

DOCKETED

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COLORADO RIVER INDIAN TRIBES

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Via Email and Online Docket

January 13, 2014

California Energy Commission
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Dear Commissioners:

The Colorado River Indian Tribes (CRIT or Tribes) offer the following comments on the Presiding Member's Proposed Decision (PMPD) regarding the Blythe Solar Power Project in advance of the California Energy Commission hearing on January 15, 2014. While CRIT appreciates the efforts taken by NextEra Energy Resources, Inc., CEC Staff, and the Committee to address some of CRIT's concerns with the proposed Conditions of Certification for cultural resources, these changes will not avoid the Project's known, significant impacts to cultural resources and area tribes. As a result, CRIT urges the Commission to reject the PMPD and deny the proposed amendment.

To put the proposed approval into perspective, the Blythe Project is only one of at least forty utility-scale renewable projects proposed within a fifty-mile radius of the Colorado River Indian Reservation. While the Reservation is now confined to an area astride the Colorado River north of Blythe—quite close to the proposed Project—the ancestors of present day CRIT members previously lived across a much broader area of the region. As a result, sacred trails, burial sites, petroglyphs and intaglios, and archaeological resources are present throughout the landscape your agency seems intent to convert to an industrial zone. The Bureau of Land Management averted its eyes from these resources—and the associated harm to area Tribes—in designating the Riverside East Solar Energy Zone as an area particularly “well-suited” for such a striking industrialization. The Commission appears well on its way to doing the same.

This vast transformation of an entire cultural landscape has significant environmental justice implications that are not addressed by the PMPD. PMPD at 3 (stating that the Blythe Project will have no disproportionate effect on minority populations). The benefits of this and other renewable energy projects will flow to energy customers in southern California and the shareholders of large energy companies such as NextEra.¹ The impacts of such projects, however, will be uniquely felt by area tribes and their members. As acknowledged by Commissioner Karen Douglas in another proceeding, “Indian

¹ To the extent utility-scale renewable projects *add* to California's energy portfolio, rather than *replace* dirtier sources of electricity, CRIT questions whether such projects can be said to result in the much-lauded greenhouse gas emissions benefits.

tribes maintain long-standing ancestral and traditional practices that connect their identities as Indian people to the environment, unlike other populations that do not have territories linked to their collective identities.” Palen Solar Electric Generating System PMPD at 6.3-57. Shifting the burden of renewable energy development to the unique communities that have occupied this landscape since time immemorial, while providing such communities with no identified benefits, is the very definition of environmental injustice. The Commission must both recognize and address such realities.

One significant harm that has resulted from the industrialization of this landscape is the disturbance, damage, and destruction of archaeological materials associated with the ancestors of CRIT members, such as burial sites, stone tools (i.e., manos and metates), and other artifacts. For example, during the construction of the Palo Verde-Devers II transmission line, construction workers unearthed burial sites that had not been identified before project approval; in attempting reburial, additional sites were disturbed. Similarly, thousands of artifacts were uncovered during the construction of the Genesis Solar Energy Project; the subsequent handling of the site by the responsible agencies has injured area tribes and the relationships between the two entities.

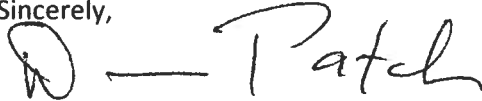
Given this recent experience, CRIT sought to ensure that the Blythe Project contained site avoidance provisions required by California law. While the PMPD relies in part on a finding that further avoidance measures will be developed in the Cultural Resources Mitigation and Monitoring Plan (CRMMP), it also appears to allow NextEra to reject an avoidance alternative based solely on the company’s own finding that avoidance is impractical. PMPD at 233. As detailed in CRIT’s briefing, this reasoning does not comport with applicable law. It is the lead agency that must, under CEQA, determine when a mitigation measure is feasible. See Pub. Res. Code § 21081. This determination must be supported by substantial evidence. *Id.* § 21081.5. Moreover, avoidance is the preferred method under CEQA of mitigating a project’s impacts to cultural resources. *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 88. Indeed, here, avoidance is the only way to prevent the significant cultural harms experienced by CRIT’s members when buried cultural resources are at stake. As a result, the deferred measures proposed for adoption by the PMPD, which leave implementation up to the discretion of the applicant, are plainly insufficient.

Finally, CRIT urges the Commission to take a more in-depth review of the Blythe Project prior to making its decision. Throughout this proceeding, CRIT has been informed that the only question for the Commission to consider is whether the proposed changes to the originally approved project would result in increased impacts. As a result, CEC Staff and the Committee have refused to consider information from CRIT that both projects (the originally licensed solar thermal project and the PV amendment) will have more severe cultural resource impacts than acknowledged by the original decision, such as direct impacts to a major trail corridor. This limiting position relies on the fiction that NextEra would actually construct the originally approved project if the license amendments were denied, a fiction that is wholly unsupported by the record. Given the scope of the proposed changes and NextEra’s unwillingness or inability to construct the original project, it is more realistic to consider the proposed “amendment” as a new project, such that the entire suite of impacts can be adequately studied. Moreover, information regarding utility-scale renewable energy siting is rapidly changing; the Commission’s approach to this particular amendment refuses to consider all that we have collectively learned over the past five years. CRIT urges the Commission to exercise its considerable discretion to ensure that all relevant information is properly considered.

Once again, CRIT appreciates the changes made to the proposed Conditions of Certification for cultural resources. These changes offer area tribes increased involvement in developing cultural resource plans,

the potential for avoidance of newly discovered resources, and greater clarity regarding the scope of the conditions of certification. However, due to the significant adverse impacts that will be caused by the Project, CRIT respectfully requests that the Commission reject the PMPD and deny the proposed amendment.

Sincerely,

A handwritten signature in black ink that reads "Dennis Patch". The signature is written in a cursive style with a large, stylized "D" and "P".

Dennis Patch
Tribal Council Chairman,
Colorado River Indian Tribes

557582.3

DECLARATION OF SERVICE

I, Sara Clark, declare that on January 13, 2014, I served and filed copies of the Colorado River Indian Tribe's Comment Letter on the Blythe PMPD, dated January 13, 2014. 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.

(Check one)

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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: January 13, 2014

_____/s/ Sara Clark_____
[Name]



Proof of Service List

Docket: 09-AFC-06C

Project Title: Blythe Solar Power Project - Compliance

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