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STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the matter of:

Amendment for the **PALEN SOLAR
ELECTRIC GENERATING SYSTEM**

DOCKET NO. 09-ACF-7C

COLORADO RIVER INDIAN TRIBES

**Testimony of Doug Bonamici regarding Consultation and the Ethnographic Study for the
Palen Project**

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STATEMENT

Commissioners, my name is Douglas F. Bonamici, and I have worked for the Colorado River Indian Tribes (“CRIT” or “the Tribes”) as a Law Clerk in its Office of the Attorney General for the past six (6) years. In that capacity it has been my duty to track, review, and report to my supervisors and the CRIT Tribal Council about the progress of the many renewable energy development proposals being pursued in the area around the Colorado River Indian Reservation. My direct involvement with the Palen Solar Electric Generating System began when, (“CEC”), the Tribes were notified that Palen Solar Holdings, LLC had filed a Petition to Amend with the CEC, seeking to revive and revise the Palen Solar Electric Energy Generating System project. (See Exhibit 8011, *Letter, to Eldred Enas, Tribal Council Chairman, Colorado River Indian Tribes, from Roger Johnson, Deputy Director of the Siting, Transmission, and Environmental Protection Division for the California Energy Commission*, February 25, 2013).

On March 22, 2013, I attended a joint meeting of CEC staff and representatives of the Bureau of Land Management at Corn Springs, a culturally significant location for area Tribes, and very near the proposed PSEGS project site. At that meeting, the proposed amendment was described and discussed, the process by which CEC staff and the CEC would review the proposed amendment, and the compressed timeline within which that review would be performed was communicated. With the Preliminary Staff Assessment due to be published in May, 2013, little time remained for Tribes to engage in the “meaningful dialogue” referenced in Mr. Johnson’s February 25th letter.

CRIT representatives conveyed this concern at that time, as well as a concern that many Tribes share: while generally supportive of renewable energy development, the proposed project puts culturally significant resources at unnecessary risk, and with the changed technology, it will certainly have significant impacts on resources not like those considered under the original project application process.

CEC Staff member, Dr. Thomas Gates conveyed the need for ethnographic review of the project’s likely impacts if approved as proposed in the PSEGS Amendment petition. I notified Dr. Gates that, pursuant to Tribal law, cultural research conducted on the Colorado River Indian Reservation may occur only after the proposed research activities are reviewed by the Tribes’ Ethics Review Board and approved by Tribal Council. This process takes time, however, and despite a timely and good faith effort to provide Dr. Gates with the required Research Application, and our commitment to process that application as soon as CEC’s legal department was satisfied with its content, time ran out, and no formal interviews of CRIT Tribal members could be accomplished. The time-frame imposed by the CEC’s Amendment process on CRIT (and all Tribes, I would offer) are unrealistically short to accomplish the many tasks, and acquire the extensive information necessary to properly evaluate project impacts.

Nonetheless, our Tribal staff assisted Dr. Gates informally, to the extent practicable, attending another project meeting with CEC Staff in August, 2013, and engaging both the Applicant, PSH, Inc., and the Bureau of Land Management as the opportunity allowed, but where the CEC’s ethnographic analysis is concerned, CRIT ended up on the outside, looking in.

Ironically, as I prepared this testimony, we received a copy of the CEC Staff's *Ethnographic Report Informing the Final Staff Assessment* ("Report"). In support of the foregoing, I draw the Commissions attention to Page 33, wherein CEC staff states the following:

"Time limits imposed by the Energy Commission amendment process are another constraint. The Mohave, Chemehuevi, Quechan, and Cahuilla cultures, and traditional cultural practices related to epistemology, world view, and religion, are too complex to understand within the limits of a six month study."

This constraint is identified elsewhere in the Report, and underlies CRIT's growing reticence to embrace CEC process. When the PSEGS was originally proposed and approved, CRIT had just two contacts with CEC – consisting of a form letter sent to its former Museum Director, followed by an unanswered telephone call. That style of outreach is 'old school' and clearly ineffective to meet the "meaningful consultation" standard now recognized by State and Federal agencies nation-wide as essential to facilitate prompt and cogent review of major undertakings such as the PSEGS project. Thus, CRIT came into this Amendment process without the benefit of having had a voice in the original process, but eager to remedy that situation. Recent events at the Genesis Solar Energy Project resulted in the loss of a major cultural resource site, and I cannot but believe that the Palen site is likely to be underlain by similar evidence of Tribal use and activity.

To its credit, the CEC seems to have made significant, positive improvements to its outreach policy and procedures. CRIT has had many contacts with Dr. Gates – all of them informative and cordial. Still, when the Staff Report arrived yesterday, we discovered that the efforts undertaken to meet the CEC on its terms, even adjusting our own process to the extent we were able, has been insufficient to further the Tribes' cultural preservation goals.

In light of that outcome, I will take this opportunity to offer the following in good faith, and with the hope that this meets with better success:

The Mohave and Chemehuevi people utilize the geographic features in the PSEGS site location in a variety of ways, ranging from practical, utilitarian purposes such as for navigation and resource location, to the cultural, social, artistic and spiritual practices that have evolved over hundreds of generations. The cultural resources site bulldozed at the Genesis Solar Energy Project, which is within easy line-of-sight from the PSEGS location, yielded materials dated to 8,000 years ago.

Mohave and Chemehuevi people have relied upon this area for a *very* long time. Its springs and trails, its foods, plants and animals, its mountains and valleys and skylines, woven throughout their ancestors' lives, are literally who they are today. The visual impacts created by another 3,800-acre industrial complex centered by two very tall, brilliantly illuminated, man-made structures in an area prized for its open vistas and sweep of sky should not be underestimated, and any review must include consideration of Tribal values relative to those impacts.

Heretofore, the CEC has not spent a great deal of energy assessing the Environmental Justice component in either the initial PSEGS review, nor in this Amendment review process,

affording that question less than two pages of text in the original PSEGS Commission Decision's Environmental Justice Screening Analysis. I assure the Commission - the Tribes sees this issue very differently.

As stated in the original PSEGS Commission Decision, "California law defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." [Govt. Code § 65040.12(e); Pub. Res. Code, § 71116(j).]"

The Commission's Findings in that Decision addressed this issue as follows: "An environmental justice screening analysis was conducted and determined that the project, as mitigated, will not have a disproportionate impact on low-income or minority populations."

I must respectfully disagree with this finding. Semantically, it leaves out reference to 'cultures' but that is, I believe, just a symptom. The real problem is that the analysis limits the reach of the impacts considered to those persons living within a six-mile radius of the site. On its face, with a project that will be visible for thirty miles in some directions, the six-mile-radius limit renders the analysis inadequate to offer truly "fair" consideration of the impacts, as envisaged by the California Government Code.

Further, the Commission's Finding fails to consider cultural impacts to area Tribes – albeit Tribes living beyond the six-mile radius – whose members have for centuries used, and continue to use the area as part of their cultural ceremonies. This use may be in ways not well-understood by non-tribal communities, but such usage is as valid, profound, and worthy of respect as any service held in St. Michael's Church in downtown Manhattan, New York.

While preparing this testimony, I came across the following e-mail message between myself and CRIT's Museum Director/THPO, Wilene Fisher-Holt, dated September 5, 2012 regarding the now-suspended Rio Mesa Solar Energy Project, a technologically similar project also proposed by the Applicant (the person referenced internally is John Bathke, former Historic Preservation Officer for the Quechan Indian Nation): “

“Certainly, John has stated a good point - even if the CEC eventually allows the developer to go forward with the excavations/collections at Rio Mesa – it should not be done without prior consultation with the area Tribes.

It's good that we have monitors out there – at least now, if they find someone's great-great-great grandmother, the Tribes will have a chance to treat her remains respectfully.

And as you may also know, my personal opinion of this particular project is very bad. It is one of the "Power Tower" projects that I used to think were a-ok. Then I saw the design specs. 750-foot towers in the desert landscape are not my idea of an aesthetic improvement – even if it does mean clean power for half a million new cracker-box houses in San Diego. db”

Though also conveying my personal viewpoint, this message is fundamentally about the perspective Tribes bring to bear on the question of how best to pursue our mutual, and laudable, clean energy goals, while preserving a wide range of other characteristics that various segments

of society value as well. As the Tribes' Chairman Wayne Patch, Sr. also noted, answering this question is challenging, but essential, if responsible and just development practices are to prevail.

In the current economic and political climate – where renewable energy development is often praised as the golden road to unlimited, clean power, economic growth, and the answer to 'climate change' - the CEC stands as gatekeeper. Notwithstanding the recent financial incentives and other forms of support and encouragement offered by the Federal Government, or the socio-political pressure to meet California's (self-imposed) statutory renewable energy portfolio standards, the CEC is an agency that must remain responsive to economic facts. The PSEGS project is not so economically advantageous that it should override all other considerations.

There are other ways to supply California and surrounding areas with the clean power we all desire. In particular, I have often heard Tribal Council members and individual Tribal members speak of their preference for Distributed Generation development. I am pleased to see the CEC has set a goal of 12,000 Megawatts of DG development as part of its overall strategy to meet California's RPS goals, and encourage the CEC to consider that alternative in lieu of approving ever more utility-scale development. (See: *CEC Website – Renewables*, Tracking Progress page, http://www.energy.ca.gov/renewables/tracking_progress/, accessed 10/15/2013.) To that end, I further encourage the Commission to review the Preliminary Assessment on the Technical Potential for Local Distributed Photovoltaics in California, prepared for the California Public Utilities Commission, published in March, 2012, which indicates that California can, with reasonable efforts, support 15,000 MW of distributed generation development. This additional capacity, if pursued diligently, would eliminate the need for six Palen-scale projects, and preserve more of our irreplaceable, culturally rich, desert landscape. (See: *California Public Utilities Commission Website – PPS Progress Reports, Q1 2013*. Find at: http://www.cpuc.ca.gov/NR/rdonlyres/384E3432-6EAB-4492-BF88-992874A7B978/0/2013_Q1RPSReportFINAL.pdf, Pg. 7, fn.10, internal citation to: <http://www.cpuc.ca.gov/NR/rdonlyres/8A822C08-A56C-4674-A5D2-099E48B41160/0/LDPVPotentialReportMarch2012.pdf> .)

**Testimony of Doug Bonamici
regarding Consultation and the Ethnographic Study for the Palen Project**


I, Doug Bonamici, declare as follows:

- 1) I am a law clerk in the Office of the Attorney General at the the Colorado River Indian Tribes. I have held this position for six years.
- 2) My relevant professional qualifications and experience are set forth in the attached resume and testimony.
- 3) I prepared the attached testimony relating to the proposed Amendment to the Palen Solar Electric Generating System.
- 4) It is my professional opinion that the attached testimony is true and accurate with respect to the issues that are addressed.
- 5) I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.
- 6) In addition to this written testimony, I am sponsoring Exhibit 8020 in this proceeding. This Exhibit is listed in Opening Testimony document submitted together with this specific testimony.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: October 16, 2013

AT: Parker, AZ



Doug Bonamici

**Statement of Qualifications: Douglas F. Bonamici
Provided on behalf of Intervenor, Colorado River Indian Tribes**

Re: Palen Solar Electric Generating System

Department: Office of the Attorney General
Job Title: Law Clerk
Years of Service: 6.25
Education: B.A. – NAU/Mohave, 2002
J.D. – Concord law School, 2008

General Duties:

- Litigation Support - Background legal research, preliminary drafting of various types of legal documents (e.g., Notices, Statements, Complaints, Briefs, etc.)
- Environmental Compliance - Monitoring/ Research
- Legal Drafting - Memos, Comments, Business Correspondence
- Land / Property – Lease Agreements - Draft, monitor Tenant compliance

Major Projects:

- Oversight of the Topock Remediation Project. I serve as the Tribes initial Point of Contact, and assist with review and comment on various project activities.
- I serve on the Topock Clearinghouse Task Force (CTF) committee, and the Orientation Subcommittee

- Solar/Renewable Projects. I review all projects proposed for construction within the Tribes' ancestral homelands for potential adverse impacts to cultural and historic resources important to the Tribes. I also provide Tribal Council, and Museum staff with information and support in their efforts to respond to inquiries by State, Federal and local agencies, as well as from developers. As necessary, I assist in the drafting of Comment Letters expressing Tribal concerns about ongoing, or proposed projects.

- Ten Tribes Partnership (TTP). Tribal partnership providing forum to address water issues among Tribes with entitlements to Colorado River water. I serve on the TTP Legal-Technical Subcommittee.

- CRIT v. U.S and CRIT v. Salazar: I provide local support – document review, data gathering, internal review/policy assessment - to outside council, the Attorney General, and Tribal Council in this long-term effort.