

## DOCKETED

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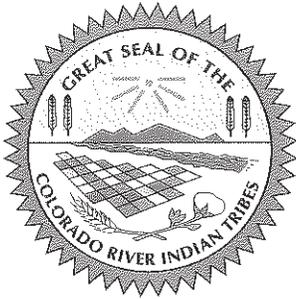
*Comment Received From: Winter King*

*Submitted On: 5/6/2016*

*Docket Number: 02-AFC-01C*

**Comments of the Colorado River Indian Tribes on the Preliminary Staff Assessment for the Sonoran Energy Project Amendment**

*Additional submitted attachment is included below.*



# COLORADO RIVER INDIAN TRIBES

## *Colorado River Indian Reservation*

26600 MOHAVE ROAD  
PARKER, ARIZONA 85344  
TELEPHONE (928) 669-1220  
FAX (928) 669-1216

May 6, 2016

### *Via California Energy Commission e-Comment*

California Energy Commission  
Dockets Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: **Comments of the Colorado River Indian Tribes on the Preliminary Staff Assessment for the Sonoran Energy Project Amendment (02-AFC-1C)**

Dear Ms. Dyas,

On behalf of the Colorado River Indian Tribes (CRIT or Tribes), thank you for the opportunity to provide comments on the Preliminary Staff Assessment for the Sonoran Energy Project (SEP) Amendment (02-AFC-1C). We appreciate Thomas Gates' assurance that these comments would be reviewed and incorporated into the Final Staff Assessment even though the official comment period has ended (*See* TN# 211259).

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,200 members belonging to the Mohave, Chemehuevi, Hopi and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribe's members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Colorado River Indian Tribes' Mohave and Chemehuevi members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribe's current members and future generations. For this reason, we have a strong interest in ensuring adequate CEC review of energy projects proposed in the Blythe area. We focus our comments in two areas: water use and cultural resources.

### *Water Use*

The reservation for Colorado River Indian Tribes is located immediately northeast of Blythe and in close proximity to the site of the SEP. The Tribes have water rights to the Colorado River decreed by the United States Supreme Court in the case of *Arizona v.*

*California* (2006 Consolidated Decree, 547 U.S. 150, 2006). Tribal lands in California are served directly by pumps and other diversions from the River. The Tribes also have land within the Palo Verde Irrigation District (PVID), and receive water deliveries from PVID.

The Petition to Amend the permit for the SEP indicates it will rely on “groundwater.” The SEP is located in the alluvial flood plain of the Colorado River. Any water that is underground at this location is likely either seepage from the Colorado River or return flow from agriculture lands. This location is part of the accounting surface for the Lower Colorado River as determined in the U.S.G.S. Investigations Report 2008-5113. Petitioner SEP should provide the technical data to indicate that they are relying on groundwater that is hydrologically distinct from water connected to the River.

The letter from attorney Melissa Foster dated March 28, 2016 and the letter from Kristen Castaños dated April 18, 2016 submitted on behalf of Petitioner indicate that the water source and the rights to that source will be developed in a Water Conservation Offset Plan (WCOP) to be provided “no later than 6 months after the beginning of site mobilization.” The water supply is key to determining whether the Commission should require dry cooling as part of the proposed amendment and whether the licensed plant has valid rights to the water that it intends to use. The Tribes request that the technical information on the water supply be made available for public comment prior to approval and definitely prior to the proposed time of “6 months after the beginning of site mobilization.”

Water users in the Lower Colorado River Accounting Surface (LCRAS) must have a federal water right or a valid contract with the Secretary of Interior under Section 5 of the Boulder Canyon Project Act. The Petitioners do not indicate if they have a right to withdraw water for the licensed operations or for the proposed amendment. The Petitioners indicate that the yet-to-be-developed WCOP “may include fallowing or other conservation methods.” Water made available to other users from fallowing or conservation requires analysis of complex legal and technical issues. All affected water users on the Colorado River, including the Tribes, should have the opportunity to comment on the WCOP prior to CEC approval.

The Lower Basin is approaching shortage conditions during which some existing water users with valid rights and contracts will not receive a full entitlement. There is no water available for BoR contracts with new users such as Petitioners.

Until water rights are secured with approved contracts with the Secretary of Interior acting through the Bureau of Reclamation Regional Director for the Lower Colorado Region the “groundwater” identified as the supply and the water to be identified in a WCOP for the licensed plant and the proposed amendment are subject to being disallowed.

The Tribes submit that the water supply must be clearly identified and legally established prior to CEC approval.

## *Cultural Resources*

As the Preliminary Staff Assessment acknowledges, the Conditions of Certification should be updated to account for new information regarding the potential for buried cultural resources in the vicinity of the Project and the preferences of area tribes regarding treatment of such resources, in the event they are discovered. CRIT requests the following modifications:

- CUL-3 requires the project owner to prepare a Cultural Resources Monitoring and Mitigation Plan (CRMMP). As the CRMMP is used to manage site monitoring and treatment of prehistoric resources, the document has the potential to significantly impact cultural resources important to the Tribes. Consequently, CRIT requests the right to review and comment on the CRMMP before the document is approved by the CEC. Further, CRIT requests that the verification statement be modified to prohibit the Compliance Project Manager from authorizing ground disturbing activities prior to approval of the CRMMP.
- CUL-4 requires the project owner to submit a Cultural Resources Report after completion of ground disturbing activities. CRIT requests that a copy of this report be provided to affected Tribes.
- CUL-6 requires cultural resource monitoring by Cultural Resource Specialists or Cultural Resource Monitors for “ground disturbance of previously undisturbed sediments full time in the vicinity of the project site, linear facilities and ground disturbance at laydown areas or other ancillary areas.” Native American Monitors, however, are limited to monitoring “excavations in undisturbed sediments in areas where Native American artifacts are covered.” We know from recent discoveries at the Genesis Solar Energy Project, the Devers-Palo Verde Transmission Line and the McCoy Solar Energy Project that this area has the potential to contain significant buried cultural resources. CRIT is greatly concerned that without Native American Monitors on-site, important resources may be overlooked and harmed as a result of project construction. Consequently, the condition must be modified so that Native American Monitors are required whenever cultural resource monitoring is to take place.
- Under CUL-6, affected tribes should also have the right to review and comment on any proposal to reduce full-time monitoring.
- CRIT requests copies of the weekly summary reports regarding project-related cultural resource monitoring required under CUL-6.
- CUL-7 must be modified in two ways. First, area Tribes must be notified of any unanticipated discoveries or unanticipated impacts within 24 hours of the discovery. Tribes also must be given the opportunity to comment on the recommended eligibility and mitigation plans. Second, CUL-7 must make explicit that reburial of any unanticipated prehistoric discoveries is preferred, and must be

allowed if feasible. CRIT request further consultation on this Condition of Certification to develop appropriate language.

- CUL-9 must be modified to include the Colorado River Indian Tribes as one of the tribes invited to bless the project area because the Tribes is not currently listed. As the CEC staff acknowledge:

There are discrepancies among: 1) the list of tribes contacted in 2005 when there was a past federal (Western) nexus to the project, 2) the list of tribes named in CUL-9, and 3) the list of tribes that staff routinely consults with on projects in the same area and over the last 5 years(.

*See Preliminary Staff Assessment, 4.3-8.*

As discussed above, the reservation of the Colorado River Indian Tribes is located in close proximity to the proposed project. The project area is also located within the traditional use area of the Mohave and Chemehuevi people. The Mohave people are indigenous to the land, having lived in the area since time immemorial. The Chemehuevi people have also traveled the desert for hundreds of years, sharing their culture and ways with the Mohave people. Throughout the Blythe area, solar energy development has intruded on the traditional homelands of the Mohave people and caused the disturbance and destruction of cultural resources, including artifacts, trails, plants, and animals, and landscapes. Water is also a sacred cultural resource. The spiritual being of the Mohave people is connected to the land and water. Therefore, not only must the Colorado River Indian Tribes be listed as a tribe invited to bless the project area, but also, deference must be shown towards the Colorado River Indian Tribes and its need to conduct its own ceremony.

Thank you for the opportunity to comment on the PSA. We look forward to reviewing Staff's incorporation of these comments into the Final Staff Assessment.

Sincerely,



Dennis Patch

Chairman, Colorado River Indian Tribes

Cc: Thomas Gates, Ph.D., Supervisor, Cultural Resources Unit (via email-Thomas.Gates@energy.ca.gov)  
Tribal Council of the Colorado River Indian Tribes (via email)  
David Harper, Director, Tribal Historic Preservation Office (via email)