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Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	201947
Document Title:	Letter to Roger Johnson re Presiding Members Proposed Decision for the Palen Solar Electric Generating System
Description:	N/A
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Organization:	Soboba Band of Luiseño Indians
Submitter Role:	Other Interested Person
Submission Date:	4/1/2014 2:24:35 PM
Docketed Date:	4/1/2014

March 21, 2014

Attn: Roger E. Johnson, Deputy Director
Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512



Re: Comments to the Presiding Members Proposed Decision (PMPD) for the Palen Solar Electric Generating System (09-AFC-7C)

The Soboba Band of Luiseño Indians appreciates your observance of Tribal Cultural Resources and their preservation in your project, and the opportunity that you have given the tribe to provide comments to the PMPD for the Palen Solar Electric Generating System. The documents that you provided the tribe have thoroughly reviewed by the Soboba Cultural Resources Department and many of the tribe's concerns and suggestions for both the CEC's PMPD and the Applicant's document titled "Palen Solar Holdings, LLC's Proposed Revisions of Staff's Condition of Certification CUL-1" were addressed in our March 7th meeting here at the Soboba Cultural Center between the Soboba Band and the California Energy Commission. After review of the documents we have prepared a number of comments and revisions for consideration.

Please review the below comments to the proposed PMPD:

CUL-1 Treatment of the Chuckwalla Valley Portion of the Pacific to Rio Grande Trails Landscape (PRGTL)

- Page 6.3-64, under **Field Inventory and Documentation of PRGTL Contributing Elements**: The last paragraph on pg. 6.3-63 states, "The project owner shall provide for Native American involvement in the design and execution of the fieldwork for these surveys, and in the interpretation and presentation of the results of the surveys"
 - Soboba proposes revision of the language for consistency purposes. This language need to specify Native American involvement from the **approved Consulting Tribes**. The language also needs to specify that **approved Tribal Monitors** will be onsite during **all surveys, testing or other ground-disturbing activities** associated with the study.
- Page 6.3-66, under **Petroglyph Study**- paragraph 2 states, "The project owner shall provide for Native American involvement in the design and execution of the fieldwork for these surveys, and in the interpretation and presentation of the results of the surveys"
 - Soboba proposes revision of the language for consistency purposes. This language need to specify Native American involvement from the **approved Consulting Tribes**. The language also needs to specify that **approved Tribal Monitors** will be onsite during **all surveys, testing or other ground-disturbing activities** associated with the study.

CUL-3 Cultural Resources Personnel

- Page 6.3-71, paragraph states, “Project owner shall obtain the services of a Cultural Resources Specialist (CRS) and one or more alternate CRSs, if alternates are needed.”
 - Tribes should be allowed to have input regarding who the chosen CRS will be.

CUL-4 Project Documentation for Cultural Resources Personnel

- Page 6.3-74, paragraph 4 states, “The project owner shall notify the CRS and CPM of any changed to the scheduling of the construction phases.”
 - This information should be compiled and sent out to all approved Tribal Consultants on a weekly basis, along with reports from the prior week. This information should go out to both tribal monitors as well as Cultural Resource Personnel.

CUL-5 Cultural Resources Monitoring and Mitigation Plan (CRMMP)

- Page 6.3-77 (5), Bullet 5 states, “Artifact Collection, retention/disposal, in-situ or onsite reburial (to the extent authorized by BLM), and curation policies shall be discussed as related to the research questions formulated in the research design.....A prescriptive treatment plan may be included in the CRMMP for limited data types.”
 - The Soboba Band of Luiseno Indians wants to know how this will be implemented, and have there been talks with the BLM yet regarding this?
 - These details need to be discussed and clearly detailed in the CRMMP, with the input from the approved consulting tribes.
- Page 6.3-77 (8), Bullet 8 states, “The manner in which Native American observers or monitors will be included, in addition to their roles in activities required under CUL-1, the procedures used to select them shall be described”.
 - Soboba proposes revision of the language for consistency purposes. This language need to specify that **approved Tribal Monitors** will be onsite during **all surveys, testing or other ground-disturbing activities** associated with the proposed project.
- Page 6.3-77 (9), Bullet 9 states, “The CRMMP shall identify which Native American Tribes will be notified of events triggering notification requirements and will include manner, type, and timing of the notification”.
 - Soboba proposes revision of the language for consistency purposes
 - Notifications should be emailed out to **all consulting tribal entities** on a **weekly basis and daily** when there is a significant event/find.

Verification:

- Page 6.3-78 (2) Bullet 2, under verification section of CUL-5, states, “At least 20 days prior to the start of the ground disturbance, in a letter to the CPM, the project owner shall agree to pay curation fees for any materials generated or collected as a result of the archaeological investigations”.
 - This implies that, with the exception of NAGPRA items, curation is the preferred method of dealing with any unanticipated finds that are recovered during the archaeological investigations including survey, testing, and data recovery).
 - Other options such as onsite reburial, and tribal repatriation need to also be considered and it shall be made clear in this section that curation is not the only option for these inadvertent discoveries.
 - Proposed change: “Project owner pays curation fees **if onsite reburial cannot be done**”. Long-term onsite reburial is actually more beneficial to the developer because no fees for curating the artifacts

CUL-7 Worker Environmental Awareness Program (WEAP)

- Page 6.3-80 (4), Bullet 4 “[Training shall include] a discussion of what prehistoric and historical archaeological deposits look like at the surface and when exposed during construction, and the range of variation in the appearance of such deposits”.
 - In addition to discussing artifact identification, this segment of the WEAP Training should also address cultural sensitivity
 - This segment of the WEAP Training should provide clarification on the role of the Tribal monitors roles in the project
 - This 10-15 minute segment should be done at the discretion of the tribes, and the information shall be presented in cooperation with or by approved tribal representatives.

CUL-8 Construction Monitoring Program

- Page 6.3-82, paragraph 5 states, “The project owner shall obtain the service of one or more Native American Monitors (NAM) to monitor construction related ground disturbance in areas where Native American artifacts may be discovered”.
 - The **Tribes should be contracting directly with the developer** not an individual. In addition, in order to maintain Tribal sovereignty, these contracts also need to be linked to the Tribes themselves, rather than between the developer and the consultant.
 - Omit the words “*one or more*”

- Change “*Native American Monitors*” to “*Approved Tribal Monitors*”
- Omit “*in areas where Native American artifacts may be discovered*”. This creates a loop hole for inadvertent discoveries. Change to “*in areas that have not been previously disturbed*”
- Page 6.3-82, paragraph 5 also states, “Preference in selecting a NAM shall be given to Native Americans with traditional ties to the area that shall be monitored”.
 - Change “*Native Americans with traditional ties to the area*” to “*Tribes with traditional ties to the area*”
- Page 6.3-82, paragraph 5 also states, “If efforts to obtain the services of a qualified NAM are unsuccessful, the project owner shall immediately inform the CRM. The CPM will either identify potential monitors or allow construction-related ground disturbance to proceed without a NAM”.
 - Under any conditions, no ground disturbance in undisturbed soils shall take place without an approved Tribal Monitor present. This should also be specifically detailed in the document.
 - The reliability of the Tribal Monitor should also be considered and addressed.
- Page 6.3-82, paragraph 5. Please add in the following comments:
 - Add into the paragraph that Tribal Monitors shall possess all required insurance and training, as well as a knowledge of earthmoving construction activities for workplace safety reasons.
 - All individuals on the project site, including Tribal Monitors, shall abide by the appropriate legal requirements and be insured and bonded in the event of an accident.

Verification:

- Page 6.3-87 (7) Bullet 7, under verification section of CUL-8, states, “Within 15 days of receiving from a local Native American group a request that a NAM be employed, the project owner shall submit a copy”.
 - Change “*local Native American group*” to “*Tribe with traditional ties to the area*”
 - Change “*NAM*” to “*Approved Tribal Monitors*”

CUL-9 Authority to Halt Construction; Treatment of Discoveries

- Page 6.3-87, paragraph states, “The project owner shall grant authority to halt ground disturbance to the CRS, alternate CRS, PPA, PHA, and the CRMs in the event of a discovery. Redirection of ground disturbance shall be accomplished under the direction of the construction supervisor in consultation with the CRS.
 - **Tribal Monitor also needs to be included in the list of those who should be granted the authority to halt the ground-disturbing activities** in the event of a discovery. The Approved Tribal Monitor may be the only one present at the time of the discovery and needs to be able to have the authority to halt the construction in the event of such a discovery.
 - Add in “*in consultation with the CRS and the Approved Tribal Monitor*”
- Page 6.3-88 (2), Bullet 2 states, “If the discovery would be of interest to Native Americans, the CRS has to notify all Native American groups that expressed a desire to be notified in the event of such a discovery within 48 hours of the initial discovery”.
 - Change “*Native Americans*” to “*Tribes*”
 - What determines whether the discovery would be of interest to Tribes? The language need to be more specific.

Below are the drafted comments to applicant’s document- Palen Solar Holdings, LLC’s Proposed Revisions of Staff’s Conditions of Certification CUL-1 (Docketed No. 09-AFC-07C):

CUL-1 Treatment of the Chuckwalla Valley Portion of the Pacific to Rio Grande Trails Landscape (PRGTL)

Part I State Cultural Resource Interests

Field Inventory and Documentation of PRGTL Contributing Elements

- Consulting Tribes should be allowed to have input regarding who the independent consultants hired for the project will be.
- Page 2, Paragraph 5 states, “Part I Funds shall be used for the preparation of one or more comprehensive technical report(s) documenting the efforts to inventory the above contributing elements of the PRGTL.”
 - The Soboba Band of Luiseño Indians is inquiring about who will have access to these reports?

Paleoenvironmental Study

- Page 3, paragraph 2 states, “Part I Funds shall be used for Native American Involvement in the design and execution of the fieldwork for these surveys, and the interpretation and presentation of the results of the survey”.
 - The Soboba Band of Luiseño Indians is inquiring about the distribution ratio of these funds and how they will be carried out. Will the funds for Tribal involvement be allocated for consultation or for being on site during the fieldwork?

Petroglyph Study

- Page 3, first paragraph under this section states, “Part I Funds shall be used for the development and conduct of a petroglyph study germane to the period of significance for the Chuckwalla Valley Portion of the PRGTL”.
 - The Soboba Band of Luiseño Indians is inquiring about who will have access to this study.
- Page 3, second paragraph under this section states, “Part I Funds shall be used **for Native American involvement in the design** and execution of the fieldwork for these surveys, and in the interpretation and presentation of the results of the surveys.
 - The Soboba Band of Luiseño Indians requests that a draft plan be circulated for Tribal Review ASAP

Public Outreach

- Page 4, the paragraph under this section states, “Part I Funds shall be used for the production and distribution of video or web-based content the purpose of which is to interpret the Chuckwalla Valley Portion of the PRGTL to the general public”.
 - No specific locations or trails shall be included in the video.

Part II- Native American Spiritual Interests

- Page 4, the first paragraph under this section states, “The CPM shall develop and create a Native American Committee which shall meet and direct the use of the Part II Funds (\$1,964,430) dedicated to Part II of this condition, the purpose of which are to directly, albeit partially, compensate Native American Communities who ascribe heritage values to Chuckwalla Valley and more specifically, to the broader PRGTL for PSEGS’ degradation of the associate and emic ethnographic values of their ancestral homelands.”
 - The Soboba Band of Luiseño Indians formally requests to be a member of this committee.

- Page 4, under the discussion of specific items that may be used as directed by the Native American Committee- (2nd bullet) “Purchase of private lands that have important sites as determined by the Native American Committee”.
 - This causes concern for management of these lands. Perhaps it would be better to establish a conservancy that is not owned by any group.
- Page 4, under the discussion of specific items that may be used as directed by the Native American Committee- (3rd bullet) “Funding of improvements (cleaning up) some important sites, such as Corn Springs Petroglyphs, North Chuckwalla Petroglyphs and McCoy Springs”.
 - There needs to be a long-term management plan for each of these sites

Verification:

- Page 5, bullet 3 states, “The CPM shall post to the CEC website an annual report detailing the specific use of the fund for Part I and for Part II of this condition”.
 - Specific confidential information shall be excluded from these annual reporting posts.

Thank you for consideration of our comments and the continued opportunity to consult on the Palen Solar project.

Sincerely,

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