEA ENERGY ALLIANCE LLC do not include the time or place of the meeting; and, the minutes fail to include that board director Greg Fulfer was absent from the meeting; and, the minutes do not reflect the authority of the meeting closure nor is the subject to be discussed stated with any specificity in the motion calling for the vote on a closed meeting; and, the minutes do not state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure.

EDDY LEA ENERGY ALLIANCE LLC was served a notice regarding this violation on July 25, 2018 to the chairman; and, is hereby notified once again that the board's minutes for the July 25, 2014 open meeting do not comply with the requirements put forth by the Open Meetings Act of New Mexico. I once again hereby demand EDDY LEA ENERGY ALLIANCE LLC to take corrective action on the minutes at a properly-noticed public meeting; or, declare the July 25, 2014 meeting and all actions taken at the meeting as invalid because proper minutes were not kept as required by state law nor could be restored by the board of directors of EDDY LEA ENERGY ALLIANCE LLC.



3. The minutes of the September 29, 2014 meeting of the board of directors of the EDDY LEA ENERGY ALLIANCE LLC do not include the time or place of the meeting; and, the minutes do not reflect the authority of the meeting closure nor is the subject to be discussed stated with any specificity in the motion calling for the vote on a closed meeting; and, the minutes do not state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure.

EDDY LEA ENERGY ALLIANCE LLC became aware of an Open Meetings Act complaint regarding this violation as submitted by myself to the Attorney General on July 12, 2018; and, is hereby notified again that the board's minutes for the September 29, 2014 open meeting do not comply with the requirements put forth by the Open Meetings Act of New Mexico. I once again hereby demand EDDY LEA ENERGY ALLIANCE LLC to correct the minutes at a properly-noticed public meeting; or, declare the September 29, 2014 meeting and all actions taken at the meeting as invalid because proper minutes were not kept as required by state law nor could be restored by the EDDY LEA ENERGY ALLIANCE LLC.

**FURTHERMORE, BE IT KNOWN, THE DIRECTORS OF THE EDDY LEA ENERGY ALLIANCE LLC ARE HEREBY NOTIFIED, PURSUANT TO THE ENFORCEMENT MEASURES OF THE OPEN MEETINGS ACT, OF THEIR FOLLOWING VIOLATION OF STATE LAW:**

4. The minutes of the January 14, 2015 meeting of the board of directors of the EDDY LEA ENERGY ALLIANCE LLC do not state the subject to be discussed during executive session with any specificity. The minutes are attached to this notice as Exhibit-A.

EDDY LEA ENERGY ALLIANCE LLC is hereby notified that the board's minutes for the January 14, 2015 open meeting do not comply with the requirements put forth by the Open Meetings Act of New Mexico. I hereby demand EDDY LEA ENERGY ALLIANCE LLC to correct the minutes at a properly-noticed public meeting; or, declare the January 14, 2015 meeting and all actions taken at the meeting as invalid because proper minutes were not kept as required by state law nor could be restored by the EDDY LEA ENERGY ALLIANCE LLC.

You are hereby informed that should EDDY LEA ENERGY ALLIANCE LLC continue to disregard my demands, as enumerated above, then I may be granted appropriate remedy by a District Court.

Complainant:

Mr. Nick Maxwell

P.O. Box 1064

Hobbs, NM 88241

575.441.3560

**MINUTES OF THE MEETING OF THE  
BOARD OF DIRECTORS OF THE  
EDDY-LEA ENERGY ALLIANCE, LLC  
WEDNESDAY, JANUARY 14, 2015**

A meeting of the Board of Directors of Eddy-Lea Energy Alliance, LLC, was held at the Economic Development Corporation of Lea County, 200 E Broadway, Suite A201, Hobbs, New Mexico.

**Call to order and roll call**

President John Heaton called the meeting to order at 3:00 pm.

Members Attending:        John Heaton, Chair  
                                      Greg Fulfer, Vice Chair  
                                      Sam Cobb, Secretary  
                                      Jack Volpato, Treasurer  
                                      Susan Crockett  
                                      Monty Newman  
                                      Jason Shirley

Others Attending:        John Waters  
                                      Melinda Allen  
                                      James Waltersheid  
                                      Tom Jones  
                                      Alicia Sanchez  
                                      Rodney Balter  
                                      Carroll Leavell  
                                      Gay Kernan

Absent:                        Johnny Cope

**Agenda**

Motion was made to approve the agenda by Monty Newman and seconded by Greg Fulfer. Motion Passed Unanimously.

**Executive Session**

Greg Fulfer made the motion to enter into Closed Executive Session pursuant to Section 10-15-1 (H)(6) NMSA 1978 (Disposition of Real Property), Sam Cobb seconded, and the motion passed unanimously.

**Return from Executive Session**

Susan Crockett made the motion to return to regular open session and certified that the only item that was discussed was pertained to the item listed on the agenda and that no action was taken. Monty Newman seconded, and motion passed unanimously.

**Adjournment**

Sam Cobb made the motion to adjourn and Greg Fulfer seconded.  
Chairman John Heaton adjourned the meeting at 4:30 PM.

DRAFT



**Closed Session**

No closed session was held during this meeting.

**Next Meeting Date**

A preliminary date of June 10<sup>th</sup> was set for the next meeting. All parties are confirming that the date will work and notice will be sent out.

**Adjournment**

There being no further discussion or comments, the meeting adjourned at 4:20 pm.

EDDY-LEA ENERGY ALLIANCE, LLC

By: \_\_\_\_\_  
James Maddox, President

ATTEST: Jack Valpato, Secretary-Treasurer  
Eddy-Lea Energy Alliance, LLC

By: \_\_\_\_\_



Nick Maxwell <nickray07@gmail.com>

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## NOTICE - ELEA: Violations of the Open Meeting Act

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Nick Maxwell <nickray07@gmail.com>

Thu, Sep 6, 2018 at 11:26 AM

To: Sam Cobb <scobb@hobbsnm.org>

Cc: John Caldwell <jcaldwell@leacounty.net>, John Heaton <jaheaton1@gmail.com>, Jack Volpato <jackvolpato@hotmail.com>, scrockett <scrockett@co.eddy.nm.us>, Jason Shirley <jgshirley@yahoo.com>, Commissioner Ron Black <ronalblack@outlook.com>, Rebecca Long <rlong@leacounty.net>, Garry Buie <gabuie52@hotmail.com>, Marshall Newman <mrnewman@hobbsnm.org>, dpenick@hobbsnm.org, Jacob Calderon <jcalderon@hobbsnm.org>, Pat Taylor <ptaylor@hobbsnm.org>, cmills@hobbsnm.org, Don Gerth <dgerth@hobbsnm.org>, Efen Cortez <ecortez@hobbsnm.org>, Mike Gallagher <mgallagher@leacounty.net>, Chip Low <clow@leacounty.net>, John Waters <jwaters@developcarlsbad.org>, Steve Vierck <svierck@edcl.org>

Mayor Sam Cobb,

Find my written notice and demands attached to this email in PDF format which demands the remedy of violations of the Open Meeting Act as caused by the directors of the Eddy Lea Energy Alliance LLC.

Thank You,

Nick Maxwell

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 **OMA-VIOLATIONS-NOTICE-ELEA.pdf**  
251K

RECEIVED

JAN 16 2014

DFA  
OFFICE OF THE SECRETARY

AMENDED AND RESTATED OPERATING AGREEMENT/  
JOINT POWERS AGREEMENT

FOR

EDDY-LEA ENERGY ALLIANCE LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT/JOINT POWERS AGREEMENT FOR EDDY-LEA ENERGY ALLIANCE LLC (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and among Eddy County, New Mexico, Lea County, New Mexico, the City of Carlsbad, New Mexico, and the City of Hobbs, New Mexico (the "Members"). This Agreement amends and replaces in its entirety the Operating Agreement/Joint Powers Agreement entered into as of November 7, 2006 among the Members.

Recitals

A. This Agreement is both an "agreement", as that term is defined in the JPA Act (defined below), and an "operating agreement", as that term is defined in the LLC Act (defined below).

B. The purpose of the Eddy-Lea Energy Alliance LLC (the "Alliance") is to promote and assist energy-related economic development in Eddy and Lea Counties (including, without limitation, by conveyance of land, buildings and infrastructure under the LED Act (defined below)). In particular, it is contemplated that the Alliance will investigate the feasibility of and negotiate a transaction (the "Venture") under which the Project Site (defined below) will be leased or sold to one or more private companies ("Venture Party") for development and use as energy-related economic development project and related activities (the "Project").

Agreement

ARTICLE I.  
DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below. (All capitalized terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement.)

1.1. "Agreement" means this Amended and Restated Operating Agreement/Joint Powers Agreement, as originally executed and as amended and restated from time to time.

1.2. "Alliance" means the Eddy-Lea Energy Alliance LLC.

1.3. "Annual Budget" has the meaning set forth in Section 4.9.

1.4. "Articles of Organization" means the Articles of Organization of the Alliance, filed with the New Mexico Public Regulation Commission, Corporations Bureau, on August 23, 2006, as

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amended and restated from time to time.

- 1.5. "Chairperson" means the Officer having duties as described in Section 6.5.3.
- 1.6. "Contribution" means an amount of funds paid, or the fair market value of property contributed, to the Alliance by any Member, in accordance with the provisions of Article IV.
- 1.7. "DFA" means the New Mexico Department of Finance and Administration.
- 1.8. "Director" means a member of the Governing Board.
- 1.9. "Effective Date" has the meaning set forth in Section 10.14.
- 1.10. "Fiscal Agent" means a Member that performs, under the general direction of the Governing Board, the budgetary and financial control requirements applicable under state law to the Alliance as a quasi-governmental agency, including the requirements of DFA and the State Auditor.
- 1.11. "Fiscal Year" means the Alliance's fiscal year, which shall begin on July 1 and end on June 30 of each year.
- 1.12. "Governing Board" means the governing board of the Alliance, as more specifically described in Article VI and elsewhere in this Agreement.
- 1.13. "JPA Act" means the New Mexico Joint Powers Agreements Act, Ch. 11, Art. 1 NMSA 1978 Comp.
- 1.14. "LED Act" means the Local Economic Development Act, Ch. 5, Art. 10 NMSA 1978 Comp.
- 1.15. "LLC Act" means the New Mexico Limited Liability Company Act, Ch. 53, Art. 19 NMSA 1978 Comp.
- 1.16. "Majority Vote" means the affirmative vote of Directors representing a Majority Interest.
- 1.17. "Majority Interest" means more than 50 percent of the total Percentage Interests.
- 1.18. "Member" means any of Eddy County, New Mexico, Lea County, New Mexico, the City of Carlsbad, New Mexico, and the City of Hobbs, New Mexico, or any other municipality or county that becomes both a member (within the meaning of the LLC Act) of the Alliance and a party to this Agreement under the authority of the JPA Act.
- 1.19. "Membership Interest" means a Member's entire interest in the Alliance as provided in this Agreement, including the right to distributions (if any), the right to appoint Directors and to vote on matters reserved to the Members, and the right to receive information concerning the business and affairs of the Alliance.



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- 1.20. "Officer" means an officer of the Alliance.
- 1.21. "Open Meetings Act" means Ch. 10, Art. 15, NMSA 1978 Comp.
- 1.22. "Percentage Interest" means the percentage interest of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in Exhibit A hereto, as determined in accordance with the provisions of this Agreement and as may be adjusted from time to time pursuant to the terms of this Agreement. The sum of the aggregate Percentage Interests of the Members shall at all times equal 100 percent.
- 1.23. "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.
- 1.24. "Primary Director" means, of the two Directors appointed by each Member pursuant to Section 6.2.2, the Director that is an elected official of the Member, or, if both Directors are elected officials of the Member, the Director that has the longest tenure in his or her current elected position, or, if both Directors have the same tenure in their current elected positions, the Director whose birthdate is closest to the date of the meeting at which a vote of the Governing Board is being held.
- 1.25. "Procurement Code" means the New Mexico Procurement Code, §§13-1-28 et seq., NMSA 1978 Comp.
- 1.26. "Project" has the meaning assigned in Recital B.
- 1.27. "Project Site" means the real property, located in Lea County and more specifically described in Exhibit B, that is owned by the Alliance.
- 1.28. "Secondary Director" means, of the two Directors appointed by each Member pursuant to Section 6.2.2, the Director that is not the Primary Director.
- 1.29. "Secretary" means the Officer having duties as described in Section 6.5.5.
- 1.30. "Tort Claims Act" means the New Mexico Tort Claims Act, §§ 41-4-1 et seq., NMSA 1978 Comp.
- 1.31. "Treasurer" means the Officer having duties as described in Section 6.5.6.
- 1.32. "Venture" has the meaning assigned in Recital B.
- 1.33. "Venture Party" has the meaning assigned in Recital B.
- 1.34. "Vice-Chairperson" means the Officer having duties as described in Section 6.5.4.

**ARTICLE II.  
LEGAL AUTHORITY**

2.1 The JPA Act authorizes two or more governmental entities, including counties and municipalities, to jointly exercise by agreement any power common to the contracting parties, §11-1-3 NMSA 1978 Comp., subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies. § 11-1-5 NMSA 1978 Comp. The common power specified in the agreement is possessed by the "administering agency" (as such term is used in §11-1-5 NMSA 1978 Comp.), which may be one of the parties to the agreement, or may be a commission or board constituted pursuant to the agreement. The Governing Board shall be the "administering agency" as such term is used in the JPA Act.

2.2 Section 3-18-1 NMSA 1978 Comp. grants authority to municipalities to enter into contracts or leases, acquire and hold property, both real and personal, and exercise such other privileges that are incident to companies and corporations of like character or degree that are not inconsistent with the laws of New Mexico.

2.3 Section 4-37-1 NMSA 1978 Comp., grants to counties the same powers that are granted to municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.

2.4 Under the LED Act the New Mexico State Legislature has determined that it is in the best interest of the state, municipalities and counties to encourage local and regional solutions to economic development and has authorized municipalities and counties to adopt local economic development plans and to enter into joint powers agreements pursuant to Section 5-10-7 NMSA 1978 Comp. to further regional economic development.

2.5 Pursuant to the LED Act, the Members have each adopted local economic development plans that encompass the Venture contemplated by this Agreement.

2.6 Pursuant to the authority of the JPA Act, the LED Act and the LLC Act, the Alliance constitutes a quasi-governmental agency that exercises certain of the powers of, and has certain of the obligations of, the Members.

**ARTICLE III.  
ORGANIZATIONAL MATTERS**

3.1. Formation. The Members have formed the Alliance under the LLC Act pursuant to the authority of the Members under the JPA Act, the LED Act and other laws of the State of New Mexico that govern each Member. The rights and liabilities of the Members shall be determined pursuant to the LLC Act, the JPA Act, the LED Act and any other applicable state law, and this Agreement.

3.2. Office and Agent. The Alliance shall continuously maintain an office (which may be a Member's office) and registered agent in the State of New Mexico. The principal office of the Alliance shall be at such location within Eddy or Lea Counties as the Governing Board may determine from time to time. The Alliance may also have such additional offices, within or outside of Eddy and Lea Counties, but within the State of New Mexico, as the Governing Board

may determine from time to time. The registered agent shall be as stated in the Articles of Organization or as otherwise determined by the Governing Board from time to time.

3.3. Addresses and Facsimile Numbers of the Members. The address, electronic mail address, and facsimile number of each Member for notice purposes are set forth on Exhibit A. A Member may change its address, electronic mail address and facsimile number upon notice thereof to all the other Members in accordance with the requirements of Section 10.3.

3.4. Limited Authority. The Alliance shall not take any action that is inconsistent with this Agreement or state law governing the authority of the Members. The Alliance shall not take any action that expands the purpose and scope of the Venture, without the unanimous consent of the Members.

#### ARTICLE IV MEMBER CONTRIBUTIONS

4.1 Contributions. Pursuant to Section 11-1-4 (B) of the JPA Act, Contributions from the funds of the Members may be made for the purposes set forth herein, including defraying the costs of the Alliance. Subject to Section 4.6, all Contributions shall be equally made by the Members.

4.2 Advances. Advances of funds to or for the benefit of the Alliance made by a Member may be repaid, if at all, upon such terms as determined by the Governing Board.

4.3 Disbursement of Gross Receipts Taxes. To the extent that gross receipts taxes remitted by the State of New Mexico to Lea County are directly attributable to the sales of goods and performance of services related to the Project or other development of the Project Site, those gross receipts taxes shall be transferred by Lea County to the Alliance for distribution to the Members (including Lea County) according to their respective Percentage Interests.

4.4 Industrial Revenue Bonds, Disbursement of "PILOTS". The Members acknowledge that (i) Lea County may issue industrial revenue bonds ("IRBs"), resulting in part or all of the Project being exempt from property taxation, as an inducement to the Venture Party to undertake the Project, (ii) as part of any such IRB transaction, the Venture Party will convey Project property to Lea County, and Lea County will lease and sell such Project property to the Venture Party under a lease and sale agreement (the "IRB Lease"), and (iii) as a condition to the issuance of IRBs, Lea County may require a provision in the IRB Lease under which the Venture Party is obligated to pay payments in lieu of exempt taxes ("PILOTS"). Under the IRB Lease, all PILOTS shall be paid by the Venture Party directly, and solely, to Lea County. Each PILOT received by Lea County shall be shared with the other Members in proportion to their Percentage Interests. Each Member may expend its share of the PILOT for any legal purpose, including distributing some or all of the share to other governmental units.

4.5 Distribution of Revenues. From time to time the Governing Board may distribute to the Members, in proportion to their Percentage Interests, excess revenues that are not needed for payment of the Alliance's expenses and costs related to the Project.

4.6 Adjustment of Percentage Interest in Event of Failure of Member to Make Required Contribution. If one or more of the Members fail to make all or any portion of any financial Contribution in accordance with the requirements of this Agreement, then the Percentage Interest of each Member that has made the required Contribution shall be increased, and the Percentage Interest of each Member that has failed to make such a required Contribution shall be decreased, to be proportional to each Member's total cumulative Contributions, without regard to any payment by the Alliance to the Members. (For example: Assume that all of the Members have made Contributions of \$25,000 to the Alliance. The Percentage Interest of each Member is 25%. Members A, B and C make required additional Contributions of \$15,000 when due (at Time X), but Member D does not. At Time X, the Percentage Interests of Members A, B and C will each be \$40,000/\$145,000, or 27.586%, and the Percentage Interest of Member D will be \$25,000/\$145,000, or 17.242%.) Any deficiency of a Member in making Contributions may not be cured (with a corresponding adjustment in Percentage Interests) except with the written consent of all of the remaining Members.

4.7 Disposal of Property. Upon dissolution of the Alliance, any Alliance property shall be disposed of according to law, with surplus funds or other property divided among the Members according to their respective Percentage Interests. Notwithstanding anything to the contrary in this Agreement, if the Project Site has been leased to, or transferred and then reacquired from, a third party, or if any radioactive or other hazardous materials have been stored on the Project Site for any period of time, then the Project Site shall not be transferred to any of the Members unless thorough technical and legal investigations, evidenced by written reports, confirm that contamination of the Project Site will not present a material risk of liability to the Members.

4.8 Return of Financial Contributions. No Member shall be entitled to withdraw from the Alliance, or demand the return of any part of its Contributions except as and to the extent specifically provided in this Agreement.

4.9 Annual Budget. The Governing Board shall, not later than March 1 of each calendar year adopt a budget for the next Fiscal Year (the "Annual Budget"), including a budget for Contributions, if any. The Annual Budget shall include the operating costs of the Alliance. In the event there are insufficient funds on hand to cover such operating costs, the costs shall be allocated to each Member pro rata and shall be paid by such Member on the dates specified in the Annual Budget.

4.10 Debt Limitation. No Member's obligation to make a Contribution shall constitute a debt payable from a levy of property taxes, and no Member shall be required to pledge its full faith and credit to the payment of any Contribution.

## ARTICLE V MEMBERS

5.1 Initial Members. The initial Members shall be the County of Eddy, the County of Lea, the City of Carlisbad, and the City of Hobbs, each of which shall initially have a 25% Percentage Interest.

5.2 Admission of Additional Members. The Members may, from time to time and at any time, admit to the Alliance additional Members, upon terms and conditions unanimously approved by vote of both the Governing Board and the Members.



5.3 Limited Liability.

5.3.1. Except for the obligation to make Contributions approved pursuant to this Agreement, no Member shall be liable for any debt, obligation, or liability of the Alliance, and no Member shall be obligated for any such debt, obligation or liability of the Alliance solely by reason of being a Member. Except as otherwise expressly provided by law or as expressly agreed by a Member in writing, no Member shall be liable, responsible or accountable in damages or otherwise to the Alliance or any other Member for any action taken or failure to act on behalf of the Alliance, unless such act or omission by such Member constitutes intentional misconduct or a knowing violation of law.

5.3.2. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, which apply to the activity of officers, agents or employees of any signatory public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the JPA Act and this Agreement.

5.4 Withdrawal of Member.

5.4.1. Any Member may withdraw from this Agreement by giving 30 days prior written notice to the other parties to this Agreement.

5.4.2. The withdrawal of any one Member to this Agreement shall not terminate this Agreement. The withdrawing Member waives any and all rights to property, funds, or any other rights under this Agreement. The withdrawing Member forfeits its Membership Interest, which shall be distributed (i) to the other Member located within the same county, or if such other Member does not wish to accept all of the withdrawing Member's membership interest, then (ii) to the remaining Members in proportion to each remaining Member's Percentage Interest.

5.4.3. This Agreement may be terminated at any time by an affirmative vote of Members representing a Majority Interest.

5.4.4. Any withdrawal or termination of the Agreement by a Member shall not affect any liabilities, obligations, financial or otherwise, incurred by such Member under this Agreement prior to the notice of withdrawal, other than an obligation to make a Contribution that the Member had not made.

ARTICLE VI  
MANAGEMENT AND CONTROL

6.1 Management and Powers.

6.1.1 The Governing Board shall be the "administering agency", as such term is used in the JPA Act.

6.1.2 The Members, acting in concert under this Agreement, shall comprise a "regional government", as such term is used in Section 5-10-7(A) of the LED Act, and the Governing Board shall be a "regional body" as that term is used in Section 5-10-7(C) of the LED Act.

6.1.3 A Member may vote, or consent to a matter concerning the Alliance, only through the action of the Member's governing body.

6.2. Governing Board: Appointment, Voting, Meetings.

6.2.1. Except for powers specifically reserved to the Members by law, in the Articles of Organization or elsewhere in this Agreement, all powers of the Alliance shall be exercised by or under the authority of, and the business and affairs of the Alliance shall be managed under the direction of, the Governing Board. Nevertheless, the Alliance shall be a member-managed limited liability company, and the Governing Board shall not be a "manager", as such term is used in the LLC Act.

6.2.2. Each Member shall designate in writing two Directors, at least one of whom shall be an elected official of the Member. Any Member may replace either or both of its Directors at any time, for any reason or no reason, effective upon notice to all the other Members and the Chairperson.

6.2.3. The Directors representing a Member shall have, jointly, a vote equal to that Member's Percentage Interest. If only one Director representing a Member is in attendance, that Director (whether the Primary Director or the Secondary Director) shall have power to vote the Member's full Percentage Interest. If both Directors representing a Member are in attendance, they shall consult concerning the vote, but whether they agree or not, the Primary Director alone shall vote the Member's full Percentage Interest.

6.3. Liability of Directors. Each Director shall carry out his or her duties in good faith, in a manner that is in the best interest of the Members, and with such care as an ordinarily prudent director in a like position would use under the circumstances.

6.4. Meetings of Governing Board.

6.4.1. Date, Time and Place of Meetings of Governing Board: Secretary. Meetings of the Governing Board shall be held at a place within Lea County or Eddy County as determined by the Chairperson. No annual or regular meetings of Members or Directors are required. The Chairperson, or, in his or her absence, the Vice-Chairperson, shall preside at each meeting of the Governing Board. If neither the Chairperson nor the Vice-Chairperson is present, the Directors shall elect a temporary Chairperson only for the purposes of the meeting. The Secretary (or, in the absence of the Secretary, a Person in attendance designated by the Governing Board, who may but need not be a Director or Officer) shall prepare minutes of such meetings, which shall be placed in the minute books of the Alliance, all in compliance with Section 10-15-1 of the Open Meetings Act.

6.4.2. Power to Call Meetings. Meetings of the Governing Board may be called by the Chairperson, and shall be called upon the written request of any two Directors.

6.4.3. Notice of Meeting. Written notice of a meeting of the Governing Board (other than an "emergency meeting", if any, within the meaning of the Open Meetings Act) shall be sent or otherwise given to each Director not less than 72 hours before the time of the meeting. The notice shall specify the place, date and hour of the meeting and include a draft agenda. A final agenda shall be delivered to each Director not less than 36 hours before the time of the meeting.

6.4.4. Open Meetings and Manner of Giving Notice. Conduct and notice of any meeting of the Governing Board shall be in compliance with the Open Meetings Act and any applicable requirements of the New Mexico Public Records Act, §§ 14-3-1 to 14-3-25 NMSA 1978 Comp. Except for emergency meetings, notice of a meeting, and a draft agenda, shall be posted at least 72 hours prior to the time of the meeting, with a final agenda being posted not less than 36 hours prior to the meeting. Except for emergency meetings, the Governing Board shall take action only on items appearing on the agenda.

6.4.5. Quorum. A meeting of the Governing Board shall have a quorum when either (i) more than half of the individual Directors are present, or (ii) Directors representing a Majority Interest are present.

6.4.6. Governing Board Action. Except for those matters for which this Agreement specifies that a unanimous vote is required, all actions of the Governing Board shall be by a Majority Vote.

## 6.5. Officers.

6.5.1 Appointment of Officers. The Governing Board shall elect Officers, who shall have the authority to manage affairs of the Alliance on a day-to-day basis, subject to the approval and control of the Governing Board. The Governing Board may appoint Officers at any time, and, subject to Section 6.5.2, each Officer shall serve for one year, or such shorter time as the Governing Board specifies at the time of the appointment. The Officers shall include a Chairperson, Vice-Chairperson, Secretary and Treasurer who each shall be elected from among the Directors. The Officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Governing Board. The Officers shall not be compensated for their service as Officers, except to the extent that expenses related to travel, including per diem costs, are approved in advance by the Governing Board.

### 6.5.2 Removal, Resignation and Filling of Vacancy of Officers.

6.5.2.1. Any Officer may be removed, with or without cause, by the Governing Board at any time. Any such action shall have no effect on the status of a Member's representative on the Governing Board.

6.5.2.2. Any Officer may resign at any time by giving written notice to all of the Directors. Any resignation shall be effective upon delivery, or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective.

6.5.2.3. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to such office.

6.5.3 Duties and Powers of the Chairperson. The Chairperson shall preside at meetings of the Governing Board, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Governing Board or prescribed by this Agreement.

6.5.4 Duties and Powers of the Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the Chairperson's absence.

6.5.5 Duties and Powers of Secretary.

6.5.5.1. The Secretary shall record the proceedings of the meetings in a minute book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Governing Board and shall perform such other duties as may be prescribed by the Governing Board.

6.5.5.2. The Secretary shall keep, or cause to be kept all documents as may be required under New Mexico law, including the Open Meetings Act. The Secretary shall perform such other duties and have such other authority as may be prescribed elsewhere in this Agreement or from time to time by the Governing Board.

6.5.6 Duties and Powers of the Treasurer.

6.5.6.1. The Treasurer shall be the chief financial and accounting officer and treasurer of the Alliance. The Treasurer shall be the principal contact between the Governing Board and the Fiscal Agent concerning the financial matters of the Alliance.

6.5.6.2. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Alliance, including accounts of its assets, liabilities, receipts, and disbursements. The books of account shall at all reasonable times be open to inspection by any Member.

6.5.7 Liability of Officers. Each Officer shall carry out their duties in good faith, in a manner that is in the best interest of the Members, and with such care as ordinarily prudent officer in a like position would use under the circumstances.

6.6. Limitations on Authority of Members, Governing Board and Officers.

6.6.1. Notwithstanding any other provision of this Agreement, no Officer or Director shall have the authority to cause the Alliance to incur any liability, or to execute on behalf of the Alliance any contract, agreement, document, instrument, note, deed, mortgage, deed of trust, or other agreement or instrument of conveyance or indebtedness (or series of any such agreements or instruments) except as otherwise approved by the

Governing Board. The Governing Board shall approve all contracts, and all contracts shall be signed by both the Chairperson or the Vice-Chairperson, and the Secretary or the Treasurer. The Governing Board shall not incur or approve any debt except with the unanimous consent of all the Members.

6.6.2. As provided in §11-1-4 NMSA 1978 Comp., the Members, Governing Board, Directors and Officers shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters pertaining to the Alliance and the Venture.

6.6.3. Notwithstanding any other provision of this Agreement, and in addition to the provisions of Section 6.4.4. of this Agreement, the Members, Governing Board, and Officers shall comply with:

- (a) All laws applicable to public funds under the laws of the State of New Mexico.
- (b) The Procurement Code.
- (c) The JPA Act.
- (d) The LED Act.

6.6.4. In the event the Alliance chooses to provide aid to a qualifying entity under the LED Act, the Governing Board shall comply with the provisions of the ordinances enacted by each Member under the LED Act.

6.6.5. In the event of any inconsistency between New Mexico law and this Agreement, the terms of New Mexico law shall prevail.

## ARTICLE VII RECORDS; REPORTING TO MEMBERS

### 7.1. Books and Records.

7.1.1. The books and records of the Affiance shall be kept in accordance with the accounting methods required for municipalities and counties under New Mexico law.

7.1.2. The books and records of the Alliance shall be open to inspection in accordance with the requirements of New Mexico law.

7.2. Reports. The Governing Board shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the Members such reports and accounting as the parties hereto may reasonably request.

## ARTICLE VIII DISSOLUTION AND WINDING UP

8.1. Conditions of Dissolution. The Alliance shall dissolve upon the occurrence of any of the following events:

8.1.1. The approval of all of the Members;

8.1.2. At any time when there are no Members; or

8.1.3. The entry of a decree of judicial dissolution under the LLC Act.

8.2. Winding Up. Upon the dissolution of the Alliance, the Alliance's assets shall be disposed of and its affairs wound up. The Alliance shall give written notice of the commencement of the dissolution to all of its known creditors.

8.3. Order of Payment of Liabilities Upon Dissolution. After determining that all the known debts and liabilities of the Alliance have been paid or adequately provided for, the remaining assets shall be distributed to the Members in proportion to their Percentage Interests.

## ARTICLE IX INDEMNIFICATION AND INSURANCE

9.1. Liability. No Member shall be responsible for liability incurred as a result of one of the other Member's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the Tort Claims Act.

9.2. Third Party Beneficiary. The Members do not and do not intend to create in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain any suit for any claim whatsoever pursuant to the provisions of this Agreement.

9.3. Insurance. The Governing Board shall obtain and carry public liability insurance coverage (including directors and officers coverage) consistent with the responsibilities of the Directors, Officers and any Alliance employees as "public employees", as such term is used under the Tort Claims Act, and with combined single limits of no less than \$1,050,000. The expense of obtaining and maintaining the required insurance shall be included in the Annual Budget. The insurance shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to any Member at the Member's request.

9.4. Amendment, Repeal or Modification. Any amendment, repeal or modification of any provision of this Article IX shall not adversely affect any right or protection of a Director, Officer, or employee of the Alliance existing at the time of such amendment, repeal or modification.

## ARTICLE X MISCELLANEOUS

10.1. Amendments. All amendments to this Agreement must be in writing, signed by all Members, and approved by DFA. In the absence of any opinion of counsel as to the effect thereof, no amendment to this Agreement or the Articles shall be made which violates the law or is likely to cause the Alliance to be taxed as a corporation.

10.2. Waiver of Partition. Each of the Members irrevocably waives any right to maintain any action for partition with respect to property of the Alliance.

10.3. Notices. Except as otherwise expressly provided in this Agreement, any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient party either (a) in person, (b) by nationally recognized overnight delivery service, (c) by facsimile equipment providing written confirmation of successful transmission, (d) by United States Certified Mail, return receipt requested, or (e) by electronic mail (with confirmation of receipt by the intended recipient). Notices delivered in person or sent by facsimile, electronic mail, or overnight delivery service shall be effective upon delivery. Notices sent by Certified Mail shall be effective on the date shown on the return receipt as the date of delivery or on the final date on which the Postal Service certifies that it was unable to deliver. Notices to any Member shall be sent to the address, facsimile number, or electronic mail address of such Member on file with the Secretary. Any Member may change the address or facsimile number to which notices should be sent by giving notice of such change to all the other Members and the Secretary.

10.4. Further Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform each and all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

10.5. Complete Agreement. This Agreement and the Articles of Organization constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or have any force or effect whatsoever.

10.6. Rules of Construction: Statutory References. Whenever in this Agreement the context so suggests, references to the masculine shall include the feminine, references to the singular shall include the plural, and references to "or" shall mean "and/or". Any reference to statutes or regulations will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

10.7. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.8. Interpretation. No provision of this Agreement shall be construed in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

10.9. Exhibits. All exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

10.10. Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby; provided, however, that if the invalid provision or application thereof destroys an essential purpose of this Agreement, such provision shall be deemed modified to the extent necessary to make it valid and enforceable.

10.11. Reliance on Authority of Person Signing Agreement. Neither the Alliance nor any Member will be required to determine the authority of any individual signing this Agreement on behalf of any Member to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual.

10.12. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state).

10.14. Effective Date. This Agreement shall be effective on the date it is approved by the DFA pursuant to the JPA Act (the "Effective Date").

**SIGNATURES APPEAR ON FOLLOWING PAGES.**



[SIGNATURE PAGE FOR LEA COUNTY]



Lea County Commission

By: *Greg Fuller*

Chairman

ATTEST: *Pat Chappelle*  
Lea County Clerk


By: *Kelli Williams*  
Deputy



[SIGNATURE PAGE FOR EDDY COUNTY]

Eddy County Commission

By:   
\_\_\_\_\_  
Jack Volpat  
Chairman

ATTEST:   
\_\_\_\_\_  
Eddy County Clerk

By: \_\_\_\_\_

[SIGNATURE PAGE FOR CITY OF HOBBS]

City of Hobbs

By: 

Mayor

ATTEST: JAN FLETCHER  
City Clerk



By: 



[SIGNATURE PAGE FOR CITY OF CARLSBAD]

City of Carlsbad

By:   
Mayor

   
Clerk

A-13-106

NEW MEXICO FINANCE AND  
ADMINISTRATION DEPARTMENT

By: Monica Affoa 5/6/14

**EXHIBIT A**

**MEMBERS' INTERESTS  
(as of the Effective Date)**

**City of Carlsbad: 25%**  
**City of Hobbs: 25%**  
**Eddy County: 25%**  
**Lea County: 25%**

**MEMBERS' ADDRESSES**

**City of Carlsbad: City Administrator  
City Hall  
101 N. Halagueno  
Carlsbad, New Mexico 88221  
(575) 887-1191**

**City of Hobbs: City Manager  
City Hall  
200 E. Broadway  
Hobbs, New Mexico 88240  
(575) 397-9200**

**Eddy County: County Manager  
Eddy County Administration Complex Suite 110  
101 W. Greene Street  
Carlsbad, New Mexico 88220  
(575) 887-9511**

**Lea County: County Manager  
100 N. Main  
Lovington, NM 88260  
(575) 396-2093**

**A-13-106**

**EXHIBIT B**

**PROJECT SITE**

**TRACT I:** A tract of land located in the Southwest Quarter of Section 17, Township 20 South, Range 33 East, N.M.P.M. and more particularly described as beginning at the Southwest corner of said Section 17, thence S89°59'E, 1322.50 feet; thence N0°3'S, 1320 feet; thence N89°59'W, 1322.50 feet; and thence S0°3'E, 1320 feet to the point of beginning; and

**TRACT II:** Lots 2, 3 and 4; the East Half of the West Half (E 1/2 W 1/2); and the South Half of the Southeast Quarter (S 1/2 SE 1/4), all in Section 18, Township 20 South, Range 33 East, N.M.P.M.

**A-06-138**

**OPERATING AGREEMENT/  
JOINT POWERS AGREEMENT**

**FOR**

**EDDY-LEA ENERGY ALLIANCE LLC**

**THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT/JOINT POWERS AGREEMENT FOR EDDY-LEA ENERGY ALLIANCE LLC (this "Agreement") is made and entered into as of the 7th day of November, 2006, by and among the parties listed on the signature pages hereof, with reference to the following facts:**

**A. The parties to this Agreement are counties and municipalities in the State of New Mexico that wish to form and participate as a member of the Eddy-Lea Energy Alliance LLC (as defined herein).**

**B. The exclusive purposes of Eddy-Lea Energy Alliance LLC are to undertake the following Venture: (i) operating and managing a collaborative venture in the public interest of the citizens of Eddy County and Lea County to jointly develop and submit a written proposal to the United States Department of Energy ("Department of Energy") regarding a grant for the study of a site in Lea County, some portion of which will be located within three miles of the intersection of highways US-62/US-180 and highway NM-176, for potential use in all of the programs that are undertaken by the Department of Energy in support of the Global Nuclear Energy Partnership, including but not limited to all facilities and administrative offices; (ii) to take subsequent steps, as appropriate, to enter such agreements as are necessary to assist the Department of Energy in evaluating a site in Lea County for potential use in all such programs; and (iii) to transact business, consistent with the laws of the State of New Mexico, to support the Parties' mutual goals for creating new jobs in Eddy County and Lea County, broadening the technical and scientific skills of the Parties' workforce and increasing the number of high-wage jobs, creating opportunities to promote the technical and scientific education of students in the Counties, strengthening the economic base of both Counties, and enhancing the system of utilities and infrastructure in the region.**

**C. This Agreement is an "operating agreement" as that term is defined in the New Mexico Limited Liability Company Act and a "joint powers agreement" as that term is defined in the New Mexico Joint Powers Agreements Act ("JPA Act"). The Governing Board created by this Agreement shall be a "Regional Government" as that term is defined in the New Mexico Local Economic Development Act.**



D. On August 23, 2006, Articles of Organization for the Eddy-Lea Energy Alliance LLC (the "Company"), a limited liability company organized under the laws of the State of New Mexico, were filed with the New Mexico Public Regulation Commission, Corporations Bureau.

E. The parties hereto desire to adopt and approve a limited liability company operating and joint powers agreement for the Company.

NOW, THEREFORE, the parties set forth the limited liability company operating agreement for the Company under the laws of the State of New Mexico.

#### ARTICLE I. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below (all capitalized terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

- 1.1 "Agreement" means this Agreement, as originally executed and as amended from time to time.
- 1.2 "Alliance" means Eddy-Lea Energy Alliance LLC.
- 1.3 "Annual Budget" has the meaning set forth in Section 4.6.
- 1.4 "Articles of Organization" means the articles for the Company filed with the New Mexico Public Regulation Commission, Corporations Bureau, on August 23, 2006, as amended from time to time.
- 1.5 "Eddy-Lea Energy Alliance LLC" means Eddy-Lea Energy Alliance limited liability company of New Mexico formed under the LLC Act and under the JPA Act.
- 1.6 "Eddy-Lea Energy Alliance LLC Member" means a Member of Eddy-Lea Energy Alliance LLC, as defined in this operating agreement of the Eddy-Lea Energy Alliance LLC.
- 1.7 "Effective Date" means the effective date of this Agreement or any subsequent supplemental agreement, which shall be the date upon which such Agreement shall be fully executed and has been approved by the New Mexico Department of Finance and Administration.

1.8. "Financial Contribution" means the total amount of funds paid, or the fair market value of property contributed, to the Alliance by any Member, in accordance with the provisions of Article IV.

1.9. "Fiscal Year" means the Alliance's fiscal year, which shall begin on July 1 and end on June 30 of each year.

1.10. "Governing Board" means the governing board of the Alliance, as more specifically described in Article VI and elsewhere in this Agreement.

1.11. "JPA Act" means the New Mexico Joint Powers Agreements Act ("JPA Act"), §§ 11-1-1 to 11-1-7 NMSA 1978 Comp.

1.12. "LED Act" means the Local Economic Development Act, § 5-10-1 et seq., NMSA 1978 Comp.

1.13. "LLC Act" means the New Mexico Limited Liability Company Act (§§ 53-19-1 to 53-19-74 NMSA 1978), as amended from time to time.

1.14. "Majority " means the affirmative vote of the Governing Board collectively holding in excess of 50 percent of the total percentage interests. In the event of a tie, the Governing Board of Eddy-Lea Energy Alliance LLC shall name an independent individual who is familiar with the Venture to cast the deciding vote, but such deciding vote may not result in an action inconsistent with this agreement, or in violation of state law applicable to the Members.

1.15. "Member" means a person, as such term is defined in the New Mexico Limited Liability Company Act, including any legal entity, that (a) is an initial signatory to this Agreement, or (b) has been admitted to the Alliance as a Member in accordance with the provisions herein.

1.16. "Membership Interest" means a Member's entire interest in the Alliance as provided in this Agreement, including the right to vote on or participate in the Alliance's management, and the right to receive information concerning the business and affairs of the Alliance.

1.17. "Percentage Interest" means the percentage interest of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in Exhibit A hereto, as determined in accordance with the provisions of this Agreement and as may be adjusted from time to time pursuant to the terms of this Agreement. The sum of the aggregate Percentage Interests of the Members shall at all times equal 100 percent.

1.18. "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.

1.19. "Procurement Code" means the New Mexico Procurement Code, § 13-1-21 et seq., NMSA 1978 Comp.

1.20. "Venture" has the meaning set forth in the Recital B.

## ARTICLE II. LEGAL AUTHORITY

2.1. The New Mexico Joint Powers Agreements Act, §§ 11-1-1 to 11-1-7 NMSA 1978 Comp., authorizes two or more public bodies to jointly exercise by agreement any power common to the contracting parties, § 11-1-3 NMSA 1978 Comp., subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies. § 11-1-5 NMSA 1978 Comp. The common power specified in the agreement is possessed by the administering agency.

2.2. Section 3-18-1 NMSA 1978 Comp., grants authority to municipalities to enter into contracts or leases, acquire and hold property, both real and personal, and exercise such other privileges that are incident to companies and corporations of like character or degree that are not inconsistent with the laws of New Mexico.

2.3. Section 4-37-1 NMSA 1978 Comp., grants to counties the same powers that are granted to municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.

2.4. Under the Local Economic Development Act, § 5-10-1 et seq., NMSA 1978 Comp., the New Mexico State Legislature has determined that it is in the best interest of the state, municipalities and counties to encourage local and regional solutions to economic development and has authorized municipalities and counties to adopt local economic development plans and to enter into joint powers agreements pursuant to 5-10-7 NMSA 1978 Comp., to further regional economic development.

2.5. Lea County, Eddy County, the City of Hobbs, and the City of Carlsbad have adopted the provisions of the Local Economic Development Act and have passed local economic development plans, which encompass the Venture contemplated by this agreement, pursuant to ordinances adopted by the Counties and the Cities respectively.

**ARTICLE III.  
ORGANIZATIONAL MATTERS**

3.1. **Formation.** The Members have formed a New Mexico limited liability company under (a) the Act by filing the Articles of Organization with the New Mexico Public Regulation Commission, Corporations Bureau, and (b) the laws of the State of New Mexico which govern each Member. The rights and liabilities of the Members shall be determined pursuant to the Act, any other applicable state law, and this Agreement.

3.2. **Name.** The name of the Alliance shall be Eddy-Lea Energy Alliance LLC.

3.3. **Office and Agent.** The Alliance shall continuously maintain an office (which may be a Member's office) and registered agent in the State of New Mexico. The principal office of the Alliance shall be at such location as the Members may determine. The Alliance may also have such additional offices as the Members may determine from time to time. The registered agent shall be as stated in the articles of organization or as otherwise determined by the Members.

3.4. **Addresses and Facsimile Numbers of the Members.** The address, electronic mail address, and facsimile number of each Member for notices purposes are set forth on Exhibit A. A Member may change its address, electronic mail address and facsimile number upon notice thereof to all the other Members in accordance with the requirements of Section 10.3.

3.5. **Purpose of the Alliance.** The sole purpose of the Alliance is to undertake activities associated with the Venture. The Alliance shall not take any action that is inconsistent with this Agreement or state law governing the authority of the Members. The Alliance shall not take any action that expands the purpose and scope of the Venture, without the consent of each Member.

**ARTICLE IV.  
FINANCIAL CONTRIBUTIONS**

4.1. **Financial Contributions.** Pursuant to § 11-1-4 (B.) NMSA 1978 Comp., of the JPA Act, contributions from the funds of the parties may be made for the purposes set forth herein and may be made to defray the costs of this Agreement. Any such contributions shall be equally shared by the members, unless provided otherwise by a unanimous vote of the Governing Board.

4.2. **Advances.** Advances of funds for the Venture made by a Member may be repaid upon such terms as determined by the Governing Board.

4.3. **Disbursement of Gross Receipts Taxes.** To the extent that gross receipts taxes paid by the State of New Mexico to Lea County are directly attributable to

the sales of goods and performance of services related to the GNEP, those gross receipts taxes shall be transferred to the LLC for distribution to the Members according to their Percentage Interest.

4.4. **Remaining Revenues.** While it is not anticipated that any profits will be generated under this Agreement, any revenues remaining after payment of all necessary and legitimate costs of operation, shall be placed into a special account managed by the Governing Board to be used for future projects.

4.5. **Adjustment of Percentage Interest in Event of Failure of Member to Make Required Contribution.** If one or more of the Members fail to make all or any portion of any financial contributions in accordance with the requirements of this Agreement, then the Percentage Interest of each Member that has made the required contribution shall be increased, and the Percentage Interest of each Member that has failed to make such a required contribution shall be decreased, to reflect the percentage of each Member's contribution to the total amount of contributions and to reflect that not all of the Members have made all contributions in proportion to their existing Percentage Interests.

4.6. **Disposal of Property.** Upon dissolution of this Agreement, any property shall be disposed of according to the law in the method in which those properties were obtained, with surplus funds or other property divided among the parties according to the percentages of their contribution during the period of this Agreement.

4.7. **Return of Financial Contributions.** No Member shall be entitled to withdraw from the Alliance, or demand the return of, any part of its Contributions except as and to the extent specifically provided in this Agreement.

4.8. **Annual Budget.** Governing Board members representing a majority shall, not later than 30 days prior to the end of each Fiscal Year of the Alliance, adopt a budget for the next Fiscal Year of the Alliance (the "Annual Budget"), including a budget for contributions, if any. The Annual Budget shall include the operating costs of the Alliance. In the event there are insufficient funds on hand to cover such operating costs, the costs shall be allocated to each Member pro rata and shall be paid by such Member (the "Operating Cost Contribution") on the dates specified in the Annual Budget.

4.9. **Designated Special Fund for Contributions.** To the extent that Members must make a financial contribution in such amount and on such terms as the Governing Board determines to be appropriate based upon the needs of the Alliance, those contributions shall be made from a designated special fund and property taxes shall not be used, nor shall the Members' full faith and credit be pledged.

**ARTICLE V.  
MEMBERS**

5.1. **Initial Members** The initial members shall be the County of Eddy, the County of Lea, the City of Carlsbad, and the City of Hobbs which shall each have a 25 per cent membership interest in the Alliance.

5.2. **Admission of Additional Members.**

5.2.1. The Members may, from time to time and at any time, admit to the Alliance additional Members, subject to the following:

5.2.1.1. No party shall be entitled to be a Member unless defined as a county, municipality or local political subdivision under New Mexico law;

5.2.1.2. Not less than a unanimous vote of the Governing Board must approve the admission;

5.2.1.3. The additional Member must make a financial contribution in such amount and on such terms as the Governing Board determines to be appropriate based upon the needs of the Alliance, the net value of the Alliance's assets, the Alliance's financial condition, and the benefits anticipated to be realized by the additional Member; and

5.2.1.4. In the event a new member is approved, a supplemental agreement/joint powers agreement, in terms satisfactory to a majority of the Governing Board, shall be executed by all Members, including the new Members, setting forth: (1) the number of directors the new Member will have on the Governing Board; (2) the contribution required of the new Member and; (3) any other matter deemed necessary by a majority of the Governing Board.

5.2.2. By its execution of a counterpart of this Agreement, each Person becoming a Member ratifies and approves all action duly taken by the Alliance and the other Members, under and pursuant to this Agreement, prior to the date on which such Person becomes a Member.

5.3. **Limited Liability.**

5.3.1. Except for the obligation to make Contributions approved pursuant to this Agreement, no Member shall be liable for any debt, obligation, or liability of the Alliance, and no Member shall be obligated for any such debt, obligation or liability of the Alliance solely by reason of being a

Member. Except as otherwise expressly provided by law or as expressly agreed by a Member in writing, no Member shall be liable, responsible or accountable in damages or otherwise to the Alliance or any other Member for any action taken or failure to act on behalf of the Alliance, unless such act or omission by such Member constitutes intentional misconduct or a knowing violation of law.

5.3.2. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, which apply to the activity of officers, agents or employees of any signatory public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorial under the provisions of the Joint Powers Agreement (§ § 11-1-1 to 11-1-7, NMSA 1978 Comp., as amended).

#### 5.4. Withdrawal of Member.

5.4.1. Any Member may withdraw from this agreement by giving 30 days prior written notice to the other parties to this Agreement.

5.4.2. The withdrawal of any one Member to this Agreement shall not terminate this Agreement. The withdrawn Member waives any and all rights to property, funds, or any other rights under this Agreement.

5.4.3. This Agreement may be terminated by majority vote of the Board at any time.

5.4.4. Any withdrawal or termination of the Agreement by a member shall not affect any liabilities, obligations, financial or otherwise, incurred by such Member under this agreement prior to the notice of withdrawal.

### ARTICLE VI. MANAGEMENT AND CONTROL

6.1. Management and Powers. In entering into this Agreement, the intent of each Member is to engage actively in the management of the Alliance, through such Member's director or alternate on the Governing Board. Accordingly, except as otherwise provided in this Agreement, the Members, through their directors on the Governing Board, shall have full, complete and exclusive authority, power and discretion to: (a) manage and control the property and affairs of the Alliance, (b) make all decisions regarding such matters; and (c) perform any and all other acts or activities customary or incident to the management of the Alliance's business, property and affairs.

6.1.1. The Governing Board shall be the "administering agency" and the "fiscal agent" as those terms are used in the JPA Act.

6.1.2. The Governing Board shall be the "regional government" as that term is used in the LED Act.

6.2. Governing Board: Appointment, Voting, Meetings.

6.2.1. All powers of the Alliance shall be exercised by or under the authority of, and the business and affairs of the Alliance shall be managed under the direction of, the Governing Board.

6.2.2. Each Member shall designate in writing, one director, and one alternate to represent such Member on the Governing Board. Any Member may replace the director or alternate at any time effective upon notice to all the other Members and the Alliance.

6.2.3. Each director of the Governing Board shall be entitled to vote in person (including by telephone), on all matters coming before the Governing Board, and in each instance shall have a vote equal to the percentage interest represented by their Alliance Member.

6.2.4. Any Governing Board director shall be entitled to ratify any action taken at any Governing Board meeting at which such director was not present by delivering a written ratification of such action to the secretary of the Alliance within 14 days after such meeting.

6.3. Liability of Directors. Each Director shall carry out their duties in good faith, in a manner that is in the best interest of the Members, and with such care as ordinarily prudent director in a like position would use under the circumstances.

6.4. Meetings of Governing Board.

6.4.1. Date, Time and Place of Meetings of Governing Board; Secretary. Meetings of the Governing Board, may be held at a place within the State of New Mexico as determined by a majority. No annual or regular meetings of Members are required. The chairperson shall preside at each meeting of the Governing Board. The secretary shall attend all meetings of the Governing Board; and shall prepare minutes of such meetings, which shall be placed in the minute books of the Alliance.

6.4.2. Power to Call Meetings. Meetings of the Governing Board may be called by the chairperson, or upon written request of any Governing Board director.



6.4.3. Notice of Meeting. Written notice of a meeting of the Governing Board shall be sent or otherwise given to each director not less than two (2) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

6.4.4. Open Meetings and Manner of Giving Notice. Conduct and notice of any meeting of the Governing Board shall be in compliance with the New Mexico Open Meetings Act, §§ 10-15-1 to 10-15-4 NMSA 1978 Comp., and any applicable requirements of the New Mexico Public Records Act, §§ 14-3-1 to 14-3-25 NMSA 1978.

6.4.5. Quorum. The presence of a majority of Governing Board directors shall constitute a quorum at a meeting of the Governing Board.

6.4.6. Governing Board Action. Except for those matters for which this Agreement specifies that a unanimous vote is required, the Governing Board may only act via a Majority vote.

## 6.6. Officers.

6.6.1. Appointment of Officers. The Governing Board shall appoint officers of the Alliance, who shall have the authority to manage affairs of the Alliance on a day-to-day basis, subject to the approval and control of the Governing Board. The Governing Board may appoint officers at any time. The officers of the Alliance shall include a chairperson, a treasurer, and a secretary elected by a Majority of Directors from among the directors of the Governing Board. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Governing Board. The officers shall not be compensated for their service as officers, except to the extent that expenses related to travel, including *per diem* costs, are approved in advance by the Governing Board.

### 6.6.2. Removal, Resignation and Filling of Vacancy of Officers.

6.6.2.1. Any officer may be removed, either with or without cause, by the Governing Board at any time. Any such action shall have no effect on the status of a Member's representative on the Governing Board.

6.6.2.2. Any officer may resign at any time by giving written notice to all of the Governing Board directors. Any resignation shall be effective upon delivery, or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective.

6.6.2.3. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to such office.

6.6.3. Duties and Powers of the Chairperson. The chairperson shall be elected by the Governing Board from among its directors. The chairperson shall preside at meetings of the Governing Board, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Governing Board or prescribed by this Agreement. The chairperson shall execute all contracts.

6.6.4. Duties and Powers of Secretary.

6.6.4.1. The secretary shall attend all meetings of the Governing Board, and shall record all the proceedings of the meetings in a minute book to be kept for that purpose. The secretary shall give, or cause to be given, notice of all meetings of the Governing Board and shall perform such other duties as may be prescribed by the Governing Board.

6.6.4.2. The secretary shall keep, or cause to be kept all documents as may be required under New Mexico law. The secretary shall perform such other duties and have such other authority as may be prescribed elsewhere in this Agreement or from time to time by the Governing Board.

6.6.5. Duties and Powers of the Treasurer.

6.6.5.1. The treasurer shall be the chief financial and accounting officer and treasurer of the Alliance.

6.6.5.2. The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Alliance, including accounts of its assets, liabilities, receipts, and disbursements. The books of account shall at all reasonable times be open to inspection by any Member.

6.6.5.3. The treasurer shall have the custody of the funds of the Alliance, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Alliance, shall deposit all moneys and other valuable effects in the name and to the credit of the Alliance in such depositories as may be designated by the

Governing Board, and shall provide a monthly report of accounts to all Members.

6.6.5.4. The treasurer shall disburse the funds of the Alliance as may be ordered by the Governing Board, taking proper vouchers for such disbursements, and shall give to the Governing Board an account of all the Alliance's transactions and of the financial condition of the Alliance.

6.6.5.5. The treasurer shall perform such other duties and shall have such other responsibility and authority as may be prescribed elsewhere in this Agreement or from time to time by the Governing Board.

6.6.6. **Liability of Officers.** Each Officer shall carry out their duties in good faith, in a manner that is in the best interest of the Members, and with such care as ordinarily prudent officer in a like position would use under the circumstances.

6.7. **Limitations on Authority of Members, Governing Board and Officers.**

6.7.1. Notwithstanding any other provision of this Agreement, no officer or director shall have the authority to cause the Alliance to incur any debt or liability, or to execute on behalf of the Alliance any contract, agreement, document, instrument, note, deed, mortgage, deed of trust, or other agreement or instrument of conveyance or indebtedness (or series of any such agreements or instruments) except as otherwise approved by the Governing Board.

6.7.2. As provided in §11-1-4 NMSA 1978 Comp (as amended), the Members, Governing Board, directors and officers shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters pertaining to the Venture.

6.7.3. Notwithstanding any other provision of this Agreement, and in addition to the provisions of Section 6.4.4. of this Agreement, the Members, Governing Board, and Officers shall comply with:

- (a.) All laws applicable to public funds under the laws of the State of New Mexico.
- (b.) The New Mexico Procurement Code.
- (c.) The JPA Act.
- (d.) The LED Act.

6.7.4. Although it is not anticipated, in the event the Board chooses to provide aid to a qualifying entity under the LED Act, the Board shall comply with the provisions of the Local Economic Development Ordinance enacted by each member. In the event of a conflict, the Board shall determine which provision shall control by a Majority vote.

6.7.5. In the event of any inconsistency between New Mexico law and this Agreement, the terms of New Mexico law shall prevail.

## ARTICLE VII. RECORDS; REPORTING TO MEMBERS

### 7.1. Books and Records.

7.1.1. The books and records of the Alliance shall be kept in accordance with the accounting methods required for municipalities and counties under New Mexico law.

7.1.2. The books and records of the Alliance shall be open to inspection in accordance with the requirements of New Mexico law.

7.2. Reports. The Governing Board shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the Members such reports and accounting as the parties hereto may reasonably request.

## ARTICLE VIII. DISSOLUTION AND WINDING UP

8.1. Conditions of Dissolution. The Alliance shall dissolve upon the occurrence of any of the following events:

8.1.1. The approval of Governing Board directors representing a majority Interest;

8.1.2. At any time when there are no Members;

8.1.3. The entry of a decree of judicial dissolution under the Act; or

8.1.4. The Eddy-Lea Energy Alliance has failed to be selected by the Department of Energy for the award of a site-study contract (after the Department of Energy has announced contract awardees) or subsequently is not selected by the Department of Energy as a preferred

site for GNEP facilities, following the approval of Governing Board directors representing a majority Interest.

8.2. **Winding Up.** Upon the dissolution of the Alliance, the Alliance's assets shall be disposed of and its affairs wound up. The Alliance shall give written notice of the commencement of the dissolution to all of its known creditors.

8.3. **Order of Payment of Liabilities Upon Dissolution.** After determining that all the known debts and liabilities of the Alliance have been paid or adequately provided for, the remaining assets shall be distributed to the various local government members in the proportion to the contribution made by each during the period of the Agreement pursuant to Section 11-1-4 (F) NMSA 1978 Comp.

#### ARTICLE IX. INDEMNIFICATION AND INSURANCE

9.1. **Liability.** No Party hereto shall be responsible for liability incurred as a result of one of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act (as amended).

9.2. **Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain any suit for any claim whatsoever pursuant to the provisions of this Agreement.

9.3. **Insurance.** The Governing Board shall obtain and carry public liability insurance coverage (including directors and officers coverage) consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 et seq. and with combined single limits of no less than \$1,050,000. The expense of obtaining and maintaining the required insurance shall be included in the annual budget of the Governing Board. The insurance shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to any Party at the Party's request.

9.4. **Amendment, Repeal or Modification.** Any amendment, repeal or modification of any provision of this Article IX shall not adversely affect any right or protection of a Governing Board member, officer, or employee of the Alliance existing at the time of such amendment, repeal or modification.

ARTICLE X.  
MISCELLANEOUS

10.1. Amendments. All amendments to this Agreement must be in writing and signed by all Members. In the absence of any opinion of counsel as to the effect thereof, no amendment to this Agreement or the Articles shall be made which violates the law or is likely to cause the Alliance to be taxed as a corporation.

10.2. Waiver of Partition. Each of the Members irrevocably waives any right to maintain any action for partition with respect to property of the Alliance.

10.3. Notices. Except as otherwise expressly provided in this Agreement, any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient party either (a) in person, (b) by nationally recognized overnight delivery service, (c) by facsimile equipment providing written confirmation of successful transmission, (d) by United States Certified Mail, return receipt requested, or (e) by electronic mail. Notices delivered in person or sent by facsimile, electronic mail, or overnight delivery service shall be effective upon delivery. Notices sent by Certified Mail shall be effective on the date shown on the return receipt as the date of delivery or on the final date on which the Post Office certifies that it was unable to deliver. Notices to any Member shall be sent to the address, facsimile number, or electronic mail address of such Member on file with the secretary. Any Member may change the address or facsimile number to which notices should be sent by giving notice of such change to all the other Members and the secretary.

10.4. Further Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform each and all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

10.5. Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or have any force or effect whatsoever.

10.6. Rules of Construction; Statutory References. Whenever in this Agreement the context so suggests, references to the masculine shall be deemed to include the feminine, references to the singular shall be deemed to include the plural, and references to "or" shall be deemed to be disjunctive but not necessarily exclusive. Any reference to the LLC Act, NMAC, or other statutes or laws will

include all amendments, modifications, or replacements of the specific sections and provisions concerned.

10.7. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.8. Interpretation. No provision of this Agreement shall be construed in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

10.9. Exhibits. All exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

10.10. Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby.

10.11. Reliance on Authority of Person Signing Agreement. Neither the Alliance nor any other Member will be required to determine the authority of any individual signing this Agreement on behalf of such entity to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual.

10.12. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state).

All of the Members of Eddy-Lea Energy Alliance LLC, a New Mexico limited liability company, have executed this Agreement, effective as of the Effective Date.

SIGNATURES APPEAR ON FOLLOWING PAGES.

Harry Teague  
Harry Teague, Organizer  
Chairman, Lea County Commission

ATTEST: Melinda Hughes  
Lea County Clerk

By: Ange Borge  
Deputy

A circular seal for the County Clerk of Lea County, New Mexico. The seal features the word "SEAL" in large, bold, capital letters in the center. The outer ring of the seal contains the text "COUNTY CLERK OF LEA COUNTY, NEW MEXICO".



[SIGNATURE PAGE FOR EDDY COUNTY]

Eddy County Commission

By: *Lucky Briggs*  
Lucky Briggs  
Chairman

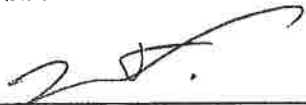
ATTEST: Jean Blenden  
Eddy County Clerk

By: *Jean Blenden*

[SIGNATURE PAGE FOR CITY OF HOBBS]



City of Hobbs

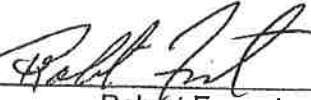
By:   
Monty D. Newman  
Mayor

ATTEST: Jan Fletcher  
City Clerk

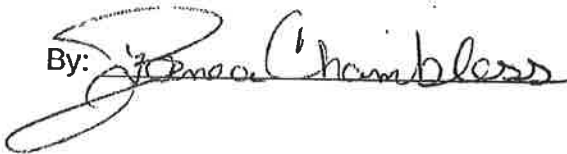
By: 

[SIGNATURE PAGE FOR CITY OF CARLSBAD]

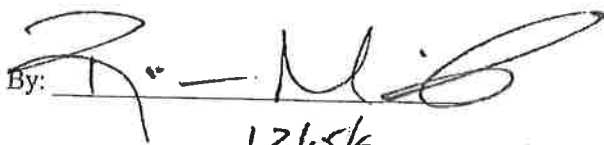
City of Carlsbad

By:   
Robert Forrest  
Mayor

ATTEST: Ranea Chambless  
City Clerk

By: 

NEW MEXICO FINANCE AND  
ADMINISTRATION DEPARTMENT

By:  A handwritten signature in black ink, appearing to be "R. M. B.", written over a horizontal line.

12/15/06

  
12/14/06

**EXHIBIT A**

**INTEREST AND ADDRESSES  
OF THE MEMBERS OF  
EDDY-LEA ENERGY ALLIANCE LLC**

**AS OF \_\_\_\_\_, 2006**

<u>Member's Name</u>	<u>Member's Address, Electronic Mail Address, and Facsimile Number</u>	<u>Member's Percentage Interest</u>
Eddy County Commission	101 W. Greene Street Carlsbad, New Mexico 88220 c/o: W. "Lucky" Briggs <a href="mailto:lbriggs@co.eddy.nm.us">lbriggs@co.eddy.nm.us</a> 505-234-1835	25%
Lea County Commission	100 N. Main, Lovington, New Mexico 88260 c/o: Harry Teague <a href="mailto:harry.teague@teacoenergy.co">harry.teague@teacoenergy.co</a> Fax: 505-393-9889	25%
City of Carlsbad	101 N. Halagueno, Carlsbad, New Mexico 88221 c/o: Bob Forrest <a href="mailto:bobforrest@carlsbadnm.com">bobforrest@carlsbadnm.com</a> Fax: 505-885-1101	25%
City of Hobbs	300 Turner Hobbs, NM 88240 c/o: Monty Newman <a href="mailto:mnewman@hobbsnm.org">mnewman@hobbsnm.org</a> Fax: 505-391-7876	25%

**MINUTES OF THE MEETING OF THE  
BOARD OF DIRECTORS OF THE  
EDDY-LEA ENERGY ALLIANCE, LLC  
FRIDAY, DECEMBER 17, 2010**

A meeting of the Board of Directors of Eddy-Lea Energy Alliance, LLC, was held at the EDC of Lea County, 200 E. Broadway Suite A201, Hobbs, New Mexico.

**Call to order and roll call**

President Johnny Cope called the meeting to order at 1:10 pm.

**Attending:** Johnny Cope, President  
John Heaton, Vice President  
Jack Volpato, Secretary/Treasurer  
Jim Maddox,

**Absent:** None

**Also present:** Roxanne Cara  
Dale Janaway  
Allen Sartin  
Gary Don Reagan  
Gary Schubert  
Monty Newman  
Sam Spencer  
Gregg Fulfer  
Kathi Bearden  
Carroll Leavell  
Ernest Sterling



### **Approval of Minutes**

Minutes historically have been recorded by Larry Hanna, Attorney at Law. His office was contacted and a copy of the last recorded meeting minutes, Monday, February 16, 2009 were acquired.

### **Financials**

A discussion followed of property tax, insurance, and accounting fees. Currently there are sufficient funds in reserve in the amount of \$5,000 to cover current year demands. Each of the four entities will contribute towards the working capital.

### **Election of Officers**

Following a motion by Jim Maddox and seconded by John Heaton, Johnny Cope was elected Chairman, John Heaton was elected Vice-President and Jack Valpato was elected secretary-treasurer.

At the conclusion of elections, Johnny Cope continued to preside over the meeting.

### **Meeting Dates**

The By-Laws indicate no regular meetings are required, they will be requested by the President as needed.

### **GNEP Property and Blue Ribbon Commission Visit**

John Heaton indicated that the GNEP site is ideal for an interim storage facility. Members of the Blue Ribbon Commission are scheduled to tour the WIPP facility January 26 & 27. A scientific presentation will be provided to the community, which at that time will be open for public comment.

John Heaton indicated three items he would like to see discussed with the Blue Ribbon Commission; 1) Interim Storage, 2) Expansion of WIPP to include high level waste, and 3) Experimental room for heat studies which would include a withdraw area. John Heaton along with Dr. Steve McCleery would organize a team for public comment.

### **Other Business**

The Committee was presented a proposal by the Dawson Geophysical Company for a seismic study to be done. Discussion on this proposal was tabled.

DRAFT



**Adjournment**

There being no further discussion or comments, Jim Maddox moved to adjourn the meeting. John Heaton seconded the motion. The motion was approved unanimously. The meeting adjourned at 3:30 pm.

EDDY-LEA ENERGY ALLIANCE, LLC

By: \_\_\_\_\_  
Johnny Cope, President

ATTEST: Jack Valpato, Secretary-Treasurer  
Eddy-Lea Energy Alliance, LLC

By: \_\_\_\_\_

DRAFT



Nick Maxwell <nickray07@gmail.com>

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## ELEA Minutes

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Nick Maxwell <nickray07@gmail.com>  
To: IPRA-ELEA@leacounty.net

Wed, Jul 25, 2018 at 8:17 AM

Eddy Lea Energy Alliance LLC,

I wish for an inspection of my ELEA minutes of board meetings dated between and including 2006 through 2009.

Thank you,

Nick Maxwell  
575.441.3560  
P.O. Box 1064  
Hobbs, NM 88241





Nick Maxwell <nickray07@gmail.com>

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## IPRA Respond - ELEA - Maxwell - 07252018

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John Caldwell <jcaldwell@leacounty.net>  
To: Nick Maxwell <nickray07@gmail.com>  
Cc: Chip Low <clow@leacounty.net>

Thu, Aug 2, 2018 at 11:15 AM

Mr. Maxwell,

This responds to your request under the New Mexico Inspection of Public Records Act received by email dated July 25, 2018. You requested "...ELEA minutes of board meetings dated between and including 2006 through 2009." I initially responded on July 25, 2018, indicating that additional time would be needed.

I have not located any responsive documents.

John W. Caldwell

County Attorney

T: 575.396.8604

100 N. Main, 4<sup>th</sup> Floor

Lovington, NM 88260

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

**CITY OF JAL  
RESOLUTION 2018-22**

**OPPOSING CONSTRUCTION OF AN INTERIM  
HIGH-LEVEL NUCLEAR WASTE SITE IN AND AROUND LEA COUNTY**

**WHEREAS**, Eddy and Lea Counties in NM are targeted for forty years or more of storage for the nation's most dangerous nuclear reactor waste, which could lead to dangerous de facto permanent dumps, and importing high-level radioactive waste would put millions of people at risk for financial and health impacts from potential accidents or incidents; and

**WHEREAS**, Holtec Inc. has applied to the Nuclear Regulatory Commission for a license to store up to 100,000 tons of 'spent' nuclear reactor fuel, which is all of the nation's most dangerous nuclear waste, in temporary in-ground storage in Lea County, SE New Mexico; and

**WHEREAS**, transporting high-level radioactive waste for the purpose of consolidated storage would unnecessarily increase risks of accidents or terrorism activity, and the waste would travel through the Southeastern New Mexico region, where the City of Jal is located; and

**WHEREAS**, high-level radioactive waste should remain secured at or near the site of generation and be transported only once, when a scientifically viable permanent disposal site becomes available; and

**WHEREAS**, high-level radioactive waste consists of irradiated (spent) fuel from nuclear power reactors and/or weapons production that includes uranium, plutonium and other radioactive elements that must be isolated for thousands of years or longer. The waste on a single train car would likely contain as much plutonium as was in the bomb dropped on Nagasaki; and

**WHEREAS**, exposure to radioactivity is known to lead to birth defects, genetic damage, and cancers and unshielded exposure to high-level radioactive waste could give a lethal dose; and

**WHEREAS**, our lives, land and aquifers must be protected from radioactive contamination which could result from accidents, radiation releases or leaks, or terrorist actions during the thousands of high-level radioactive waste shipments that would occur for a period of 24 years if consolidated storage is licensed; and

**WHEREAS**, an accident releasing only a small amount of radioactivity could contaminate a 42-square mile area. A 1985 DOE study found that cleanup could cost \$620 million in a rural area. Today, the amount for cleanup could be much more; and

Res 2018-22



**WHEREAS**, small, rural communities with largely aging populations and few resources to fight back are being targeted to host the radioactive waste dumps, an example of extreme environmental injustice; and

**WHEREAS**, many states have previously rejected consolidated high-level radioactive waste storage or disposal, and Texas farmers and ranchers concerned about the Ogallala Aquifer successfully defeated a proposed Deaf Smith County nuclear disposal site in the 1980's.

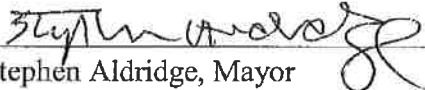
**NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF JAL:**

That the City does not support or consent to the consolidated interim storage of radioactive waste in New Mexico, or the transportation of high-level radioactive waste on our railways or highways for the purpose of consolidated storage or permanent disposal of high-level radioactive waste in New Mexico

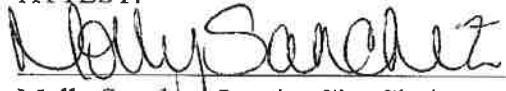
**ADOPTED THIS 29th DAY OF May 2018.**

CITY OF JAL, NEW MEXICO



  
Stephen Aldridge, Mayor

ATTEST:

  
Molly Sanchez, Interim City Clerk

Environmental Racism an Active Factor in the Siting and White Privilege Associated with the  
Holtec International HI-STORE Consolidated Interim Storage Facility Project

Myrriah Gómez, Ph.D.

September 7, 2018

New Mexico uniquely experiences radioactive coloniality because of its 76-year history with the nuclear industry and the stratification of race, politics, and social hierarchies that have resulted. Beginning with the siting of Site Y of the Manhattan Project in 1942, the racial, political, and social hierarchies created by nuclear colonialism overwhelmingly value White, upper class, businessmen (specifically) and military personnel, placing people of color and poor Whites under the erasure of the nuclear industrial complex. New Mexico is the only state in the U.S. with what is considered a cradle-to-grave nuclear industry, meaning that every process of building nuclear weapons and sustaining nuclear energy occurs or has occurred in New Mexico<sup>1</sup>. The New Mexico Environment Department lists 22 permitted hazardous waste sites in the state. This does not account for unpermitted sites, which also exist, including multiple hazardous waste sites related to uranium mining, milling, and processing. Three of these sites specifically relate to nuclear energy: Los Alamos National Laboratory, Sandia National Laboratory, and the Waste Isolation Pilot Plant (“Permitted Waste Facilities”). Now a fourth site, the Holtec International HI-STORE Consolidated Interim Storage Facility Project, is being proposed in southeastern New Mexico.

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<sup>1</sup> Public Service Company of New Mexico (PNM), the state’s largest electricity provider, which serves over 500,000 New Mexico residential and business customers in various parts of the state, has “just over 10% ownership in” Palo Verde Nuclear Generating Station (“Nuclear Power”). Thus, although there is not a nuclear power plant physically located in New Mexico, New Mexicans financially support nuclear power, often without realizing it.



However, many of the more recent siting decisions that have resulted in new sectors of the nuclear industrial complex in New Mexico have resulted because people in power have tempted poor communities overwhelmingly comprised of people of color with economic opportunities, many of which have resulted in death and disease, as was/is the case with uranium mining across indigenous communities in New Mexico. Eventually, New Mexicans, especially indigenous people, are blamed for this fate of willful participation, ultimately driving the status quo for expanding the nuclear industry in New Mexico, granting more federal funding to the state, thus making New Mexico more dependent on the federal government. This process is not limited to government funding; it also includes private industry. For example, because New Mexico has a transuranic waste facility in southern New Mexico (the Waste Isolation Pilot Plant), near both the U.S./Mexico and New Mexico/Texas borders, decision makers are now considering it a logical location for a high-level Consolidated Interim Storage (CIS) facility. The reality, though, is that many New Mexicans have voiced opposition to this facility, including the County of Bernalillo, the City of Albuquerque, the City of Jal, the City of Las Cruces, and the Municipality of Lake Arthur, and Additionally, the New Mexico Cattle Growers' Association passed their own resolution in opposition to Holtec/Eddy-Lea Energy Alliance (ELEA) CIS facility ("New Mexico Cattle Growers"). Additionally, New Mexicans have voiced opposition during public scoping meetings and directly to the Nuclear Regulatory Commission (NRC). New Mexicans are saying they *do not* want Holtec International HI-STORE Consolidated Interim Storage Facility Project in New Mexico.

I attest that the proposal for the Holtec International HI-STORE Consolidated Interim Storage Facility Project is an example of environmental racism based on studies defining and

documenting environmental racism across, in particular, the United States. For the purposes here, I define environmental racism using Benjamin Chavis's definition:

Environmental racism is racial discrimination in environmental policymaking. It is racial discrimination in the enforcement of regulations and laws. It is racial discrimination in the deliberate targeting of communities of color for toxic waste disposal and the siting of polluting industries. It is racial discrimination in the official sanctioning of the life-threatening presence of positions and pollutants in communities of color. And, it is *racial discrimination in the history of excluding people of color from the mainstream environmental groups, decisionmaking [sic] boards, commissions, and regulatory bodies* (Chavis 4, my emphasis).

This expansive definition is not limited to examining the siting of toxic waste facilities, which is a common shortcoming in the methodology of environmental racism studies. Rather, this definition, as well as my forthcoming analysis, considers of the effects of eliding people of color from decision-making processes concerning such a nuclear waste facility, including how groups, boards, commissions, and regulations are comprised and facilitated.

### **Methodology**

While environmental racism was coined before the publication of the landmark study *Toxic Wastes and Race in the United States*, this report, published by the Commission for Racial Justice of the United Church of Christ in 1987, laid the foundation for the methodology with which to examine the connection(s) between race, place, and the disproportionate targeting of communities of color for toxic waste facilities. The report argued that, “[R]acial and ethnic communities become particularly vulnerable to those who advocate the siting of a hazardous waste facility as an avenue for employment and economic development. Thus, proposal that



economic incentives be offered to mitigate local opposition to the establishment of new hazardous waste facilities raise disturbing social policy questions” (xii). The Commission for Racial Justice defines “hazardous wastes” according to the Environmental Protection Agency (EPA) definition, “which is by-products of industrial production, which present particularly troublesome health and environmental problems” (xiii) that must be stored or disposed of in a facility. The proposed CIS facility falls under those parameters. Additionally, the report states that, “The Commission for Racial Justice concludes that, indeed, race has been a factor in the location of commercial hazardous waste facilities in the United States” (xv). Thus, adhering to a major tenet of the definition of environmental racism as it was first articulated, I demonstrate that the siting of the Holtec International CIS facility is an example of environmental racism based heavily on the racial and socioeconomic disparities in the proposed-facility’s location in southeastern New Mexico, which is compounded by the legacy of nuclear coloniality in New Mexico, including the lack of representation of people of color throughout all stages of decision making. This siting, and the argument for environmental racism that accompanies it, fits into the larger methodological framework for analyzing environmental racism across the United States by correlating the location of commercial hazardous waste facilities to the racial and socioeconomic disparities in nearby communities. Rather, by applying an environmental justice framework, which adopts a public health model of prevention, we can prevent the building of the Holtec International CIS facility and not wait for proof that harm is, in fact possible. By eliminating the threat of harm, we shift the paradigm for dealing with the disproportionate targeting of minority communities for hazardous waste facilities, such as a high-level nuclear waste facility being proposed in southeastern New Mexico.

Additionally, I want to call attention to the fact that siting is not the only aspect that renders this proposed project as environmental racism. Geographer Laura Pulido examines white privilege as a more structural and spatial concept for understanding how environmental racism functions. She states, “White privilege allows us to see how environmental racism has been produced—not only by consciously targeting people of color [...] but by the larger processes of urban development, including white flight, in which whites have sought to fully exploit the benefits of their whiteness” (33). A closer analysis of the proposed Holtec International CIS facility reveals that the economic appeal of the site was created by the “existence of a racial hierarchy,” one that “reproduced racial inequality, and undermines the well-being of that community” (Pulido 16). As I emphasized earlier, an important aspect of environmental racism is the absence of people of color from decision-making boards, commissions, and regulatory bodies. That being said, I highlight the point that all eight voting members of the Eddy-Lea Energy Alliance (ELEA) in addition to its three administrative staff members are all ethnically White. It is racist that Hispanics/Latinos, who comprise well over 50% of Eddy-Lea Counties, are disproportionately represented. In fact, they are not represented at all. Whereas siting is a critical factor in this case, we have to analyze the complicated definition(s) of race, which suggests, first and foremost, an unfair hierarchy of power. To do this will allow us to more holistically examine the environmental racism at play in the proposal. Thus, the proposal is both overt discrimination (siting) and covert discrimination (power structures).

### **Race and Ethnicity in Eddy and Lea Counties**

Although the population seen representing the interests of the Eddy and Lea Counties is overwhelmingly white, Eddy and Lea Counties are predominantly comprised of communities of color. This fact warrants detailed examination by the Nuclear Regulatory Commission (NRC) in

that these populations have been either omitted from the decision-making process or quieted, in various ways.

The proposed facility is sited for Lea County, 32 miles east of Carlsbad (Eddy County) and 34 miles west of Hobbs (Lea County (2)). However, by acknowledging the largest cities near the proposed facility, the scoping report fails to acknowledge the people who comprise other parts of Lea County, including: Buckeye, Caprock, Eunice, Hobbs, Humble City, Jal, Knowles, Lovington, McDonald, Maljamar, Monument, Oil Center, and Tatum. Eunice has a population of 2,922; Jal has a population of 2,047 people, and Lovington has a population of 11,009 people (“About Lea County”).

The numbers reflecting racial and ethnic minorities in Lea County are much higher than Eddy County. In Lea County, 58.5% of the population identifies as Hispanic or Latino (higher than the 18.1% national percentage). Additionally, 4.4% of the population identifies as Black or African American and 1.9% identifies as American Indian or Alaska Native (higher than the national 1.3%). In total, 64.8% of the population in Lea County identifies as people of color, compared to the 35.8% who identify as White alone, not Hispanic or Latino (lower than the national 60.7%). We must consider 16.1% of that population that is foreign born and 41.5% of households speak a language in addition to English.

Similarly, but not as high as in Lea County, in Eddy County, 49.1% of the population identifies as Hispanic or Latino (higher than the 18.1% national percentage). Additionally, 1.9% of the population identifies as Black or African American and 2.4% identifies as American Indian or Alaska Native (higher than the national 1.3%). In total, 53.4% of the population in Eddy County identifies as people of color, compared to the 47.0% who identify as White alone, not

Hispanic or Latino (lower than the national 60.7%). We must consider 6.1% of that population that is foreign born and 26.0% of households speak a language in addition to English.

### **Siting as Environmental Racism in the Proposed Holtec Site**

The long-term implications of moving 173,600 metric tons of commercial irradiated nuclear fuel to southeastern New Mexico are unforeseeable, given the lack of plans for a permanent high-level waste facility after the cancelation of a racist plan to move the nation's high-level nuclear waste to Yucca Mountain. Without a long-term plan, high-level radioactive waste would remain in southeastern New Mexico longer than the proposed plan addresses.

Pursuant to Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), and the Interagency Memorandum of Understanding on Environmental Justice (August 4, 2011) mandates that federal agencies identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process.

In their December 2017 "Environmental Report on HI-STORE CIS Facility," Holtec International dedicates Chapter 4 to discussing "Environmental Impacts," of which section 4.8 is dedicated to "Socioeconomics and Environmental Justice." This section begins by forecasting potential economic benefits, creating a bias at the onset of their evaluation. The report states, "Environmental effects of any new construction, facility improvements required, or infrastructure overloads that result from such a population increase should also be evaluated as induced effects of the development" ("Environmental Report"). The second paragraph of the section is dedicated to discussing potential economic benefits, which is developed upon the idea of bringing in new people in order to pressure housing, schools, water supply, and infrastructure,

specifically. This presents a biased lens with which Holtec is examining socioeconomic and environmental justice impacts.

Section 4.8.1 assumes that all direct and indirect jobs that will directly result from the construction phase of the project will be filled by the people already living in the region of influence (ROI). The existing poverty rates for Eddy and Lea Counties are both higher than the national average. In Lea County, 18% of the residents live in poverty. In Eddy County, 15.2% of the population lives in poverty (“Quick Facts”). According to the Center for Poverty Research at the University of California, Davis, “The official poverty rate [in the United States] is 12.7 percent, based on the U.S. Census Bureau’s 2016 estimates” (“What is the Current Poverty Rate”).

#### **Environmental Justice: It Is Not Too Late**

During the First National People of Color Environmental Leadership Summit, held on October 24-27, 1991, delegates drafted and adopted 17 principles of Environmental Justice. These principles continue to serve as a defining document for the movement against environmental injustice and environmental racism. Principle number five states, “Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food” (“Principles”). Multiple groups from the region have mobilized against the Holtec facility. The range of efforts, individually and collectively, I cannot fully express here; they remain consistent and ongoing. The NRC should take note of the petitions and signatures, at least, collected by these groups, which are operating under, primarily, principle five in the question of the Holtec International CIS facility.

Additionally, various cities and towns in New Mexico have passed resolutions opposing the CIS Facility, in addition to the New Mexico Cattle Growers' Association. For example, the City of Jal in Lea County adopted resolution 20018-22, "Opposing Construction of an Interim High-Level Nuclear Waste Site in and around Lea County," in which they state that Eddy and Lea Counties in have been "targeted for forty years or more of storage for the nation's most dangerous nuclear reactor waste, which could lead to dangerous de facto permanent dumps, and importing high-level radioactive waste would put millions of people at risk for financial and health impacts from potential accidents of incidents" ("City of Jal Resolution"). Radioactive waste would travel through Jal in southeastern New Mexico, and the city expresses that, "Small, rural communities with largely aging populations and few resources to fight back are being *targeted* to host the radioactive waste dumps, an example of extreme environmental injustice" ("City of Jal Resolution," my emphasis). This is a prime example of the environmental justice praxis that is occurring around the proposal.

The scoping report does not adequately address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation by these populations. Holtec International, to date, has failed to provide comprehensive communication strategies to inform environmental justice communities.

I am available to discuss my comments. If you have any questions, please contact me at (505) 699-6609 or by email at [myrriahg@unm.edu](mailto:myrriahg@unm.edu).

Myrriah Gómez, Ph.D.

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University of New Mexico

## Works Cited

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City of Jal. “City of Jal Resolution 2018-22 Opposing Construction of an Interim High-Level Nuclear Waste Site in and around Lea Count.” 29 May 2018.

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City of Las Cruces. "Council Action and Executive Summary Ordinance/Resolution #19-017, A Resolution to Oppose the Transport of High Level Nuclear Wastes and the Construction and Operation of Nuclear Waste Storage Facilities in New Mexico.

<http://static1.1.sqspcdn.com/static/f/356082/27957717/1533086623483/Las+Cruces+City+Council+Resolution.pdf?token=2SLqLv95MfMh0gF90D6gEjxpG4A%3D>

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**EDUCATION**

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**Degrees**

- 2014 Ph.D. English, concentration on Latina/o Literature  
The University of Texas at San Antonio. San Antonio, TX
- 2009 English Language and Literature  
University of New Mexico. Albuquerque, NM
- 2007 B.A. English, minor in Professional Writing. Magna Cum Laude  
New Mexico Highlands University. Las Vegas, NM

**Foreign Study**

- 2001 *Decolonizing Knowledge and Power Summer School*  
Barcelona, Spain
- 2008 *Literaria España*. Spain.  
University of New Mexico
- 2006 Educational Exchange. Granada, Nicaragua.  
New Mexico Highlands University
- 2006 Educational Exchange. Granada, Nicaragua.  
New Mexico Highlands University

**PROFESSIONAL EXPERIENCE**

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**Faculty Appointments**

- 2016-present Assistant Professor. Honors College.  
The University of New Mexico.
- 2015-2016 Assistant Professor. Division of Arts and Sciences.  
The University of New Mexico–Gallup.
- 2014-2015 Adjunct Instructor. Department of English.  
Central New Mexico Community College.
- 2013-2015 Adjunct Instructor. Department of Chicana and Chicano Studies.  
The University of New Mexico
- 2015 Adjunct Instructor. Department of History.  
Santa Fe Community College
- 2012-2013 Adjunct Instructor. Department of Humanities, Social Sciences, and Language & Letters.  
Northern New Mexico College.
- 2010-2011 Teaching Assistant. The Writing Program.  
The University of Texas at San Antonio.

- 2007-2009 Teaching Assistant. English Department.  
The University of New Mexico.
- 2006-2007 Peer Mentor (instructor of record). English Department.  
New Mexico Highlands University.

**Research Assistantships**

- 2010 Research Assistant, Ben Olguín, Latin@ War Narratives and Transnational/Transracial Citizenship project, The University of Texas at San Antonio, San Antonio, Texas, Spring 2010.
- 2009 Research Assistant, Sonia Saldivar-Hull, Women's Studies Institute, multiple projects, The University of Texas at San Antonio, San Antonio, Texas, Fall 2009.
- 2007-2008 Graduate Research Assistant, Policy Division, Los Alamos National Laboratory, Los Alamos, NM, June 2007-August 2008.

**PUBLICATIONS**

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**Refereed Single-Author Books**

*Nuclear Nuevo México: Identity, Ethnicity, and Resistance in Atomic Third Spaces.* The University of Arizona Press. Under contract.

**Refereed Journal Articles**

- "Yellow Woman and Yellowcake: Mapping Intersections and Divergences of Hibakusha and Pueblo Women's Transnational Narratives of Survivance." *Frontiers: A Journal of Women Studies*. Submitted.
- "Constructing Chola Cyber-Consciousness: Atomic Third Spaces and the Nuclear Family in *Lunar Braceros 2125-2148*." *Science Fiction Studies*. Submitted.
- "Nuclear Alienation: Carnavalesque Disruptions Relating to Atomic Secrets, Arthur Sze's "The Los Alamos Museum," and Wen Ho Lee's *My Country Versus Me*." *Western American Literature: A Journal of Literary, Cultural, and Place Studies*. Submitted.

**Refereed Book Chapters and Encyclopedia Entries**

- "Erasing *Querencia* from Los Alamos: Racist and Sexualized Portrayals of New Mexican Women and Place in the Television Series *Manhattan*." *Querencia: Essays on the New Mexico Homeland*, edited by Vanessa Fonseca, Spencer Herrera, and Levi Romero, U of New Mexico Press, forthcoming.
- "Tamales" (1,000 words). *Celebrating Latino Folklore: An Encyclopedia of Cultural Traditions*. Ed. Maria Herrera-Sobek. Santa Barbara: ABC-CLIO, 2012. 1060-62. Print.

**Book Reviews**

- "*Testimonios de herederas: New Approached to Theorizing the Archive*." *Chicana/Latina Studies: Journal of Mujeres Activas en Letras y Cambio Social*. Forthcoming.
- "Using Photographs to Weave a Community Tapestry: Faith, Family, and Following Traditions in Patricia Trujillo-Oviedo's *Chimayó*." *La Tolteca* 3:3 (2013): 23-4. Web.

**Reports**

- "Unknowing, Unwilling, and Uncompensated: The Effects of the Trinity Test on New

Mexicans and the Potential Benefits of Radiation Compensation Act (RECA) Amendment,” Tularosa Basin Downwinders Consortium with the New Mexico Health Equity Partnership, February 2017.

## PRESENTATIONS

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### Roundtable Presentations and Invited Lectures

- 2017 “Querencia and Los Alamos: Nuevomexicana/o Homesteaders on the Pajarito Plateau before and after the Manhattan Project,” Aficionados Lecture Series Speaker, Colorado College, Colorado Springs, Colorado, October 2017.
- “Trinity’s Downwinders: Disease and Desecration in the Tularosa Basin.” Aficionados Lecture Series Speaker, Colorado College, Colorado Springs, Colorado, October 2017.
- “Re-Creating the Digital Archive: A Project to Return Nuclear *Testimonios* to Nuevomexicano Communities.” Historias de Nuevo México, Northern New Mexico College, Española, New Mexico, October 2017.
- 2014 “Writing Memoir.” Voces: Youth Writing Institute, National Hispanic Cultural Center, Albuquerque, New Mexico, June 2015 and June 2014.
- “Seven Chicano Deaths: Labor Accidents Resulting in Deaths at the Los Alamos Scientific Laboratory in the 1970s and Their Connection to *Salt of the Earth*.” Santa Fe Community College’s 60<sup>th</sup> Anniversary of *Salt of the Earth*, Santa Fe Community College, Santa Fe, New Mexico, March 27, 2014.
- 2013 “Nuclear Colonization: Racism, Identity Politics, and the Manita/o Telling of the Violent Takeover of the Pajarito Plateau, 1942.” El Centro de la Raza Speaker Series, The University of New Mexico, Albuquerque, New Mexico, October 21, 2013.
- 2012 “Recording Our Histories: The Urgency Behind Documenting Hispana/o Presence in the Manhattan Project,” *Tú eres mí otro yo: A First-Year Experience Faculty and Student Seminar Series*, Northern New Mexico College, Española, New Mexico, September 26, 2012.
- “Nuclear Colonization,” Invited Speaker. HOY Treatment Facility, Española, NM, May 2, 2012.
- “Transformation: Gender and Engendering Change,” Invited Plenary Speaker with Dr. Norma Cantú, Dr. Sharon Navarro, and Dr. Antonia Castañeda. UTSA English Graduate Student Symposium, the University of Texas at San Antonio, San Antonio, Texas, March 31, 2012.
- 2010 “Rebeca, Portia, and The Historical Importance of Crypto-Jewish Women in *The Merchant of Santa Fe*,” Will Around the World: A Symposium on International Shakespeare, Invited Panelist, The University of Texas at San Antonio, San Antonio, Texas, April 16, 2010.

### Refereed Conferences and Presentations

- 2018 “Nuestra Señora del Laboratorio: Constructing Consciousness in the Faceless Guadalupes of Marion C. Martinez,” *Mujeres Activas en Letras y Cambio Social*, El Paso, Texas, August 2018.
- “Nuevomexicana Electras: Locating Decolonial Desire in *Night at the Fiestas*,” 11<sup>th</sup> International Conference on Chicano Literature and Latino Studies. Salamanca, Spain, May 28-30, 2018.

- “El Camino de la culebra: Site Y of the Manhattan Project and the Creation of an Intranational Border in Los Alamos, Nuevo México,” May 23-26, Barcelona, Spain, May 23-26, 2018.
- “Becoming America’s Bikini Bombshell: The Myth of Rita Hayworth and the Able Test Atomic Bomb,” Southwest Popular/American Culture Association, Albuquerque New Mexico, February 2018.
- 2017 “Trinity Downwinders: How the Tularosa Basin Downwinders Consortium Responds to the Effects of the Manhattan Project in South Central New Mexico,” Historias de Nuevo México, Northern New Mexico College, Española, New Mexico, October 2017.
- “Maids in *Manhattan*: Racist, Sexist, and Ahistorical Depictions of New Mexican Women and Place in the Television Show *Manhattan*,” Mujeres Activas en Letras y Cambio Social (MALCS) Summer Institute, Sonoma State University, Sonoma County, California, July 2017.
- “Harboring Transuranic Waste: *Lunar Braceros, 2125-2148*, and the Waste Isolation Pilot Plant (WIPP) in New Mexico,” MELUS, Boston, Massachusetts, April 2017.
- “Social Justice Pedagogies,” 12<sup>th</sup> Annual UNM “Teaching and Social Justice” conference, The University of New Mexico, February 2017.
- 2016 “Na'nizhoozhí: Exposing the Historical and Contemporary Violence in Gallup, New Mexico.” American Studies Association Annual Meeting, Denver, Colorado, November 2016.
- 2015 “Nuclear Mestiza Cyborgs: An Examination of Loyda Martínez’s Whistleblower Status at the Los Alamos National Laboratory.” Mujeres Activas en Letras y Cambio Social, Albuquerque, New Mexico, July 31, 2015.
- 2014 “Nuclear Colonization: Racism, Identity Politics, and the Manita/o Telling of the Violent Takeover of the Pajarito Plateau, 1942.” National Association for Chicana and Chicano Studies, Salt Lake City, Utah, April 11, 2014
- 2012 “Yellow Woman and Yellowcake: Mapping Hibakusha and Pueblo Women’s Transnational Relationships,” Western Literature Association, Lubbock, Texas, November 10, 2012.
- “Nuclear Colonization: Negotiating the Binary of the Hill and the Valley,” Historias de Nuevomexico Conference, Northern New Mexico College, El Rito, New Mexico, October 13, 2012.
- “Exposing Inter-Faces/Interfaces: The Faceless Guadalupe(s) of Marion C. Martínez,” 2012 El Mundo Zurdo: The International Conference on the Life and Work of Gloria E. Anzaldúa, The University of Texas at San Antonio Downtown Campus, San Antonio, Texas, May 19, 2012.
- “A Teleology of Transformation: Rita Hayworth, Gilda, and the Bikini (Atoll) Bombshell,” UTSA English Graduate Student Symposium, “Transformation: Gender and Engendering Change, the University of Texas at San Antonio, San Antonio, Texas, March 31, 2012.
- 2011 “(Re)Modeling the Images of Pueblo Women: Nora Naranjo-Morse, ‘Pearlene,’ and the ‘Olla Maiden’,” COLFA Research Conference, University of Texas at San Antonio, San Antonio, Texas, March 24, 2011.
- 2010 “Before the Bomb, There Were Bean Fields: Tropes and Chronotopes in Los Alamos Poetry by Adán Baca, Arthur Sze, and Peggy Pond Church,” Rice Graduate Student Symposium,

Rice University, Houston, Texas, September 18, 2010.

“*Las hijas de los hidalgos: The Erasure of Mexican Women’s Property Rights in the Novel Caballero*,” The Louisville Conference on Literature and Culture since 1900, Louisville, Kentucky, February 2010.

“Daughters of Transmission: Recovering Crypto-Judaic Practices in New Mexico in *The Merchant of Santa Fe*,” Society for Crypto-Judaic Studies Annual Conference, Phoenix, Arizona, August 2008.

“Chicana/o Literature in the Bilingual and Spanish Heritage Language Classrooms,” 36<sup>th</sup> Annual State Bilingual Conference, New Mexico Association for Bilingual Education (NMABE), Co-presenter, Albuquerque, New Mexico, April 2008.

“A New Chicana: Breaking Stereotypes and Asserting Subjectivity,” Southwest/Texas Pop Culture Association/American Culture Association Annual Conference, Albuquerque, NM, February 2008.

#### **Creative Writing Readings and Presentations**

- 2016 “Homesick” and “La Malinche,” Diversity, Equity, and Inclusion Poetry Reading, The University of New Mexico – Gallup, April 20, 2016.
- 2010 “Brief Memories of Stefania,” Domestic Violence Awareness Month Poetry Reading, The University of Texas at San Antonio, October 28, 2010.

#### **FUNDED GRANTS**

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- 2017 Office of the Vice President for Research, “Voces de Nuveo México/Voices of New Mexico: Documenting the Cultural Contributions of the ‘Baby Boomer’ Generation in New Mexico,” The University of New Mexico, for 2018, Co-recipient with Dr. Anna Nogar, UNM Department of Spanish and Portuguese.
- 2017 Center for Regional Studies Faculty Development Award Faculty Research Initiatives, “Trinity Downwinders: Narratives of the Disease and Distrust in Southern New Mexico,” The University of New Mexico, for Spring 2017. \$4238.86.
- 2016 Faculty-Led Study Abroad Grant, Study Abroad Allocations Committee, “Conexiones,” The University of New Mexico, for Summer 2016. \$16,500.
- Program Development Grant, Study Abroad Allocations Committee, “Conexiones,” The University of New Mexico, for Summer 2016. \$3420.
- 2015 The University of New Mexico Gallup Mini-Grant Recipient, 2015.

#### **HONORS, AWARDS, AND SPECIAL RECOGNITION**

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##### **Service Awards**

- 2017 Sarah Belle Brown Community Service Award. The University of New Mexico, 2017. Nominee.

##### **Teaching Awards**

- 2018 UNM Center for Teaching and Learning New Faculty Teacher of the Year, 2017-2018. Nominee.
- 2015 PNMGC Faculty of Color Award for Teaching, The University of New Mexico, 2015.

##### **Fellowships and Scholarships**

- 2011 Ford Foundation Predoctoral Fellowship

2009 University of Texas at San Antonio English Department Doctoral Fellowship  
 2007 New Mexico Higher Education Department Graduate Scholarship

### **COURSES TAUGHT**

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#### **The University of New Mexico**

2016-present Atomic Bomb Culture  
 Legacy of Aztlán  
 Chicana/o Civil Rights Movements and Social Activism  
 Nuclear Nuevo México

2013-2015 Introduction to Comparative Global and Ethnic Societies  
 Introduction to Chicana and Chicano Studies  
 Chicana-o/Latina-o Civil Rights

2007-2009 English 102: Expository Writing  
 English 101: Analysis and Argument  
 English 101 Intercession Workshop Instructor

#### **Study Abroad- The University of New Mexico**

2017 Conexiones Spain (Time, Space, and Culture)

#### **The University of New Mexico – Gallup**

2015-2016 Developmental English II  
 Writing Standard English  
 Accelerated Composition

#### **Santa Fe Community College**

2015 U.S. History

#### **Central New Mexico Community College**

2014-2015 Analytic Writing  
 College Writing

#### **Northern New Mexico College**

2012-2013 The History and Culture of Northern New Mexico  
 English 111: Composition I (Online)  
 El Puente/Summer Bridge—English

#### **The University of Texas at San Antonio**

2010-2011 English 1013: Freshman Composition I  
 English 1023: Freshman Composition II

#### **New Mexico Highlands University**

2006-2007 English 100 Workshop for English 100: Reading and Writing

### **UNIVERSITY AND PROFESSIONAL SERVICE**

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#### **The University of New Mexico**

2018-present National Trails Intermountain Region-University of New Mexico, Faculty Advisory  
 Committee, The University of New Mexico, Albuquerque, NM, January 2018- present.

2017-present American Studies Department, Affiliated Faculty, The University of New Mexico,

- Albuquerque, NM, Spring 2017-present.
- 2016-present UNM Sanctuary Campus Working Group, The University of New Mexico, Albuquerque, NM, 2016-present.
- Southwest Hispanic Research Institute (SHRI), Affiliated Faculty, The University of New Mexico, Albuquerque, NM, Fall 2016-present.
- Curriculum Committee, Honors College, The University of New Mexico, Albuquerque, NM, Fall 2016-present.
- 2015 “Sing Our Rivers Red” Co-Organizer, The University of New Mexico, Albuquerque, NM, March 2015.
- Faculty Advisor, Chicana and Chicano Studies Student Organization, The University of New Mexico, Albuquerque, NM, 2014-2015
- Faculty Mentor for Divana Olivas, El Centro de la Raza El Puente Fellows Program, The University of New Mexico, Albuquerque, NM, 2014-2015.
- 2007-2008 English 101 E-Portfolio Project, Department of English. Spring 2008.
- The University of New Mexico Peer Mentoring for Graduate Students of Color, 2007-2008.
- High School Seniors Invited Instructor, New Mexico English Teacher Exchange Program, The University of New Mexico/South Valley Academy, Albuquerque, NM, Spring 2007.

**The University of New Mexico - Gallup**

- 2015-2016 Diversity Film Series Co-Chair, The University of New Mexico – Gallup, Gallup, NM, Spring 2016.
- “UNM-Gallup Diversity, Equity, and Inclusion Summit” Executive Director’s Planning Committee, The University of New Mexico – Gallup, Gallup, NM, Spring 2016.
- “Sing Our Rivers Red” Women’s History Month Event Coordinator, The University of New Mexico – Gallup, Gallup, NM, March 2016.
- Constitution and By-laws Committee, The University of New Mexico – Gallup, Gallup, NM, Fall 2015-Spring 2016.
- Tenure and Rank Committee, The University of New Mexico – Gallup, Gallup, NM, Fall 2015.

**University of Texas at San Antonio**

- 2010-2011 Graduate Student Representative. Graduate Programming Committee, 2010-2011.
- University of Texas at San Antonio English Graduate Student Symposium, Co-Chair, 2010-2011.
- 2009-2010 University of Texas as San Antonio English Graduate Student Symposium, Co-Chair, 2009-2010.
- Domestic Violence Awareness Month Co-Coordinator, Women’s Studies Institute, The University of Texas at San Antonio, San Antonio, Texas, October 2009.

**New Mexico Highlands University**

Updated 3/7//2018



- 2008 Los Alamos National Laboratory Student Ambassador, 2006-2008.
- 2007 New Mexico Highlands University Multicultural Week, Appointed Chair, 2007.
- 2005-2006 Associated Students of New Mexico Highlands University Student Senate, Vice-President, 2005-2006.
- 2004-2005 Associated Students of New Mexico Highlands University Student Senator, 2004-2005.

**COMMUNITY SERVICE**

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- 2017-present Concerned Citizens for Nuclear Safety, Board Member, New Mexico, April 2017-present.
- 2016-present Tularosa Basin Downwinders Consortium, Steering Committee Member, New Mexico, January 2016-present.
- 2015-2018 West Mesa High School Assistant Track Coach, Albuquerque, New Mexico.
- 2014-2018 Running 505 501c, Board Member. Albuquerque, New Mexico, 2014-present.
- 2013 Third Woman Press Revitalization Fundraiser. Co-Organizer, Albuquerque, New Mexico, December 2013.
- 2012 Media Literacy Project's Girl Tech Collective in conjunction with Young Women United, volunteer, Albuquerque, New Mexico, January 2012-November 2012.
- 2011 San Antonio Youth Literacy, mentor, San Antonio, Texas, January 2011-May 2011.
- 2009 Del Norte High School Assistant Track Coach, Albuquerque, New Mexico, 2008-2009.

**SELECTED PROFESSIONAL ASSOCIATIONS**

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- Mujeres Activas en Letras y Cambio Social (MALCS)  
The Society for the Study of Multi-Ethnic Literature of the United States (MELUS)  
National Association for Chicana and Chicano Studies (NACCS)  
Popular Culture Association/American Culture Association (PCA/ACA)