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COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE RD.
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

November 8, 2013

Via E-Comment Only

California Energy Commission
Dockets Unit, MS-14
Docket No. 09-AFC-6C
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Comments of the Colorado River Indian Tribes on the Blythe Solar Power Project Amendment (09-AFC-6C)

Dear Commissioners,

The Colorado River Indian Tribes (CRIT or the Tribes) have significantconcerns about the impacts of the Blythe Solar Power Project (BSPP or Project) on the cultural landscape of the Palo Verde Mesa and surrounding area. The ancestors of CRIT's members, particularly those members who are Mohave or Chemehuevi, have lived in this area since time immemorial. The Colorado River Indian Reservationis located in close proximity to the Project site. CRIT members continue to use the area for cultural, spiritual, and religious purposes, and feel a close connection to the land. As a result, the construction of a nearly 4000-acre photovoltaic solar facility in this area will cause serious cultural harm to the Tribes.

CRIT realizes that the Commission is considering an amendment to an existing license and, as such, that CEC Staff take the position that they must constrain their analysis to the differences in impacts between the already licensed project and the new Project. This blinkered approach is improper for at least three reasons.

First, new information of substantial importance has arisen since the Commission's approval of the original project, particularly related to the impact of utility-scale renewable projects on area tribes. The construction of the Genesis Solar Energy Project—during which thousands of buried prehistoric artifacts created by and connected to the ancestors of CRIT's members were disturbed, damaged, or destroyed—has provided ample new evidence regarding the likelihood of encountering buried cultural material and the severe harm to area tribes that results. Similar experiences resulted from the construction of the Devers-Palo Verde II Transmission Line, in

which numerous burial sites were encountered in an area where buried cultural material was not expected to occur. This new information merits consideration of the impacts of the entire project, rather than just the changes. Pub. Res. Code § 21166; CEQA Guidelines § 15162.

Second, CRIT was never properly notified or consulted—either by the Commission[1] or the Bureau of Land Management[2]—in the course of the initial proceeding. In 2009-10, the Tribes were also unaware of the sheer magnitude of utility-scale renewable projects slated to be developed within their ancestral homeland and the harms that such projects would pose to individual artifacts, sacred sites, and the cultural landscape as a whole. The Commission should not punish the Tribes for its own failure to conduct adequate outreach during the initial proceeding by excluding information about the Project's impacts now.

Third, the Staff Assessment (SA) acknowledges that the revised Project will have significant, unmitigable impacts. As a result, the Commission cannot approve the Project unless it can make override findings, weighing the Project's benefits against its harms. These harms cannot be cabined to harms resulting from the change in the Project.

Nor can the Commission rely on the SA for an adequate description of the Project's cultural resource impacts, as the SA's analysis of these impacts is woefully inadequate, particularly when compared to the recent Final Staff Assessment issued for the Palen Solar Electric Generating System (Docket No. 09-AFC-07C). The Project's SA reveals a mindset more common in earlier agency review of utility-scale renewable projects, where landscape level concerns were ignored, tribal perspectives were excluded, and all *actual* analysis of impacts was forgone or deferred in the rush to approve projects reliant on American Recovery and Reinvestment Act dollars. The Final Staff Assessment from the Palen Project suggestedto CRIT that CECStaff were learning from past mistakes. This SAsuggests otherwise.

In addition, the SA's Cultural Resource analysis is uninformative, muddled, and inconsistent. While professing to consider only the changes in impacts, the SA fails to provide any clear information about the cultural resource harms that will be avoided by the Project revision or about the harms that will remain. It appears to cobble together sections from the Palen Final

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[1] As discussed further below, the Commission relied almost exclusively on the project applicant to conduct outreach and "consultation" with tribes. Tribes are unlikely to share sensitive information with project developers, as their motivations are rightfully viewed with skepticism.

[2] Instead of consulting with tribes through the Section 106 process, as required under the National Historic Preservation Act (NHPA), BLM "use[d] the [National Environmental Policy Act public] commenting process to satisfy" its Native American "involvement" requirements under the NHPA. SA 4.3-35. This shortcut is entirely inappropriate, as it fails to afford affected tribes the confidentiality and respect contemplated in the NHPA'sgovernment-to-government consultation process.

Staff Assessment and prior Commission documents, without providing any clarity on how these discussions relate to the Commission decision to be made. In discussions with CEC Staff, CRIT questioned the lack of a *Preliminary* Staff Assessment; the release of this "Final" Staff Assessment does nothing to relieve the Tribes' concerns that adequate analysis requires a period of public review and comment, followed by subsequent staff revisions. CRIT strongly urges the Commission to direct CEC Staff to prepare a revised Final Staff Assessment that both speaks to the Project's adverse impacts to area tribes and that provides a clear picture of the issues before the Commission.

For all of these reasons, CRIT respectfully submits that the Commission cannot approve the Blythe Project on the existing record.

I. The SA Presents No Information on Trails or Ethnographic Resources in the Vicinity of the Project Site.

In order to determine whether any ethnographic resources will be affected by the Project, CEC Staff searched within the Project site and a 0.5-mile buffer. SA 4.3-28. The SA notes that within this area, "staff was not informed of any ethnographic resources." SA 4.3-39. Their ultimate conclusion—that the Project will have no impact on ethnographic resources—is flawed in at least two ways.

First, it appears that the Commission has relied, at least in part, on the Project developer to "consult Native Americans." SA 4.3-29; *see also* SA 4.3-33 ("AECOM received no response from nine Native American contacts."). While CEC Staff has also conducted some additional outreach, it has come primarily in the form of informational presentations touting the alleged benefits of the revised Project. The Commission itself has not reached out to area tribes in the traditional government-to-government format, as this practice is unfortunately barred by prohibitions on ex parte communication. Given the paltry efforts at locating ethnographic resources that may be impacted by the Project, it is unsurprising that none have been reported. This asserted silence does not mean, however, that no ethnographic resources are present that will be impacted by the Project.

Had proper consultation been conducted, it is likely that a more complete picture of ethnographic resources would have emerged. As is evident from the Palen Final Staff Assessment, trails crisscrossthis entire region, connecting numerous sacred sites and traditional cultural properties. The Project is located directly within Salt Song trail routes, a trail that retains significant cultural, historic, and spiritual value to the Chemehuevi people. The adjacent McCoy Mountains also contain numerous sacred sites that will be impacted by the Project.*See, e.g.*, Palen Final Staff Assessment, Cultural Resources Figure 11 (attached as Exhibit 1, illustrating the McCoy Mountains Resource Area Traditional Cultural Property and depicting numerous tribes through or adjacent to the Blythe Project site).

The SA does note that one existing prehistoric trail runs through the site (SMB-P-410).[3]SA 4.3-100. However, it does not appear that the CEC Staff has considered whether current tribes ascribe any importance to this trail. As such, the SA erroneously concludes that "the extant recordation of [this prehistoric trail] is sufficient data recovery," and that no additional mitigation is warranted. SA 4.3-100.

Second, CEC Staff relied on a 0.5-mile buffer around the Project site in which it purportedly attempted to find ethnographic resources. SA 4.3-28. This buffer is far too small, given that the massive project will result in an industrialized landscape plainly visible from adjacent mountain ranges. These types of indirect, landscape-level impacts must be included in an adequate cultural resource analysis, as recently stated by the California State Historic Preservation Officer. State Historic Preservation Officer, Sustainable Preservation, California's Statewide Historic Preservation Plan, 2013-2017 (advocating for a landscape level of assessment to ensure the avoidance, minimization and mitigation of impacts from renewable energy projects on public land with rich archaeological deposits); SA 4.3-122 (erroneously concluding that the Project "will have no indirect impact on cultural resources").

Even for archaeological resources, the principle focus of the SA's cultural resource analysis, the analysis remains incomplete. According to the SA, CEC Staff has not "analyze[d] any impacts to cultural resources from [the] changed [gen-tie] route," due to the apparent unavailability of BLM data. SA 4.3-41. Moreover, CEC Staff acknowledges that it must take analytical short-cuts in its analysis, because of "inconsistent and incongruous filed recording and site form data omissions." SA 4.3-85. The proper course of action when such difficulties arise is *not* to forge ahead without the relevant information, but to remedy the errors and omissions. The SA must be revised.

II. As the Deadlines Imposed by the American Recovery and Reinvestment Act No Longer Apply, the Commission Has No Justification for Its Truncated Review of Cultural Resources.

In its consideration of the original project, "staff developed a more accelerated approach to pre-certification review of cultural resources," which allowed staff to assume that all archaeological sites were eligible, and therefore significant—without conducting any analysis—and then adoptdata recovery as a mitigation measure for all these sites. SA 4.3-79 to -80. In this shortened review, affected tribes would not be consulted about the significance or eligibility of resources, or about appropriate mitigation measures, in direct violation of the NHPA. Rather, the Project developer would simply engage in "a brief consultation with Energy Commission staff and BLM by telephone." SA 4.3-80. The developer could then begin excavation of buried

[3]CRIT notes that Table 4, which appears to remove the sites that are not impacted by the revised Project, strikes through SMB-P-410. SA 4.3-104.If this site is no longer affected by the revised Project, the text at SA 4.3-100 should be revised.

cultural material without even determining the extent of the site, in order to "further accelerate" data recovery. SA 4.3-81.

As the SA notes, the alleged "primary benefit" of this approach was "*a substantial reduction*" in the amount of time spent analyzing cultural resources. SA 4.3-79; *see also* SA 4.3-81 ("gearing up would only have to happen once, which saves time and money"). The SA claims that quick project approval was necessary to secure financing under the American Recovery and Reinvestment Act.

Even though ARRA funding deadlines are no longer at issue with the revised Project, the SA proposes to rely on the exact same truncated process. CEC Staff would assume that "all project-related direct, indirect, and cumulative construction impacts, to known cultural resources . . . would be significant." SA 4.3-90. The fast-paced data recovery efforts "remain[s] largely unchanged" for the revised project. SA 4.3-80.

CRIT strongly objects to this treatment of cultural resources. CEQA prohibits a lead agency from simply assuming that a resource is eligible, particularly in order to "save time and money," and then moving on to make "override findings" to support approval of the environmentally damaging project. As noted by the California Court of Appeal:

> This approach has the process exactly backward and allows the lead agency to travel the legally impermissible easy road to CEQA compliance. *Before* one brings about a potentially significant and irreversible change to the environment, an EIR must be prepared that sufficiently explores the significant environmental effects created by the project. The [] approach of simply labeling the effect "significant" without accompanying analysis of the project's impact . . . is inadequate to meet the environmental assessment requirements of CEQA.

Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs, 91 Cal. App. 4th 1344, 1371 (2001). Moreover, deferringeligibility and mitigation determinations until the Project is already under construction effectively removes area tribes from the consultation process promised under the National Historic Preservation Act, a lack of conformity with federal LORS that is not mentioned or analyzed as required in the SA. The Conditions of Certification must be revised to remove these illegal shortcuts.

III. Avoidance of Cultural Resources Must Be Required Where Feasible; Data Recovery Does Not Reduce the Harm Associated with Disturbing Buried Resources, Including Burial/Cremation Sites.

Disturbance of archaeological resources, burial sites, and cremation sites associated with the ancestors of CRIT members results in severe cultural harm. This harm is particularly acute for CRIT's Aha Macav (Mohave) members, for whom the disturbance of an ancestor's belongings and remains is taboo. Consequently, CRIT urges the Commission to require avoidance of known

prehistoric archaeological sites and to impose clear, enforceable, and strong Conditions of Certification to protect as-yet-undiscovered buried cultural material.

CRIT notes that a number of prehistoric sites will be directly impacted by the proposed Project, including areas with fire-affected rock, ceramics, and bone fragments. CRIT urges the CEC Staff to consider whether the fire-affected rocks and bone fragments have the possibility of indicating cremation or burial sites. To the extent there is any indication of such activities, the sites must be left undisturbed.

The SA, however, indicates that all sites will be subject to data recovery. SA 4.3-94 ("Staff's recommended mitigation for the modified [Project] is primarily data recovery . . . ."). Despite the repeated objections from CRIT and other tribes regarding the use of these invasive techniques, the SAutterly ignores the possibility that data recovery activities may result in cultural harm. Instead, the discussion is couched entirely in data recovery's ability to prevent loss of scientific knowledge. SA 4.3-94 ("Mitigating project impacts to cultural resources to a less-than-significant level is generally couched in terms of recovering data that would be lost when the resources are destroyed."). This discussion appears to assume that all archaeological sites are important solely for their informational potential. SA 4.3-95 ("the questions about history or prehistory . . . make the sites CRHR-eligible"). Yet under both the state and national federal registers, resources can be eligible for other *cultural* values as well. Data recovery does nothing to protect these values, and indeed, only worsens the harm. CRIT urges the Commission to revisit CEC Staff's conclusion that "significant direct physical impacts to cultural resources would be reduced to a less-than-significant level through a program of data recovery, resource registration, and public outreach, and the loss to the public of the values inherent in these resources would be adequately mitigated." SA 4.3-96. Instead, the Commission must consider whether avoidance of the sites (or, as a second alternative, in-situ reburial of the materials), is a feasible mechanism for avoiding cultural resource harm.

This determination is particularly appropriate given the flexible nature of photovoltaic construction. CRIT notes that NextEra "suggest[ed] that the reduced grading requirement may provide the potential to avoid some archaeological sites. The 2013 Amendment suggest this would be evaluated during the design phase." SA 4.3-6 to -7. CRIT strongly suggests that the Commission evaluate the feasibility of avoiding *all* prehistoric sites through a reduced grading requirement at the time it considers the current application. If this decision is left until the design phase, the Commission will have little ability to *require* such mitigation activities. Instead, it will be left to the discretion of NextEra, who is unlikely to take such steps voluntarily unless they come with no cost or delay.

The SA also concludes any discovery of buried cultural material during Project construction can be reduced to a less than significant level by the imposition of conditions of certification. SA 4.3-111. This conclusion is unsupported, particularly in light of new information regarding discoveries of buried cultural material at Genesis and during the construction of the Devers-Palo Verde II transmission line, projects located in close proximity to Blythe.

The SA acknowledges the likelihood of encountering buried cultural material at the Project site. Yet instead of learning from the missteps at the Genesis project, the proposed Conditions of Certification repeat the same mistakes. They allow post-approval preparation of a Cultural Resource Mitigation and Monitoring Plan (CRMMP), without adequate tribal review and comment. They leave implementation and enforcement of the CRMMP to NextEra and its hired consultants. They fail to require the use of Native American Monitors in a way that ensures all areas are monitored and all resources will be protected. They fail to provide clear lines of communication and responsibility in theevent resources are discovered. Perhaps most importantly, they fail to require avoidance of newly discovered significant resources if feasible; as described above, the automatic use of data recovery is inappropriate for prehistoric sites. CRIT is preparing suggested modifications to the Conditions of Certification to address these concerns, which will be submitted to the Commission for consideration.

IV. The LORS Analysis Fails to Analyze Compliance with All Applicable Laws.

The Commission must consider whether a proposed project will comply with *all* applicable federal, state, and local laws, ordinances, regulations, and standards (LORS). Yet in determining theProject's compliance with LORS for cultural resources, the SA considers only two federal LORS: the Antiquities Act of 1906 and the Archaeological Resources Protection Act. Cultural resources on federal public land, particularly those connected to tribes, are protected by a host of additional laws, including the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, the Federal Lands Policy and Management Act, their implementing regulations, and a host of executive orders, including Executive Orders 13007 and 13175, and President Obama's November 5, 2009 Executive Order on Tribal Consultation. The LORS analysis must be revised to address the Project's compliance with the full suite of laws that protect cultural resources.

V. Mitigation Imposed for Cultural Resources Conflicts with Conditions of Certification Proposed for the Palen Project.

The SA proposes to mitigate for the Project's cumulative impacts to cultural resources by requiring NextEra to pay a $35/acre fee toward documentation activities for the Prehistoric Trails Network Cultural Landscape (PTNCL). This mitigation measure raises three concerns.

First, the fee is intended to support documentation activities for a landscape that CEC Staff have discarded in the Palen Final Staff Assessment. In that document, CEC Staff propose that the landscape is part of a much larger Pacific to Rio Grande Trails Landscape (PRGTL), of which the Chuckwalla Valley is one component part. References to the PTNCL are discarded, and it appears that cumulative mitigation funding from that project will no longer support documentation activities for the PTNCL. The Commission, however, set up the cumulative mitigation fee program based on the assumption that funding from Blythe, Palen and Genesis (at their original acreages) would be sufficient to engage in documentation activities. Now that the Palen Project is apparently putting money toward different documentation activities, and

the Blythe Project is proposed for a significant acreage reduction, the Commission must reevaluate whether the per acre fee is sufficient to fund the types of activities envisioned.

Second, the SA claims that this measure "would reduce the significance of the amended project's cumulative impacts to the greatest extent possible." SA 4.3-2. This statement is utterly unsupported. No analysis is provided to explain why documenting the remainder of a trail network will do anything to reduce the impacts of a project that will be built on top of these trails; nor is there any indication why a larger per-acre fee could not be imposed to support a broader range of activities to protect cultural resources.

Finally, and most importantly, the mitigation for cumulative impacts brushes aside any effort to apply mitigation measures supported by area tribes. Instead of consulting with tribes about appropriate mitigation, the SA simply states that "[b]ecause only [Native Americans] can suggest possible mitigation, if any, this cumulatively considerable impact may be unmitigable." SA 4.3-119. CRIT certainly agrees that the cumulative impact of these numerous utility-scale renewable projects cannot be reduced to a level of insignificance. However, CRIT objects to the suggestion that there was no way for CEC Staff to ask tribes about possible mitigation. That is precisely the purpose of the consultation requirements and guidelines that should have been followed in this process.

It is true, however, that CRIT's members are typically uncomfortable with the idea of receiving monetary compensation as mitigation for disturbance and destruction of cultural resources. In no circumstance can cultural resources be assigned a monetary value, and in no circumstance would CRIT voluntarily allow such cultural harm in exchange for funding. However, in the event that projects are approved within CRIT's ancestral homeland, over CRIT's stringent objection, CRIT does not oppose measures designed to fund further preservation of tribal culture.

VI. The Cumulative Cultural Resource Analysis Relies on Out-of-Date and Incomplete Information.

A cumulative impact analysis is neither accurate norinformative unless it includes all relevant information about similar or nearby projects. The SA fails in this regard. First, the geographic scope, for both the local and regional analyses, is artificially constrained by political boundaries, including only projects in California. The proposed Project is located approximately 10 miles from the Arizona border, where significant additional renewable projects are either approved or seeking approval. These projects must be considered in the cumulative impacts analysis as well.

Second, the cumulative impact analysis ignores the subsequent discoveries of cultural resources at the Genesis Solar Energy Project. The SA claims that Genesis, together with Blythe and Palen, impacted only 329 sites. Yet in the middle of project construction, NextEra made a significant discovery of thousands ofadditional buried cultural resources. These resources must be included in the SA's analysis. Similarly, the "Impacts of Existing Projects" should be updated to include new information about the discoveries at Genesis.

VII. Geoglyphs Should be Considered Ethnographic Resources Despite the Perceived Controversy regarding Age of Origin.

The SA considers whether the Project will have an adverse impact on certain geoglyph figures along the Colorado River. CEC Staff conclude that these geoglyphs are of recent origin, and thus are not entitled to protection in this proceeding. SA 4.3-40. Regardless of the origin of the geoglyph figures, CRIT notes that some Native Americans believe that these figures are central to their creation stories. This belief system entitles these figures to protection as ethnographic resources. SA 4.3-3 ("The decision to call resources 'ethnographic' depends on whether associated peoples perceive them as traditionally meaningful to their identity as a group and the survival of their lifeways.").

As the SA concludes that these resources are ineligible, and thus impacts are insignificant, the SA provides no information about how the Project will actually affect these sites. The SA must be revised to clarify whether the geoglyphs are within the footprint of the Project and whether they will be destroyed as a result of Project construction.

VIII. The Project's Lack of Conformity with Protections for California Desert Conservation Act Class L Lands Must Be Analyzed.

The SA claims that the Project is located entirely on lands classified as "Class M" under the California Desert Conservation Act (CDCA) Plan. SA 4.5-6. This information is incorrect. According to the Final EIS for the prior project, as well as maps of the CDCA Plan, the proposed Project is located entirely on "Class L" Lands. Blythe Solar Power Project PA/FEIS, at 1-6; Desert Renewable Energy Conservation Plan, Description and Comparative Evaluation of Draft DRECP Alternatives, Figure 3.7-8, Multiple Use Classes within the Cadiz Valley and Chocolate Mountains Ecoregion (attached as Exhibit 2).

This distinction is crucial. Class L lands are so designated to "protect[] sensitive, natural, scenic, ecological and cultural resource values." The CDCA Plan prohibits development on Class L lands if sensitive values will be "significantly diminished." *Id.* In sharp contrast, Class M lands permit a "controlled balance between higher intensity use and protection of public lands" and specifically permits "energy, and utility development," so long as the projects are designed and managed "to mitigate damage to [desert] resources." As described above, the Project does not adequately analyze or mitigate damage to cultural resources, arguably rendering the Project out of compliance with Class M requirements. But given that the proposed Project is within Class L lands, the Project is certainly out of conformance with the more stringent requirements regarding protection of sensitive cultural resources. The SA must be revised to analyze this lack of conformity with federal LORS.

IX. The Project's Lack of Conformity with Visual Resource Management Class III Requirements Must Be Analyzed.

Similarly, the SA fails to consider whether the Project is in conformance with the CDCA Plan's requirements for visual resources. While the CDCA itself did not specify Visual Resource Management (VRM) classifications for the lands under the CDCA's purview, it required BLM to later establish such classifications to manage the protection of scenic values. *See* 43 U.S.C. § 1711(a). VRM classifications, ranging from Class I (highest protection) to Class VI (lowest protection), set the level of visual change to the landscape that may be permitted for any surface-disturbing activity.

Within the CDCA, BLM establishes VRM classifications piecemeal. For the Project area, BLM set the VRM classification through its approval of the Devers-Palo Verde II transmission line, such that most of the Project area is designated VRM Class III. The field manager also recommended that the remainder of the area also be designated as Interim VRM Class III, in part because the land use classification is the more restrictive Class L. Blythe Solar Power Project PA/FEIS, at 3.19-8. A VRM Class III requires the "partial[] ret[ention of] the existing character of the landscape," such that the project does not "dominate the view of the casual observer." *Id.* at 4.18-1. The PA/FEIS then goes on to note that the Project *is out of conformance with the VRM classifications*, particularly from such important areas as the McCoy Mountains.*Id.* at 4.18-9, -10, -11, -13. Yet the SA utterly fails to mention the VRM requirements, the existing site designation, and the Project's lack of conformity. The SA must be revised to analyze the Project's lack of conformity with these federal LORS.

X. Examples of Areas Requiring Clarification.

As discussed above, the SA ultimately fails as an informational document due to inconsistencies and unclear statements. CRIT has not had the opportunity to carefully review other sections of the SA; this list focuses on some of the most problematic portions of the Cultural Resources section:

- Page 4.3-1: The SA states that "[t]hese data recovery activities have been conducted by the project owner and monitored by Energy Commission cultural resources staff throughout the compliance process." It is unclear from this statement whether "data recovery activities" refers only to historic-period data recovery efforts and whether these processes are complete.
- Page 4.3-12: The SA focuses on "Prehistoric Settlement in the Chuckwalla Valley" and appears to lift language directly from the Final Staff Assessment for the Palen Solar Electric Generating System. As the Chuckwalla Valley is located significantly west of the Project site, it is inappropriate and confusing to repurpose this discussion for this SA. *See, e.g.*, SA 4.3-12 (stating that "[a]n extensive network of trails is present within the Chuckwalla Valley," but offering no information on trails in the vicinity of the Project site).

- Page 4.3-27: The SA states "For this project, staff has used the analytic process of Approach 3 (defined above under 'Methodology and Thresholds for Determining Environmental Consequences') . . . ." Despite the cross reference, "Approach 3" is not described in that section of the SA.
- Page 4.3-30: It is difficult to tell from the SA which cultural resources will be affected by the revised Project area. For instance, the SA states that that AECOM recorded 71 cultural resources within a 1.0-mile radius of "the PAA," (SA 4.3-30), but fails to clarify whether this is the original PAA or the revised PAA.
- Page 4.3-36: Instead of listing the Colorado River Indian Tribes as an affected tribe, the SA refers to CRIT as the "Colorado River Reservation."
- Page 4.3-47: The SA states that "the revised footprint" now places "some" prehistoric resources outside of the Project Area of Analysis. The SA then lists some sites. However, it is unclear whether this list is exhaustive or simply illustrative.
- Page 4.3-49: The SA contains an extensive table of Identified Cultural Resources. Rather than listing only those resources impacted by the revised Project, or providing any information to allow a reader to identify which resources are no longer impacted, the SA lists all resources impacted by "*the originally proposed BSPP*." (emphasis added).
- Page 4.3-65: SMB-H-234 is described as containing exclusively *historic* era artifacts. However, elsewhere, the SA lists SMB-H-234 as a prehistoric site. *See* SA 4.3-99, -104, -152. Information about the prehistoric components of this site must be provided.
- Page 4.3-79: Footnote 23 discusses the future production of a Programmatic Agreement. However, BLM and other relevant parties have already signed the relevant agreement for the prior project, which now must be amended.
- Page 4.3-88: The SA states that "staff has assumed the eligibility of the prehistoric trail site and of the three prehistoric 'pot drop' sites []. The former two such sites are now outside the boundary of the amended project area." It is unclear what "the former two" refers to. The trail and one of the pot drop sites? The first two pot drop sites? Something else?
- Page 4.3-91: The SA notes that "the amendment is not specific about the need for grading and provides no estimate of the depth of disturbance due to site grading activities." As project grading is among the construction activities most likely to result in a harm to cultural resources, CRIT contends that this information must be clarified in advance of project consideration.
- Page 4.3-96 to -97: At SA 4.3-96, it states that only one quarry site would remain within the project footprint (CA-RIV-3419). The very next page states that two quarry sites would be impacted by the amended project. This inconsistency must be remedied.

Conclusion

The public comment period for the SA was the first opportunity for the public to formally bring its concerns to the Commission. This laterequest is unfortunate, as CRIT is now bringing these numerous concerns to the attention of the Commissioners less than one month prior to the date when evidentiary hearings are slated to begin for the Project. CRIT urges the Commission

to take a step back. The Blythe Project will result in the massive transformation of a portion of the Mohave desert very close to the Colorado River Indian Reservation and within the ancestral homeland of CRIT's members. The Project will result in serious impacts, which have not been addressed by the SA. CRIT is attempting to provide as much information as possible, but without adequate time to review and synthesize these comments, CRIT fears that these concerns will continue to be ignored.

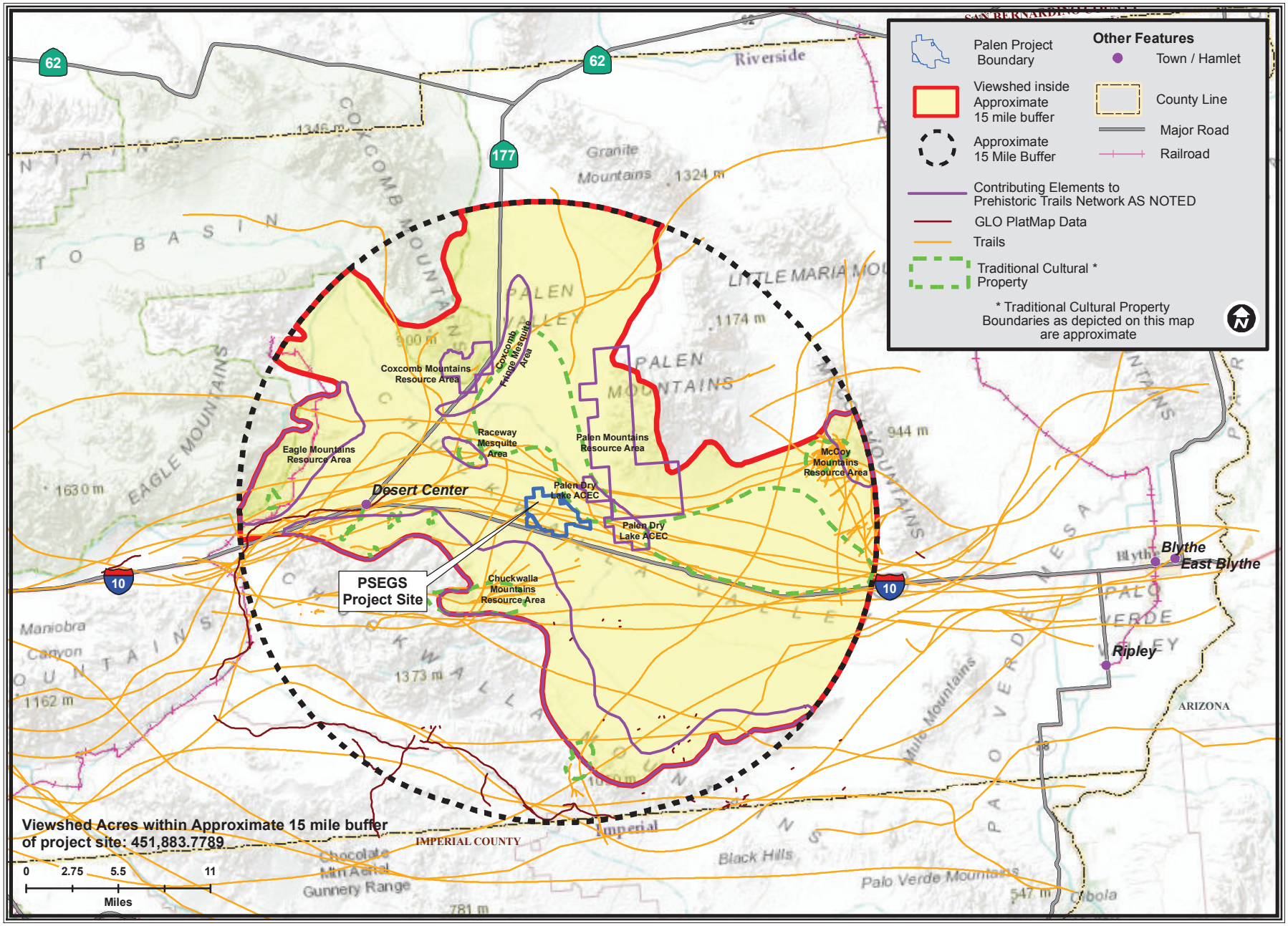
Sincerely,

Sylvia Homer,
Acting Tribal Council Chair
Colorado River Indian Tribes

EXHIBIT 1

CULTURAL RESOURCES - FIGURE 11

Palen Solar Electric Generating System - Archaeological Areas, Trails and other Contributing Elements to the Chuckwalla Valley portion of the PRGTL

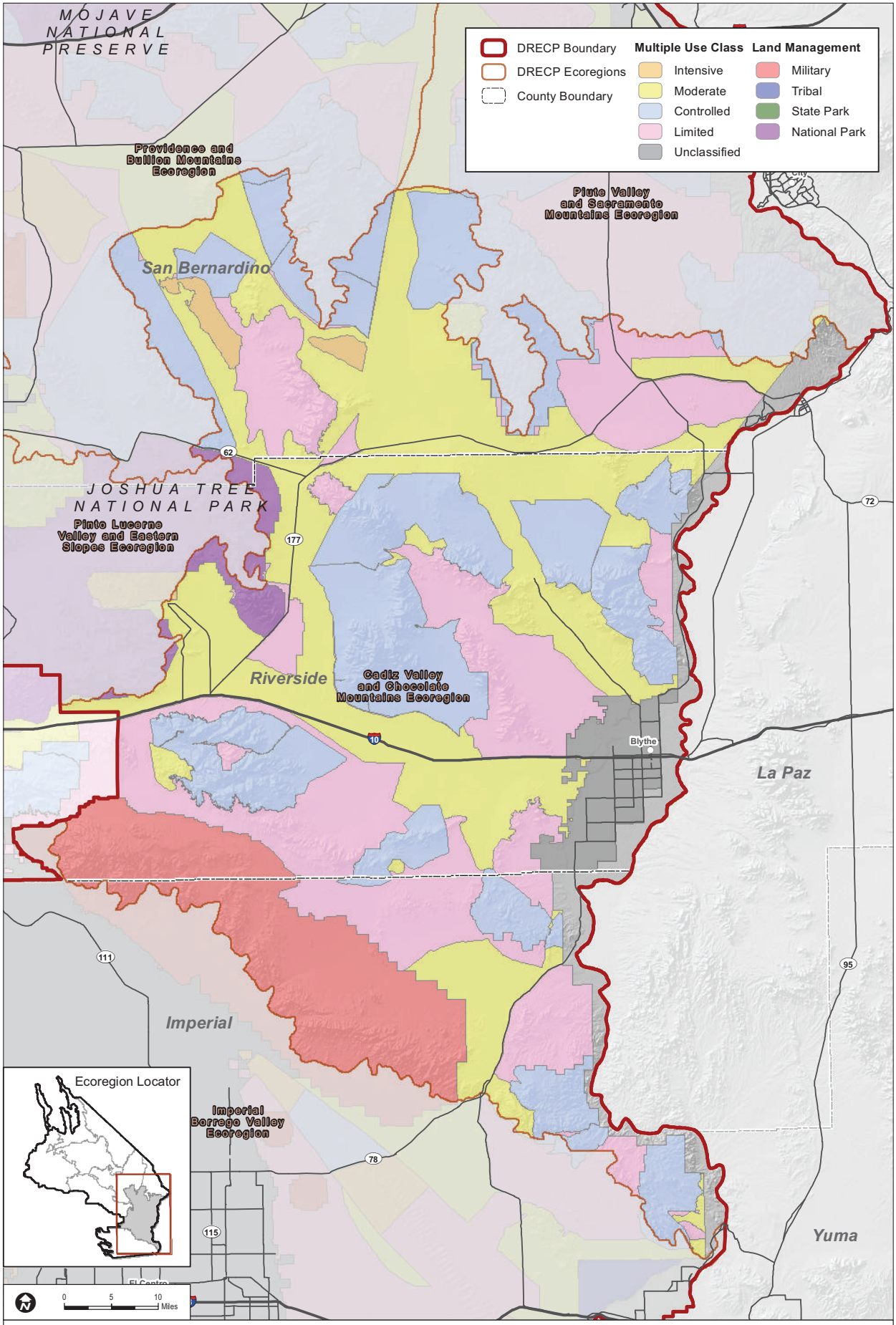


CULTURAL RESOURCES

CALIFORNIA ENERGY COMMISSION - SITING,TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

SOURCE: ESRI, Delorme, Tele Atlas

EXHIBIT 2



Sources:

FIGURE 3.7-8

Multiple Use Classes within the Cadiz Valley and Chocolate Mountains Ecoregion

Desert Renewable Energy Conservation Plan (DRECP)

M:\JOBS4\6287\common_gis\Preliminary_Analysis\Figures\fig3.7-8.mxd 11/19/2012

DECLARATION OF SERVICE

I, Sean Mulligan, declare that on November 8, 2013, I served and filed copies of the Comments of the Colorado River Indian Tribes on the Blythe Solar Power Project Amendment (09-AFC-06C), dated November 8, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: http://www.energy.ca.gov, is attached to this Declaration.

For service to all other parties and filing with the Docket Unit at the Energy Commission:

X I successfully uploaded the document to the Energy Commission's e-filing system and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.] **or**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: November 8, 2013

/s/ Sean Mulligan
[Name]

Proof of Service List

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Project Title: Blythe Solar Power Project - Compliance
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Applicant

Dan Neville, Project Director, Development
NextEra Energy Resources
505 14th Street, Suite 310
Oakland, CA 94616
daniel.neville@nexteraenergy.com

Applicant Representative

Marie Fleming
Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
mfleming@gb-llp.com

Scott Galati
Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com

Applicant Consultant

Sara Head
AECOM
1220 Avenida Acaso
Camarillo, CA 93012
sara.head@aecom.com

Tricia Bernhardt
Tetra Tech, Inc.
143 Union Boulevard, Suite 1010
Lakewood, CO 80228
tricia.bernhardt@tetratech.com

Intervenor

Elizabeth Klebaner, Counsel for California Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
eklebaner@adamsbroadwell.com

Marc D. Joseph, Counsel for California Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com

Rebecca Loudbear, Office of the Attorney General
Colorado River Indian Tribes
26600 Mohave Road
Parker, AZ 85344
rloudbear@critdoj.com

Tanya A. Gulesserian, Counsel for California Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

Intervenor Representative

Michael R. Lozeau , Counsel for LIUNA Local 1184
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
michael@lozeaudrury.com

Richard T. Drury , Counsel for LIUNA Local 1184
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
richard@lozeaudrury.com

Sara A. Clark, Counsel for Colorado River Indian Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
clark@smwlaw.com

Winter King, Counsel for Colorado River Indian Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
king@smwlaw.com

Commission Staff

efiling archive
California Energy Commission

Jared Babula, Staff Counsel
California Energy Commission

Mary Dyas, Project Manager
California Energy Commission

Sacramento, CA
efilingPOSarchive@energy.ca.gov

Office of the Chief Counsel, 1516 Ninth Street, MS-14
Sacramento, CA 95814
jared.babula@energy.ca.gov

Siting, Transmission & Environmental Protection Division, 1516 Ninth Street, MS-2000
Sacramento, CA 95814
mary.dyas@energy.ca.gov

Committee

DAVID HOCHSCHILD, Associate Member, Commissioner
California Energy Commission
Sacramento, CA

Eileen Allen, Commissioners' Technical Adviser for Facility Siting
California Energy Commission
Sacramento, CA

Eli Harland, Adviser to Commissioner Douglas
California Energy Commission
Sacramento, CA

Jennifer Nelson, Adviser to Commissioner Douglas
California Energy Commission
Sacramento, CA

KAREN DOUGLAS, Presiding Member, Commissioner
California Energy Commission
Sacramento, CA

Kelly Foley, Adviser to Commissioner Hochschild
California Energy Commission
Sacramento, CA

Raoul Renaud, Hearing Adviser
California Energy Commission
Sacramento, CA

Public Adviser

Alana Mathews, Public Adviser
California Energy Commission
Public Advisers Office, 1516 Ninth Street, MS-12
Sacramento, CA 95814
publicadviser@energy.ca.gov

Public Agency

California ISO
Folsom, CA
e-recipient@caiso.com

Jeff Childers
Bureau of Land Management, Desert District Office
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553
jchilders@blm.gov

John Guerin
Riverside County Airport Land Use Commission
Riverside County Administrative Center, 4080 Lemon Street, 14th Floor
Riverside, CA 92501
jguerin@rctlma.org

Magdalena Rodriguez
California Department of Fish and Game, Inland Desert Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
magdalena.rodriguez@wildlife.ca.gov

Tera Baird
United States Fish and Wildlife Service
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262
Tera_baird@fws.gov

Tiffany North, Supervising Deputy County Counsel
Riverside County
3960 Orange Street, Suite 500
Riverside, CA 92501
tnorth@co.riverside.ca.us