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Complaint and protest against the California-based concentrating solar power (CSP) developer Genesis Solar LLC, the California Energy Commission (CEC), the United States Department of Interior Bureau of Land Management (BLM) and the United States Department of Energy (US DOE)

[1] CAlifornians for Renewable Energy, Inc. (CARE) is a non-governmental organization (NGO) registered with an Application for Consultative Status with the United Nations Economic and Social Council (ECOSOC)at: http://esango.un.org/civilsociety/displayHomepage.do?method=displayHomePage

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I. INTRODUCTION

CAlifornians for Renewable Energy, Inc. (CARE) respectfully files this complaint and protests to the Genesis Solar Energy Project (GSEP) Final Environmental Impacts Statement (FEIS) and associated proposed amendment (PA) to BLM's California Desert Conservation Area (CDCA) Plan.

This project specifically violates Article 8[2] of United Nations Declaration on the Rights of Indigenous Peoples (7 September 2007) because the development of the Genesis Solar Energy Project (GSEP) will cover 2.5 square miles in Riverside County in Southern California with long rows of parabolic troughs that are right over the top of intersecting ancient Indian trails interconnecting geoglyphs and the possible location of a major village site that could contain human remains buried by sediment there. The entire site and surrounding area are considered sacred to the Mojave, Paiute, Chemehuevi, and other native peoples. This would violate Article 8 d) which prohibits "action which has the aim or effect of dispossessing them; [Indigenous Peoples] of their lands, territories or resources". The proposed action would allow the destruction of indigenous peoples' human burial sites, villages, trails, and geoglyphs whose cultural destruction would destroy the heritage of the effected native peoples and the world.

I wish to file a complaint and protest against the California-based concentrating solar power developer Genesis Solar LLC of the proposed Genesis Solar Energy Project (GSEP), the California Energy Commission (CEC), the United States Department of Interior Bureau of Land Management (BLM) and the United State Department of Energy (US DOE) for violating human rights to fast track the development of large industrial solar thermal electric projects that will literally pave over hundreds of square kilometers of undeveloped wilderness whose entire landscape (including this project's site) is considered sacred to the Mojave, Paiute, and Chemehuevi peoples.[3] A vast wilderness of lands held in trust by the Federal government for native peoples through the Bureau of Land Management (BLM) are threatened with industrial development where literally hundreds of square miles of wilderness areas will be paved over for solar farms were these same officials can not guarantee the solar farms will even work.

In August 2007, the United States Bureau of Land Management (BLM) California Desert District and the California Energy Commission (CEC) and entered into a Memorandum of Understanding (MOU) to jointly develop the environmental analysis documentation for solar

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[2] Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;
(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

[3] The video with the background info on our struggle for justice is at: http://www.vimeo.com/13985034

The digital video is authenticated by Testimony of film maker Robert Lundahl and Declaration of aircraft pilot Jeff Gatchell
1)http://www.energy.ca.gov/sitingcases/genesis_solar/documents/others/CARE_Exhibits/615_unsigned_Testimony_andDeclaration_of_Robert_Lundahl_9-AFC-8.PDF
2)http://www.energy.ca.gov/sitingcases/genesis_solar/documents/others/CARE_Exhibits/610_Dec_of_Gatchell_5-24-2010.PDF We incorporate by reference herein the Exhibit Files for Intervenor CARE at the CEC Genesis project website: http://www.energy.ca.gov/sitingcases/genesis_solar/documents/others/CARE_Exhibits/

thermal projects which are under the jurisdiction of both agencies. Consistent with that MOU, the BLM and the CEC prepared a joint environmental compliance document to address the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) for the Genesis Solar Energy Project (GSEP). Specifically, a Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) was prepared and was circulated for agency and public review and comment between April 9, 2010, and July 8, 2010. The SA/DEIS is incorporated by reference in this Plan Amendment/Final Environmental Impact Statement (PA/FEIS).

Genesis Solar, LLC, (Applicant) proposes to construct, operate, maintain and decommission the GSEP or Proposed Action which includes a 250 MW solar generating facility, 230-kV transmission line (gen-tie) and ancillary facilities (access road and natural gas pipeline) on BLM-administered land, approximately 25 miles west of the city of Blythe and five miles north of the Interstate-10 freeway. The Applicant is seeking a right-of-way (ROW) grant for approximately 4,640 acres [or 7.25 square miles]. Construction and operation of the GSEP would disturb a total of about 1,808 acres [or 2.5 square miles]. Remaining acreage that would not be disturbed may not be part of the ROW grant.

The GSEP would include the construction and operation of two adjacent, independent, nearly identical power block units (Units) of 125 MW nominal capacity each for a total nominal capacity of 250 MW commercial solar parabolic trough generating station and ancillary facilities. The GSEP would be constructed in two phases. Each phase is designed to build one Unit to provide a approximately 125 MW of electricity and would occupy an estimated 900 acres. The GSEP would be connected to Southern California Edison's planned Colorado River Substation, which would be located approximately 11 miles southeast of the GSEP area, via the proposed gen-tie line, a 230 kV transmission line.

The PA/DEIS fails to comply with CEQA and NEPA in seven distinct ways. First, it omits essential information and, as a result, fails as an informational document. Second the PA/FEIS unlawfully defers the formulation of various studies and mitigation measures. Third, significant unstudied changes have been made to the Project since the PA/FEIS release, and significant new information is planned to be added to the PA/FEIS at a future date, so the PA/FEIS must be re-circulated and an additional public comment period provided. Fifth, the discussion of Alternatives is inadequate insofar as BLM declined to evaluate site alternatives on the sole basis that they are inconsistent with the Applicant's purpose and need. Sixth, the PA/FEIS unlawfully segments the Project by failing to consider the impacts of the Palen and Genesis solar projects and associated transmission upgrades. Seventh, the Project applicant proposes to use well water that is drawn from the Colorado River that is already allocated to other consumptive users.

The Genesis Solar Energy Project, located in Eastern Riverside County along the I-10 corridor, that local Native American tribes consider the most sacred area of the North American Continent, La Cuna de Aztlan [the cradle of the Aztec civilization]. It is the area where the Aztec Calendar is geographically outlined and located in the form of geoglyphs [AKA intaglios], petroglyphs [rock art], and interconnecting trails that have been used by tribal runners for thousands of years. The area entails from the Kofa Mountains in Arizona, west to the human

head image (Copill-Quetzalli) on the crest of the San Jacinto Mountains above the city of Palm Springs, Ca.

Another nearby project proposed Blythe Solar Power Project is overlaid on more than 25 large geoglyphs that we have been identified by still photograph and GPS location to the BLM throughout the area. They include the world known image of Kokopilli, Cicimitl (The Great Spirit that takes human spirits to their final resting place in the Topock Maze, "Mictlan"). Included in the area is the image of Tosco, over 5 large windrow mazes, a 9 level pyramid and over 25 sacred images (that we have not yet deciphered). The main East/West & North/South trails all lead to and from the Blythe Giant Intaglios. One trail leads to Kokopilli and Cicimitl which traverses west through the south end of the McCoy Mountains to the McCoy Springs. Here the image of Quetzalcoatl takes a bath then goes to the Palen Mountains "Hue-Hue-Tlapallan" (Reddish Earth), were he is lead to the underworld by Xolotl (The Dog), as shown in the petroglyphs at the Palen Mountain Mural Wash. The trail comes down from the Palen Mountain Wash and meets with another trail from the McCoy Springs area that is in the Genesis project. The trail then runs west along the plains of the Palen Mountains then crossed southwest towards the Chuckawalla Mountains were it meets the main trail coming west from the Mule Mountains towards Desert Center, Ca. These two trails meet at the proposed Palen Mountain Project and the southwest trail leads towards Corn Springs (Tula) located in the center of the Chuckwalla Mountains.

II. APPLICANT HAS NO LAWFUL WATER SUPPLY FOR THE PROJECT

The CEC's Revised Staff Assessment (RSA) states "water in the Colorado River is fully appropriated and any diversion of water from the Colorado River would be a significant impact."[4] Accordingly, CEC Staff concluded that proposed Project groundwater pumping would result in a significant impact to the Colorado River because "the reduction in outflow from the CVGB to the PVMGB" that results from Project groundwater use "will be made up at least in part by inflow from the Colorado River"[5] and "all groundwater production at the site would be considered Colorado River water."[6]

CEC Staff's conclusions are in accordance with the BLM's FEIS for the Project. The FEIS states:

> [b]ecause water within the [CVGB] is tributary to the Colorado River System, it is subject to the U.S. Supreme Court's Consolidated Decree (regarding Arizona v. California). Studies have estimated the flow to the Colorado River Basin as being between about 400 to 1,200 ac-ft/yr…The USGS identifies the CCGB[sic] as part of the Colorado River Basin/System in USGS SIR 2008-5113. The basin is subject to the Colorado River Compact of 1922, and the Boulder Canyon act of 1928, and Consolidated Decree (547 U.S. 150 [2006]). Groundwater contained in

[4] Exh. 400, p. C.9-68
[5] Exh. 402, p. 31
[6] Exh. 400, p. C.9-68

> the CVGB discharges across the eastern basin boundary, located between the McCoy Mountains and the Mule/Palo Verde Mountains, about 8 miles southeast of the GSEP…where it enters into the [PVMGB]. Groundwater contained in the PVMGB is hydrologically contiguous with groundwater contained in the Palo Verde Valley Groundwater Basin (PVVGB), which flanks the Colorado River. Therefore, under current/natural conditions, groundwater underlying the GSEP site flows in a southeasterly direction, into the PVVGB, and eventually influences the hydrology of the Colorado River. Downstream water right holders include California, Arizona, and Mexico.[7]

Also:

> [g]iven the location of the GSEP and the anticipated annual GSEP water requirements, the GSEP would impact the PVMGB and the Colorado River Basin.[8] The Colorado River Basin is defined under the Colorado River Compact of 1922 (affirmed by 547 U.S. 150 [2006]) as, '…all of the drainage area of the Colorado River System,' where the term 'Colorado River System' is defined as the Colorado River and its tributaries. Finally, tributaries to the Colorado River were defined as, 'all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry.'[9]

Further:

> [t]he U.S. Geological Survey has indicated that the CVGB lies within a basin tributary to the Colorado River and that wells drawing groundwater within those groundwater basins could be considered to be withdrawing water from the Colorado River Aquifer (Wilson et al., 1994). The USGS developed an accounting surface for determination of whether water was being drawn from the mainstream of the Colorado River. The accounting surface for the GSEP site ranged from 248 to 252 feet mean sea level (msl). Consequently, the GSEP has the potential to divert Colorado River water without an entitlement to the water, and all groundwater production at the site should be considered Colorado River water.[10]

The FEIS later states, in its evaluation of the dry cooling alternative, that [w]ater in the Colorado River is fully appropriated and the Colorado River would be impacted. The U.S. Geological Survey has indicated that the PVMGB and CVGB lie within a basin tributary to the Colorado River and that wells drawing groundwater could be considered to be withdrawing water from the Colorado River Aquifer (Wison et al., 1994). Consequently, the GSEP has the potential to divert Colorado River water without any entitlement to the water, and all groundwater production at the site would be considered Colorado River water.[11]

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[7] Genesis Solar Energy Project PA/FEIS, pp. 3.20-3-4.
[8] Genesis Solar Energy Project PA/FEIS, p. 4.19-2
[9] *Id*
[10] *Ibid*
[11] Genesis Solar Energy Project PA/FEIS, p. 4.19-17

In short, both Energy Commission Staff and the BLM concluded that proposed Project pumping would use Colorado River water, resulting in an impact to the River. The Applicant disagrees and contends that the Project would not impact the Colorado River. Notably, the Bureau of Reclamation, the water master for the Colorado River, stated that the Applicant's conclusion that the Project would not impact the Colorado River (or require an entitlement) is unjustified.

On September 28, 2010 a letter[12] from the Colorado River Board of California was docketed with the Energy Commission which confirms this critical point. Established in 1937 by California statute to protect Californians rights and interests in the Colorado River, the Colorado River Board is the authoritative State agency for the Colorado River.[13] This letter says, definitively, that groundwater pumping is pumping Colorado River water, and that the Project Applicant must obtain a legal entitlement to Colorado River water pursuant to Federal law before it may pump groundwater.

The Colorado River Board confirmed that "the CVGB groundwater underneath the project site is hydraulically connected with the Colorado River."[14] The Colorado River Board, the United States Geological Survey, the Metropolitan Water District, the Bureau of Land Management and Energy Commission Staff all agree that the Chuckwalla Valley Groundwater Basin is hydraulically connected to the Colorado River. The Colorado River Board confirmed that "consumptive use" of the Colorado River mainstream includes water drawn from the River mainstream by underground pumping.[15] Thus, "any amount" of the 10,644 acre-feet of water extracted from the Chuckwalla Valley Groundwater Basin for Project construction (4.104 acre-feet) and operation (6.540 acre-feet under a dry-cooled scenario) "that will be replaced by the Colorado River, in total or in part, is considered a use of Colorado River water.[16] In other words, regardless of whether the water drawn is used directly by the Project or is induced into the groundwater basin to fill the void left by the Project's groundwater pumping the Project's groundwater pumping would be considered a "consumptive use" of Colorado River mainstream water pursuant to the United States Supreme Court consolidated decree *Arizona v. California* (2006) 547 U.S. 150.

Finally, the Colorado River Board confirmed that to obtain "a legally authorized and reliable water supply" for the Project, the Applicant should acquire "water through an existing [Boulder Canyon Project Act] Section 5 contract holder, the Metropolitan Water District of Southern California."[17] Further, "[a]lthough other options may be available it is the Board's assessment that they could not be implemented in a timely manner and address the requirement that water consumptively used from the Colorado River must be through a BCPA Section 5 contractual

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[12] See http://www.energy.ca.gov/sitingcases/genesis_solar/documents/others/2010-09-23_Colorado_River_Board_of_California_Letter_TN-58622.pdf
[13] Cal. Water Code §§12500 et seq.
[14] Letter from Gerald R. Zimmerman, Acting Executive Director of the Colorado River Board of California to the State Clearinghouse, September 23, 2010, p. 1
[15] *Id* pp. 1-2.
[16] *Id* p. 1
[17] *Id* p. 2

entitlement."[18] The legal requirement that the Applicant obtain an entitlement is distinct from any offset scheme. Thus, to comply with federal law, the BLM must require the Applicant to obtain an entitlement before pumping any ground water at the Project site.

III. LOSS OF IRREPLACEABLE ECOLOGICAL RESOURCES

The BLM's Renewable Energy Fast Track Projects website[19] lists 9 solar thermal projects in various stages of application or permitting along the Colorado River with another 15 or more projects slated for Arizona. Impacts on desert ecosystems, habitat and bio-resources are incalculable. As the Gold Rush of 1848 left a toxic legacy of mining tailings whose impact is measurable over 150 years later, Large Thermal Solar Developments will create impacts that will similarly be long term and disastrous.

a. Grading of desert surfaces
b. Use of scarce water for cooling and cleaning panels
c. Interruption of animal migration patterns
d. Reflectivity and potential atmospheric effects
e. Impacts to watersheds
f. Impacts to plant material and natural indigenous pharmacological resources
h. Net effects on CO_2 sinkage and release
g. Increased risk to national security due to terrorist attack by locating significant energy infrastructure in one remote location.

IV. FINAL EIS IS PRE-COMMITTING TO A CERTAIN PLAN PRIOR TO CONDUCTING AN INDEPENDENT ENVIRONMENTAL REVIEW

The PA/FEIS at 2-38 states "2.5, Preferred Alternative, *The BLM has selected the Dry Cooling Alternative as the agency's Preferred Alternative because the Dry Cooling Alternative would reasonably accomplish the purpose and need for the Proposed Action while fulfilling BLM's statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors*. The only difference between the Proposed Action and the Dry Cooling Alternative is the cooling method employed. Impacts will be the same or similar for most environmental resources with the exception of a substantial decrease in water consumption for the Dry Cooling Alternative compared to the Proposed Action."

The Final EIS is pre-committing to a certain plan prior to conducting an independent environmental review [PA/FEIS] which violates the public participation requirements under the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA). The project requires an EIS because it involves land that is currently owned by the Federal Government.

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[18] *Id*

[19] See http://www.blm.gov/ca/st/en/prog/energy/fasttrack.html

"Failure to follow the NEPA process of evaluation of actions, public involvement, and decision maker consideration of full information, before actions are taken, is what is called a procedural lapse in implementation of the NEPA process. Some portion of the NEPA process has been left out or a short cut taken.

Timing - Premature selection and commitment to proposed action resulting in a "pre-decision" or preparing the NEPA document after the applicant has begun implementation of the project thus negating the intent of the law. Sometimes called post facto documentation or informally, NEPA backfill. The lapse directly relates to the need to treat NEPA compliance as a process rather than a document and includes consideration of the environment and public input before decisions at a local level are finalized or before action is taken. This lapse emphasizes the need for applicants, state, and federal officials involved to be educated on the process."[20]

V. INADEQUATE NO-ACTION ALTERNATIVE

The Final EIS alternatives analysis is inadequate because it fails to properly provide for a no action alternative. Pursuant to NEPA (40 CFR 1505.1(e)), a reasonable range of alternatives must be examined in the Draft EIR/EIS, and were selected based on the following criteria: (1) the alternative's potential to meet the Proposed Action's purpose and need; (2) the feasibility of the alternative; and (3) the alternative's ability to avoid or lessen adverse effects of the Proposed Project. See PA/FEIS at 2-38.

2.3
No Action Alternatives
BLM's alternatives related to the No Action Alternative and the Plan Amendment are the following:

No Action Alternative A
Under this No Action Alternative, the ROW application would be denied, and the ROW grant would not be authorized. The CDCA (1980, as Amended) would not be amended.

Land Use Plan Amendment Alternative - No Action Alternative B
Under this No Action Alternative, the ROW application would be denied, and the ROW grant would not be authorized. The CDCA (1980, as Amended) would be amended to identify the Proposed Action application area as unsuitable for any type of solar energy development.

Land Use Plan Amendment Alternative - No Action Alternative C
Under this No Action Alternative, the ROW application would be denied, and the ROW grant would not be authorized. The CDCA (1980, as Amended) would be

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[20] See http://www.fema.gov/library/file?type=publishedFile&file=nepa_desk_reference.pdf&fileid=78c5f760-0026-11dd-baa4-001185636a87

amended to identify the Proposed Action application area as suitable for any type of solar energy development.

As required under NEPA Section 1502.14(d), a No Action Alternative must also be considered." The BLM's No-action alternative is improper because it relies in two cases on approval of the amendment of CDCA Plan and in one case it would "identify the GSEP application area as suitable for any type of solar energy development". Additionally when federal agencies decide on project proposals, "[n]o action . . . would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

VI. IMPROPER PURPOSE AND NEED FOR THE PROJECT

Some examples of evidence of this unlawful pre-commitment from the Purpose and Need section of the FEIS are as follows:

> **Energy Commission Project Objectives**
> The CEQA guidelines require a clearly written statement of objectives to guide the lead agency in developing a reasonable range of alternatives and aid decision-makers in preparing findings or a statement of overriding considerations. CEQA specifies that the statement of objectives should include the underlying purpose of the project (Section 15126.6(a)). After considering the objectives set out by the applicant, the Energy Commission identified the following basic project objectives, which are used to evaluate the viability of alternatives in accordance with CEQA:
>
> 1. To construct a utility-scale solar energy project of up to 1,000 MW and interconnect directly to the CAISO Grid while minimizing additions to electrical infrastructure; and
> 2. To locate the facility in areas of high solar insolation.
> 3. In addition, when considering retention or elimination of alternative renewable technologies, in addition to evaluating the likelihood of reducing or eliminating the potential impacts of Genesis Solar Energy Project at its proposed site, staff evaluated whether alternative technologies could meet the following key project objectives:
> 4. To provide clean, renewable electricity and to assist Southern California Edison (SCE) in meeting its obligations under California's Renewable Portfolio Standard Program (RPS);
> 5. To assist SCE in reducing its greenhouse gas emissions as required by the California Global Warming Solutions Act; and
> 6. To contribute to the achievement of the 33% renewables RPS target set by California's governor and legislature

7. To complete the review process in a timeframe that would allow the applicant to start construction or meet the economic performance guidelines by December 31, 2010 to potentially qualify for the 2009 ARRA cash grant in lieu of tax credits for certain renewable energy projects.

40 CFR, § 1502.13 (Purpose and Need), requires the purpose and need statement to briefly specify the underlying purpose and need *to which the agency is responding* [*emphasis* added] in proposing the alternatives, including the proposed action. In Appendix N, BLM's responses to public comments on the *Chevron Energy Solutions Lucerne Valley Solar DEIS,* Section 1.1.1 of the DEIS, the BLM's Purpose and Need includes responding to Chevron Energy Solution's (CES) application under Title V of the FLPMA, BLM ROW regulations, 43 CFR, Part 2800, and other applicable federal directives, as follows: "The BLM will decide whether to approve, approve with modifications, or deny issuance of the ROW…." In this case the BLM recognizes the benefit to developing renewable and acknowledges that there are numerous locations on which to develop renewable energy as well as many different technologies. *However, contributing to the state's renewable standards is not a BLM mandate and therefore is not included in the BLM's purpose and need statement*. [*Emphasis* added] In the GSEP PA/FEIS the BLM takes the opposite approach by recognizing the CEC's project objective as part of the Purpose and Need for the project. This is improper and violates 42 U.S.C. § 1983.[21]

VII. NO HIGH DG ALTERNATIVE PROVIDED

Table 2-6 of the FEIS lists "Distributed Solar Technology" as "ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED ANALYSIS". Clearly the failure to include the High DG alternative is an unlawful attempt to minimize the impacts of the project by not considering a reasonable range of alternatives as demonstrated by the FEIS's improper assumption that DG "was eliminated because it is ineffective in responding to the BLM's purpose and need". Clearly such finding would be erroneous since whenever an agency approves a major action that may affect the environment, it must comply with NEPA. NEPA "establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences," including, in many cases, preparation of an EIS.[22] In addition to analyzing the proposed agency action, an EIS must "'[r]igorously explore and objectively evaluate all reasonable alternatives' to [the proposed] action. The analysis of alternatives to the proposed

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[21] This is in violation of 42 U.S.C. § 1983, commonly referred to as "section 1983" which provides:

> *Every person who under color of any statute*, ordinance, regulation, custom, *or usage*, of any State or Territory or the District of Columbia, *subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law*, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (emphasis added).

[22] *Center for Biological Diversity v. U.S. Dept. of Interior*, 581 F.3d 1063, 1071 (9th Cir. 2009) (internal citations omitted).

action is 'the heart of the environmental impact statement.'"[23] The FEIS improperly excludes the High DG alternative. The FEIS states at 2-31,

> While it will very likely be possible to achieve 250 MW of distributed solar energy over the coming years, the limited numbers of existing facilities make it difficult to conclude with confidence that this much distributed solar would be available within the same timeframe as the proposed GSEP. Barriers exist related to interconnection with the electric distribution grid. Also, solar PV is one of the components of the renewable energy mix required to meet the California Renewable Portfolio Standard requirements, and additional technologies like solar thermal generation, would also be required. BLM has no authority to require an applicant to use different technology then the applicant proposes. This alternative was eliminated because it is ineffective in responding to the BLM's purpose and need to respond to the application at hand. In addition, it would likely be economically infeasible for the Applicant to implement.

In an Advice Letter 3691-E filed before the California Public Utilities Commission (CPUC) PG&E identified "ten location-specific criteria that it has used, and is continuing to use, to select candidate sites for PV [utility owned generation] UOG facilities. Among these are the cost of interconnection, substation capacity, and local transmission capacity.[24] Each of these factors favors project sites that would reduce or eliminate the need for costly upgrades to the transmission and distribution system. Indeed, the PV Program as a whole was proposed in part because distributed generation may reduce the transmission-related delay and cost related to bringing new sources of renewable power to load centers. Accordingly, PG&E has proposed appropriate siting criteria to optimize the locational value of sites and to reduce potential costs related to transmission upgrades." Interconnect costs and feasibility is not included in the FEIS and judging from fees of 600,000 USD currently charged to project in the 3 MW size, substantial system upgrades may be required with projects of a combined thousands of MW on a single line, if it is possible to connect them at all, and the omission of these facts from the FEIS, calls the ability to interconnect into question since no planning or preparation is indicated.

515 MW of PV solar DG[25] has been denied access to sell its capacity in to the markets. Additionally, the CPUC and CAISO have erected barriers to entry by small DG PV solar in to the ancillary services markets for avoided costs of natural gas, and emissions, including but not

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[23] *Id.*; 40 C.F.R. § 1502.14 (2009).

[24] *See* Advice Letter 3691-E at 8.

[25] See California Public Utilities Commission's California Solar Initiative team Annual Program Assessment to the Legislature June 30, 2009. http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/103173.PDF Highlights of the report include: California has over half a gigawatt of solar connected to the electric grid at customer sites. With recent rapid growth, California now has over 515 megawatts (MW) of cumulative installed solar photovoltaic (PV) capacity at nearly 50,000 sites,[] including 226 MW installed under the CSI Program.[] The non-CSI Program solar PV capacity was installed primarily under prior solar programs, including the Self-Generation Incentive Program (SGIP) and the Emerging Renewables Program (ERP).

limited to; criteria pollutants credits; other greenhouse gas emission credits[26]; and renewable energy credits ("REC")s based on specific environmental attributes of specific types and technologies of renewable energy resource. Purportedly the California Solar Initiative "['CSI'] Program focuses exclusively on onsite, grid-connected solar that is used by electric customers that want to offset some portion of their own load by installing self-generation. The CSI Program does not fund wholesale solar power plants, designed to serve the electric grid or help utilities meet Renewable Portfolio Standard ('RPS') obligations"[27] and this policy has created undue prejudice or disadvantage to any sale of electric energy for resale in interstate commerce of small Distributed Generation ("DG") PV solar located near to the load centers.[28]

By excluding the High DG alternative the FEIS perpetrates disparate impacts i.e., in the form of socioeconomic discrimination on low-income communities of color in the load centers where fossil fuel power plants are currently located that emit emissions that are harmful and endanger the public.[29] This represents a distinct "community value" that supports locating solar PV generation near load centers where transmission upgrades may not be needed. Building transmission projects to connect GSEP that will require nearly the same amount of fossil fuel combustion turbines for backup power during periods of peak demand is the antithesis of this "community value" that has not been examined in the PA/FEIS.

VIII. CULTURAL RESOURCES

The American Indian Religious Freedom Act of 1978 (AIRFA) enforces the right of Native American to have access to their sacred places. If a place of religious importance to Native Americans may be affected by an undertaking, AIRFA promotes consultation with Indian religious practitioners, which may be coordinated with National Historic Preservation Act (NHPA) Section 106 consultation. The Archaeological and Historic Preservation Act of 1974 (AHPA) imposes additional requirements if a project would affect historic properties that have archaeological value and notifies the Department of the Interior when an action under the AHPA does not comply with NHPA Section 106. The National Historic Preservation Act (Section 106; 36 CFR, Part 800) Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official and other parties. The goal of consultation is to identify historic properties

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[26] Although the Commission's authority includes recovery of certain costs associated with environmental compliance through wholesale rates, the Commission does not directly regulate air emissions. The Commission is taking action consistent with climate change concerns, including removing regulatory barriers to increased development of renewable energy and enabling more effective demand response. In addition, Commission staff studies federal, state, and regional greenhouse gas initiatives to consider the implications of such initiatives for the Commission and the wholesale energy markets it regulates.

[27] Annual Program Assessment to the Legislature June 30, 2009 at page 5.

[28] The California utilities contract for a variety of renewable resources including industrial wind, and industrial solar as part of the RPS Program, but exclude counting over 515 megawatts (MW) of cumulative installed solar photovoltaic (PV) towards RPS compliance. Updates on the progress of the RPS program can be found at http://www.cpuc.ca.gov/PUC/energy/Renewables/

[29] Therefore PA/FEIS is in error where it finds the impacts of the GSEP on "environmental justice" are the same as the no action alternative.

potentially affected by the undertaking, assess effects, and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. The BLM has failed to carry out its duties under AIRFA, AHPA, and NHPA to conduct government to government consultation with tribes.

> Ground-disturbing construction activities associated with the GSEP can directly impact cultural resources by damaging and displacing artifacts, diminishing site integrity and altering the characteristics that make the resources significant. In addition, in the case of historic architectural resources and places of traditional cultural importance, impacts can occur to the setting of a resource even if the resource is not physically damaged…. [PA/FEIS at 4.4-3]
>
> Based on graphical representations showing the anticipated disturbance below ground and the anticipated above-ground intrusion into the flat landscape, impacts associated with the GSEP potentially affecting cultural resources, … [PA/FEIS at 4.4-3]
>
> Based on this information all archaeological resources, and possibly additional resources yet to be discovered during construction, located within the full extent of the GSEP's surface and below-grade impacts (inclusive of foundations and trenches) would be adversely affected by the GSEP…[PA/FEIS at 4.4-3]
>
> Based on preliminary evaluations of NRHP eligibility, the proposed GSEP would directly impact 27 significant archaeological resources (see Table D-9). These include:
> 1. 12 prehistoric-to-historic period Native American archaeological sites, 6 of which are potential contributing elements to a potential Prehistoric Trails Network Archaeological Landscape (PTNAL); and… [PA/FEIS at 4.4-3 to 4.4-4]
>
> In addition, the proposed GSEP would indirectly impact 248 sites that are contributors to the potential Prehistoric Trails Network Archaeological Landscape (PTNAL) (see 3.4-16 and 3.4-39 through 3.4-41). [PA/FEIS at 4.4-4]
>
> Trails
> During late prehistoric and ethnohistoric times, an extensive network of Native American trails was present in the Colorado Desert and environs (Heizer 1978; Cleland 2007; Sample 1950, p. 23; Apple 2005; Earle 2005; McCarthy 1993a; Melmed and Apple 2009; Von Werlhof 1986). Segments of many trails are still visible, connecting various important natural and cultural elements of landscape, for example, these trails are often marked by votive stone piles (cairns) and ceramic sherd scatters (pot drops).
>
> A late prehistoric-early historic Native American trail has been reported traversing roughly east/west through the Chuckwalla Valley (Johnson and Johnstone 1957, map 1). Johnson (1980, p. 89-93, fig. 1) identifies this route as part of the Halchedhoma Trail (recorded as CA-Riv-53T) running from San

Bernardino through San Gorgonio Pass to the Colorado River at present day Palo Verde Valley. In the vicinity of the Chuckwalla Valley, the trail proceeded roughly east-northeast from Hayfield Dry Lake past the future site of Desert Center to Gruendike Well. From there it went east, south of Palen Dry Lake to Sidewinder Well, then turned east, north of Ford Lake to McCoy Spring. It then headed south, around the south end of the McCoy Mountains, before going northeast towards the Colorado River. *Work by McCarthy (1993a, Fig. 10) suggests that offshoots of this trail may have crossed the GSEP site footprint leading to Ford Dry Lake and points to the south and west*. [PA/FEIS at 3.4-16]

Geoglyphs

Geoglyphs were constructed on desert pavements by rearranging and/or clearing pebbles and rocks to form alignments, clearings, and/or figures (Arnold et al. 2002; Gilreath 2007, pp. 288–289; Solari and Johnson 1982). These rock alignments (Harner 1953) occur throughout the deserts of southeast California and adjacent portions of southern Nevada and western Arizona. Rock alignments are present throughout this region, including two recorded along the western foot of the McCoy Mountains (McCarthy 1993a and b). Representational figures have only been noted in close proximity to the Lower Colorado River.

In the Mojave Desert, large rock alignments are found in Panamint Valley, Death Valley, Eureka Valley, and the Owens River Valley (Davis and Winslow 1965; Gilreath 2007, pp. 288–289; von Werlhof 1987). They have been interpreted as resulting from group ritual(s) (von Werlhof 1987). Many appear characterized by multiple-use episodes, with portions added through the years as part of ongoing rituals/ceremonies.

Colorado River geoglyphs include the Topock Maze (Rogers 1929) and a few dozen giant ground figures (Harner 1953; Setzler and Marshall 1952), often first observed from the air. During historic times, the Topock Maze was used by Yuman peoples for spiritual cleansing.

Johnson (1985, 2003), von Werlhof (2004), and Whitley (2000) relate the geoglyphs to Yuman cosmology, origin myths, and religion. Cation ratio dating5 of desert varnish has provided estimated ages of approximately 1200–1000 BC for the Colorado geoglyphs (Dorn et al. 1992; Schaefer 1994, p. 63; von Werlhof 1995), although use of the technique remains controversial (Gilreath 2007, p. 289).

Von Werlhof (1995, 2004) relates these sites to the Yuman creation story. They also may have functioned as focal points for shamanistic activities, vision quests, curing, and group rituals/ceremonies. Symbolic activities also were represented by intentional pot drop distributions along trails near water sources. The importance to Native Americans of water sources for survival during long-distance trips and seasonal rounds is obvious. Water sources also manifested significant spiritual values and often were associated with major rock art

complexes (McCarthy 1993a and b; Schaefer 1992). [PA/FEIS at 3.4-16 to 3.4-17]

Ethnographic Background
Currently, it is unclear which historic Native American group or groups occupied or used the region in which the proposed GSEP site is located, but the Chemehuevi, Serrano, Cahuilla, Mojave, Quechan, Maricopa, and Halchidhoma are the most likely. [PA/FEIS at 3.4-17]

Public Highways [Trails] within the Subject Area

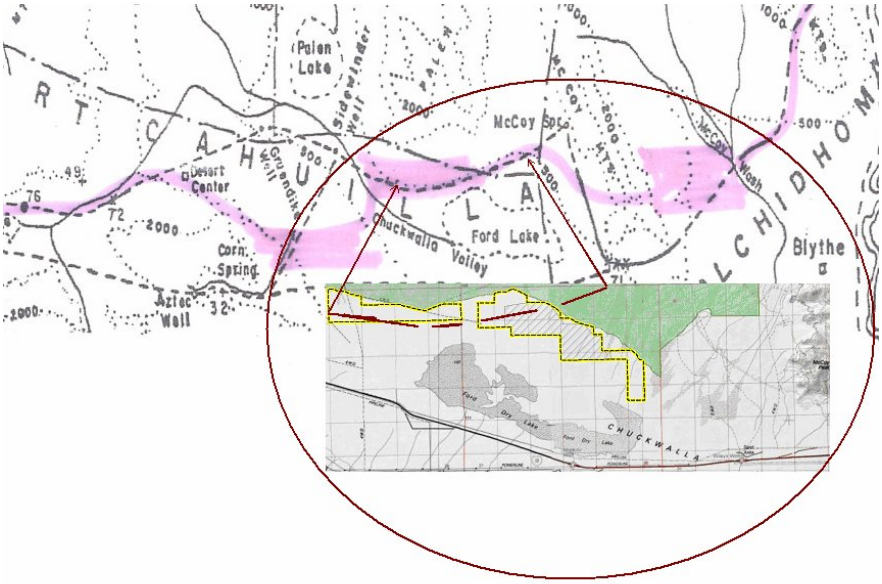

Figure 1 trail between Corn Spring and McCoy Spring bisects the Genesis project site

The applicant proposes to decommission or vacate public highways that are trails that have existed for thousands of years and to otherwise impair public use of historically established roads and ways within the subject area. The proposal put forth by the applicant would prohibit access of their property and dictating terms of use. By proposing such schemes, the BLM ignores native people's inalienable rights that are protected by the United States Constitution, California Constitution, California State law, Federal law, and/or Presidential authority affixed with the original land patents, and possibly even rights protected by the *Treaty of Guadalupe Hidalgo*.

All of the main arterial highways passing over the subject public lands were clearly established before Congressional passage to the Federal Land Policy Management Act of 1976, which repealed Federal Revised Statute 2477. Many of these highways were, in fact, established during the prehistoric era and continued in use during the Spanish and Mexican Periods, were protection of the *Treaty of Guadalupe Hidalgo* and later perfected under Revised Statute 2477 and the California Act Granting to Roads and Highways a Right of Way over the Public Lands of this State (California 1866:855). Revised Statutes 2477 states as follows:

> Sec. 2477. The right of way for construction of highways over public lands, not reserved for public uses, is hereby granted. (U.S. 1875:456.)

An early California legal definition for the term highway clearly included a broader interpretation than might be considered today. The 1911 Highway Code define Highway as follows:

> § 2618. In all counties of this State public highways are roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such in actions for the partition of real property.

The Act Granting to Roads and Highways a Right of Way over the Public Lands of this State, approved by the sixteenth session of the California Legislature, states:

> Section 1. Whenever any corporation, company or individual shall, in accordance with the general laws of this State, lay out and construct any road or highway over any unoccupied public lands of this State, or over any lands that the State by donation of Congress, otherwise, may hereafter acquire, such corporation, company or individual, and their respective assigns, are hereby granted the right of way for such roads or highways over such public lands. This act shall apply to roads heretofore as well as hereafter laid out and constructed. (Approved April 2, 1866. Statutes 1865-66:855.)

The United States Constitution, ninth and tenth amendments provide addition explanation regarding the rights and powers of the Unites States, the State, and the people:

> Amendment 9 - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
>
> Amendment 10 - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Based on these early laws, it is clear that both the United States Congress and the California State Legislature distinctly understood that the public had a right to pass over the public lands and there was an expressed expectation for the people to use or otherwise construct highways to facilitate their rights and rights of ways, to, from, over, and across these public lands. The BLM cannot grant or charge fees for rights or rights of ways that are preexisting, protect by the United States Constitution, the California Constitution, California State law, Federal law, international treaty and/or Presidential authority affixed with the original land patents.

Decommissioning roads, the County's abandonment of roads, or otherwise vacating roads only affect the government's responsibility to the roads, but in no way impairs the public's right to use or maintain the public road or way (*Chollar-Potosi v. Kennedy* 93 Am. Dec. 409; *Brown v. Stone* 69 Am. Dec. 303). Additionally, the long history of uninterrupted use and enjoyment of the roads and right of way conferred titled to the private property assignees in common, and perhaps in

common with the public, and have also established prescriptive rights to continue to enjoy the roads and rights of ways (*Pierce v. Cloud*, 82 Am. Dec. 496; *Chollar-Potosi v. Kennedy* 93 Am. Dec. 409; *Hill v. Crosby*, 13 Am. Dec 448).

Historically established public highways within the subject area include, but are not limited to, the roads and trails as marked on the Patrick Johnson Map 4-1-1957. Based upon CARE's Exhibit 609 trails; i.e., historically established public highways, roads, ways, and rights of ways that were established and granted by laws, treaties, rights, and court decisions that supersede the BLM's authority to grant others this right of way. The BLM lacks authority to convert preexisting rights into privileges. Research is incomplete regarding other public highways existing in the subject area. These impacts have not been studied to the degree to inspire confidence. Under the ARRA Fast Tracking process, Environmental Impact Statements have been quickly prepared. Answers are supplied by the Applicant in many cases before the questions can be asked. Unfortuntly like other answers in search of a problem the answers provided by the applicant are misleading or just wrong.

IX. WHY DOES BLM BELIEVE THEY HAVE A DUTY TO CONDUCT A SECTION 106 CONSULTATION WITH THE APPLICANT AND CEC EVERYONE BUT THE EFFECTED INDIAN TRIBES?

The Section 106 programmatic agreement and PA/FEIS must include a discussion of the Project's impacts on human burials. Both CEQA and NEPA require that each of the Project's significant impacts be disclosed and analyzed and all feasible mitigation must be required.[30]

Despite testimony by Intervener CURE and CEC Staff regarding the high likelihood of the presence of human burials on the Project site,[31] CEC Staff's admission that it did not analyze the Project's impacts on human cemeteries,[32] and considerable briefing dedicated to the Project's impacts on human burials, the PMPD and PA/FEIS do not mention human burials at all—not once. There is no reason why, despite substantial evidence showing that the Project would significantly impact human burials, the PMPD and PA/FEIS fail to address this issue.

Proposed Section 106 programmatic agreement:

> WHEREAS, *the California Energy Commission (Energy Commission), may certify the Next Era Genesis Ford Dry Lake Solar Project* located on public lands pursuant to Section 25519, subsection (c) of the Warren-Alquist Act of 1974 and

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[30] See Intervener CURE's Second Reply Brief, p. 11; San *Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 160 Cal.App.4th 683

[31] July 21, 2010 CEC Tr., pp. 210-211, 260.
See http://www.energy.ca.gov/sitingcases/genesis_solar/documents/2010-07-21_Transcript.pdf

[32] July 21, 2010 CEC Tr., p. 179.

for the purposes of consistency proposes to manage all historical resources in accordance with the stipulations of this Agreement; and

WHEREAS, *the BLM, in coordination with the Energy Commission, has authorized the Applicant to conduct specific identification efforts for this undertaking including a review of the existing literature and records, cultural resources surveys, ethnographic studies, and geo- morphological studies to identify historic properties that might be located within the Area of Potential Effect (APE)*; and

WHEREAS*, the Applicant has retained an archaeological consultant to complete all of the investigations necessary to identify and evaluate cultural resources located within the Area of Potential Effect (APE) for both direct and indirect effects.* A review of the existing historic, archaeological and ethnographic literature and records has been completed to ascertain the presence of known and recorded cultural resources in the APE and buffered study area, has conducted an intensive field survey for 5,188 acres of land, including all of the lands identified in APE for direct effects for all project alternatives, and has completed intensive field surveys for alternatives on lands that are no longer part of the project. *A cultural resources inventory report (Class II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, prepared by Tetra Tech, May 2010) that presents the results of identification efforts to the BLM and the Energy Commission. The BLM has provided the report to the consulting parties and Indian Tribes for review and comment; and …* [Programmatic Agreement at 6][33]

Under the National Environmental Policy Act the relationship between the tribes and the United States can be described as government-to -government. The status of tribes has been described as that of "domestic dependent nations," and, as such, their sovereignty pre-dates the founding of the United States. Therefore the destruction of lands used by and sacred to tribes are subject to the tribes' rights of first refusal to protect their use of those lands and prohibit the development of those land held in trust for the tribes by the United States.

5.2.2 Section 106 Compliance

Adverse effects that the proposed or alternative actions may have on cultural resources will be resolved through compliance with the terms of a Programmatic Agreement (PA) under Section 106 of the National Historic Preservation Act (NHPA) (16 USC Section 470). Analysis of impacts in this document and implementation of the terms of the PA would evidence BLM's compliance with NHPA Section 106 and NEPA.

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[33] See PD/FEIS Appendix D at p. 39
http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/palmsprings/genesis.Par.53604.File.dat/Vol2_Genesis%20PA-FEIS_Apdx-D-Cultural.pdf

In accordance with 36 CFR Section 800.14(b), PAs are used for the resolution of adverse effects for complex project situations and when effects on historic properties, resources eligible for or listed in the National Register of Historic Places (NRHP), cannot be fully determined prior to approval of an undertaking. *The BLM would prepare a PA in consultation with* the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, *Indian tribes*, and other interested parties. *The PA would govern the conclusion of the identification and evaluation of historic properties (eligible for the NRHP), as well as the resolution of any adverse effects that may result from the proposed or alternative actions.*

Treatment plans regarding historic properties that cannot be avoided by project construction will be developed in consultation with stakeholders as stipulated in the PA. When the PA is executed and fully implemented, the proposed action would have fulfilled the requirements of NEPA and Section 106 of the NHPA. The PA would be executed prior to BLM's approval of the Record of Decision for the ROW grant for the action.

5.2.3 Tribal Consultation for the GSEP

The BLM consults with Indian tribes on a government-to-government level in accordance with several authorities including NEPA, the NHPA, the American Indian Religious Freedom Act, and Executive Order 13007. Under Section 106 of the NHPA, the BLM consults with Indian tribes as part of its responsibilities to identify, evaluate, and resolve adverse effects on cultural resources affected by BLM undertakings.

The BLM invited Indian tribes to consult on the GSEP on a government-to-government basis at the earliest stages of project planning by letter in November 2009, and has followed up with an additional correspondence, communication, and other information since then. To date, 15 tribes or related entities have been identified and invited to consult on the proposed action, including those listed below. Tribes were also invited to a general information meeting and site visit, held on January 25, 2009. *Letters to request consultation to develop a Section 106 Programmatic Agreement with tribes, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation were mailed out to the below-listed tribes on February 25, 2010.* [PA/FEIS at 5-2 to 5-3]

Response to Comments on Use of Programmatic Agreement to Comply with the NHPA:

6-010 See responses to comments 6-044 and 12-089. Efforts to identify places of traditional cultural importance to ethnic and cultural groups are described on pages 3.4-28 through 3.4-34 and in Appendix D of the FEIS. Mitigation measures for cultural resources affected by the GSEP are presented on pages 4.4-8 through 4.4-10 and in Appendix G of the FEIS. *The BLM is complying with Section 106 of the National Historic Preservation Act (NHPA) <u>through the completion of</u> a Programmatic Agreement (PA) with the State Historic Preservation Officer (SHPO) and <u>consulting parties such as Native American Tribes</u>.*[PA/FEIS at 5-13 to 5-14]

8-025 In accordance with prevailing professional standards, the Class III cultural resource inventory conducted for the GSEP identified all cultural properties locatable from surface and exposed profile indications. This is considered a reasonable effort to identify historic properties that might be affected by the proposed undertaking. The geoarchaeological studies point to sediments within the project footprint that have the potential to contain archaeological materials because of their relatively recent age, stability, and proximity to topographic features (e.g. lake shoreline) used by indigenous peoples. *Areas having high potential to contain buried archaeological deposits will be targeted for monitoring during construction. Any significant cultural resources discovered during construction will be treated in accordance with the Historic Properties Treatment Plan developed pursuant to the Programmatic Agreement for the GSEP*.

8-027 The regulations implementing the National Historic Preservation Act (NHPA), found at 36 CFR Part 800, provide for the *use of a Programmatic Agreement (PA)* when effects on historic properties cannot be fully determined prior to approval of an undertaking. PAs commonly are used to comply with NHPA Section 106 on large projects like the GSEP. *The PA for the GSEP would govern a process for completing the identification and evaluation of cultural resources that would be affected, and for determining mitigation consistent with their values, prior to construction or other activities that could affect them. The PA will be completed and signed prior to approval of the ROD.* Consulting parties and stakeholders, including the State Historic Preservation Officer, the Advisory Council on Historic Preservation, and Indian tribes, will have an opportunity to participate in consultations on the terms and provisions of the PA before it is approved. [PA/FEIS at 5-40]

8-059 The Class III cultural resource inventory for the GSEP identified observable cultural resources within the GSEP Area of Potential Effects, including those along the ancient shoreline of Ford Dry Lake. These cultural resources are described in section 3.41 of the FEIS. The analysis of impacts for the resources identified is presented in section 4.4 of the FEIS. Mitigation measures for cultural resources affected by the GSEP are presented on pages 4.4-8 through 4.4-10 and in Appendix G of the FEIS. *Mitigation will include monitoring to identify any buried cultural resources along the ancient shoreline that may be discovered during construction. Specific treatment measures for cultural resources that will be affected by the GSEP, including any buried cultural resources that are discovered during construction, will be implemented as part of a Historic Properties Treatment Plan pursuant to a Programmatic Agreement being developed for the project.* [PA/FEIS at 5-47]

12-089 The BLM has been consulting with Indian tribes since the early stages of project planning and will continue this consultation throughout the Section 106 compliance process. BLM's tribal consultation efforts are discussed on pages 3.4-

> 32 through 3.4-34 and in Appendix D, Cultural Resources Tables 3 and 4. Tribes have been invited to identify properties of traditional cultural and religious importance that might be affected by the project. *Tribes have also been invited to participate in consultations to develop a Programmatic Agreement for the project* that will seek to resolve adverse effects on any properties of traditional cultural and religious importance that may be identified. *Development of the Programmatic Agreement, with tribal participation, is ongoing*. The *Programmatic Agreement will be completed and signed prior to approval of the ROD* [PA/FEIS at 5-69]

In the CEC's presiding members proposed decision (PMPD)[34] it appears that BLM believes that itself and the CEC are better qualified than the tribes themselves to determine the final programmatic agreement terms to be imposed on the tribes.

> Staff argues in their Reply Brief that research was not the only value being considered in evaluations of significance and proposed mitigation. For example, Table 8 (Ex. 403 p. C.3-67) contains a list of sites that were primarily considered for ethnographic (non-scientific) impacts. For mitigation of impacts to ethnographic resources or spiritual resources, Staff's proposed Conditions of Certification, CUL-1 and CUL-16 to address potential impacts to these resources as currently identified. Condition CUL-1 funds a regional study specifically to mitigate any potential contribution to a cumulative impact to the Prehistoric Trails Network as a cultural landscape. (7/21/10 RT 150: 15-21; 151: 2-7) (Staff's Reply Br. To Issues Raised at the 7/21/10 Hearings.)
>
> Staff further argues:
>
> > Under Section 106 of the National Historic Preservation Act, the BLM must perform a government-to-government consultation with Native Americans. As a result of this process, additional ethnographic resources may be discovered which could be impacted by the project. *The BLM's Programmatic Agreement is the appropriate mechanism to address impacts to ethnographic resources and to develop mitigation.*"
>
> The Applicant would be subject to any mitigation in the Programmatic Agreement and the mitigation required by Conditions of Certification, CUL-1 and CUL-16. (7/21/10 RT 151:2-25; 152:1-25; 153:1-12). It should be noted that at this time, no specific formally identified traditional cultural property has been mentioned in or near Genesis by Native American groups and, therefore, no impacts have been identified. (7/21/10 RT 152:1-25) (Staff's Reply Br. To Issues Raised at the 7/21/10 Hearings).

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[34] See http://www.energy.ca.gov/2010publications/CEC-800-2010-011/CEC-800-2010-011-PMPD.PDF at 18 to 22 Posted: August 19, 2010.

Staff's expert testified "once you've destroyed cultural resources, they're gone forever. And in the case of standard recommended mitigation, specifically only for archeological sites where we're recovering information, modern excavation techniques can indeed recover some, but not all of this information. And unfortunately data recovery doesn't mitigate the loss of other kinds of values that would be part of these resources, spiritual values, and cultural values." (7/21/10 RT 147:21-148:12.) [PMPD at 17 to 18]

Conclusion Re: Direct Impacts

We are left with the following observations: archaeological recovery is inherently destructive, so avoidance is the preferred way to mitigate impacts to known cultural resources. (7/21/10 RT 180:12-15; 210:12-14.) The GSEP has been redesigned to avoid 55 known cultural resources, but its construction will still directly impact 27 known cultural resources. (7/21/10 RT 147:21-148:12; 208:2-9.) The mitigation planned for the 27 directly impacted cultural resources is data recovery. (7/21/10 RT 193:12-20; 196:14-20.) Data recovery mitigates impacts to scientific values but not ethnographic or cultural (spiritual) values. (7/21/10 RT 147:21-148:12.)

It appears that Staff omitted ethnographic values in their calculation of the worst case scenario. In the worst case scenario, at least some of the significant cultural resources assumed to be present at the site should also be assumed to contain ethnographic values. The only way to mitigate ethnographic values is avoidance. (7/21/10 RT 147:21-148:12.) Since data recovery of the cultural resources directly impacted by the GSEP would not mitigate the ethnographic values, the proposed mitigation (data recovery) would not fully mitigate direct impacts.

Therefore, it is difficult to conclude that the direct impacts to cultural resources imbued with ethnographic values can be mitigated to insignificance if those resources are also to be collected, catalogued and curated.

Furthermore, the testimony of Staff's expert confirms that sacredness is in the eye of the beholder. (7/21/10 RT 150:4-14; 175:12-19.) *Intervenor CARE, called as a witness Alfredo Figueroa, a member of the Chemehuevi Tribe, to testify regarding the ethnographic values of the GSEP site. Mr. Figueroa testified that the GSEP site is "very, very sacred. It's the most sacred area in the world*." (7/21/10 RT 236:1-12, Ex. 617.) Several members of the public also commented on the high cultural values placed on the cultural resources found in the area around the GSEP. (7/21/10 RT 94:7-116:9.)

In light of the record, we find that although direct impacts to cultural resources at the GSEP site have been, and will be, substantially mitigated; the sites that are contributors to the PTNCL contain both archeological and ethnographic resources and although the impacts to these resources will be mitigated in someways, the impacts to the ethnographic resources may not be mitigated below the level of significance. (Ex. 403, p. C.3-76).

5. Cumulative Impacts

A cumulative impact refers to a project's incremental effects considered over time and together with those of other nearby, past, present, and reasonably foreseeable future projects whose impacts may compound or increase the incremental effect of the project. (Pub. Res. Code § 21083; Cal. Code Regs. tit. 14, § 15064(h), 15065(a) (3), 15130, and 15355.) *The construction of other projects in the same area as the project could affect unknown subsurface archaeological deposits, both prehistoric and historic.*

The GSEP impacts, when combined with impacts from past, present, and reasonably foreseeable projects, contribute in a small but significant way to the cumulatively considerable adverse impacts for cultural resources at both the local I-10 Corridor and regional levels. (Ex. 403, p. C.3-152.)

The majority of the proposed future projects examined in this analysis would likely undergo CEQA and/or NEPA review. Sites that could not be avoided would be tested to evaluate significance. National and California Historic Register eligible sites would be subject to historical documentation or data recovery excavations to mitigate impacts.

Although it is anticipated these measures would reduce many individual site impacts to less than significant levels, archaeological excavation and analysis cannot recover all the scientific values and other values of a site. (Ex. 403, p. C.3-152.) *This analysis estimates that more than 800 sites within the I-10 Corridor, and 17,000 sites within the Southern California Desert Region, will potentially be destroyed. The destruction of cultural resources and cultural landscapes results in the loss of information, but also to irreparable damage to cultural and spiritual values.* In terms of the loss of information, mitigation can reduce the impact of this destruction, but not to a less-than-significant level. *In terms of cultural and spiritual impacts, the nature of these impacts and potential mitigation measures can only be determined by members of the community who value the resources and landscapes, in this case Native Americans.* Because only they can suggest possible mitigation, if any, this cumulatively considerable impact may be unmitigable. (Ex. 403, pp. C.3-152 through C.3-153.)

To reduce GSEP's impacts to the greatest extent possible, we will impose CUL-1 and CUL-2. CUL-1 and CUL-2 would reduce GSEP's cumulative impact by funding programs to define, document, and possibly nominate to the National Register of Historic Places the two cultural landscapes that GSEP shares with two other nearby solar projects, thus protecting these landscapes from further development and degradation. The cost of these programs would be shared by the three projects based on the acreage they would occupy. While the implementation of these conditions will reduce the GSEP impacts to the greatest extent possible, remaining impacts will still be cumulatively considerable. (Ex. 403, p. C.3-153.)

6. Impacts to Native American Religious Practices
CARE claims that the proposed Genesis Solar Energy Project conflicts with local Native American tribes' freedom to practice their religions. CARE relies on the Religious Freedom Restoration Act of 1993 [42 U.S.C. §§ 2000bb et seq.] (Hereinafter, "RFRA").

In *Navajo Nation v. United States Forest Service* 535 F. 3rd. 1058 (9th Cir. 2008), the Ninth Circuit Court of Appeals sitting en banc, articulated a two pronged standard to determine whether government action of approving a project interferes with Native American religious practices. In Navajo Nation, the United States Forest Service, after complying with NEPA and Section 106 of the NHPA, approved the use of a portion of a mountain side and recycled water to make artificial snow. Several Native American tribes claimed the mountain was sacred and the approval would interfere with their religious practices. The court held that in order for a party to establish a prima facie RFRA claim, a plaintiff must present evidence sufficient to allow a trier of fact to rationally find the existence of two elements. First, the activities the plaintiff claims are burdened by the government action must be an "exercise of religion." Second, the government action must "substantially burden" the plaintiff's exercise of religion. (*Navajo Nation v. United States Forest Service* 535 F. 3rd. 1058 (9th Cir. 2008) at page 1068).

In this matter, according to the testimony of Alfredo Acosta Figueroa: the Interstate-10 corridor is the most sacred area of the North American Continent. It is the area where the Aztec Calendar is geographically outlined and located. The area entails the Kofa Mountains in Arizona, west to the human head image (Copill-Quetzalli) on the crest of the San Jacinto Mountains above the city of Palm Springs, California.

CARE submitted testimony that claims that the proposed Blythe Solar Power Project (several miles to the east of the GSEP) is overlaid on more than 25 large geoglyphs called the Blythe Giant Intaglios. One trail traverses west through the south end of the McCoy Mountains to the McCoy Springs. The trail comes down from the Palen Mountain Wash and meets with another trail from the McCoy Springs area that is in the Genesis project. The trail then runs west along the plains of the Palen Mountains. (Ex. 600.)

CARE submitted a digital video disc (DVD) entitled "La Cuna de Aztlan" featuring video of the Blythe Giant Intaglios with Mr. Figueroa describing the ethnographic history of the geoglyphs. (Ex. 615.) *In his testimony at the hearing, Mr. Figueroa testified that the GSEP site, along the north edge of the Ford Dry Lake, was part of the Aztec's migration. He described the GSEP site as a "cross roads" and stated that the area is "very, very sacred."* (7/21/10 RT 236:1-12.)

CARE also submitted what appears to be a topographical map entitled "Francis J. & Patricia H. Johnston's Map: University of California Archaeological Survey, April 1, 1957" (Ex. 608.) The legend of the map defines symbols used in the map,

to wit, a straight line indicates "recorded trail," a broken line indicates "reported trail," a dot-dash line indicates "tribal boundary," a round bullet indicates an "occupation site," an "X" indicates "sherds or trail feature," and a "+" indicates, "petroglyphs." Superimposed over the black and white map, it appears that someone used a pink highlighter marker to indicate the approximate locations of the Palen, Genesis and Blythe power plant sites and a line that we can only infer was drawn to show the trail that Mr. Figueroa referred to in his testimony as the "Aztec's migration." (7/21/10 RT 236:1-12; Ex. 608.)

The pink highlight that appears to represent the location of the GSEP occurs northwest of "Ford Lake" just south of the intersection of the Desert Cahuilla and Chemehuevi tribal boundary. A broken line indicating a "reported trail" runs laterally through the rough rectangle representing the GSEP site. A straight line indicating a "recorded trail" crosses the broken reported trail near Sidewinder Well, goes around the GSEP site and terminates at "Ford Lake." (Ex. 608.)

The Applicant contends that the prehistoric trail alleged by CARE is not present within the GSEP disturbance area. Applicant argues that there has never been any confirmation that this bisecting trail exists or ever existed. According to the Applicant, "[t]he field crews conducting the GSEP surveys were well aware of what prehistoric trails look like and how to record them. Prehistoric trails are generally only visible in this region, in areas of desert pavement that are geologically stable. No trails were observed within the GSEP [disturbance area and buffer zones] during the pedestrian and geoarcheological field surveys. *Although CARE made a video of the region and submitted it as evidence, the video does not show any trail within or near the GSEP site or disturbance area*." (Applicant's Brief in Reply to CARE, p. 4.)

This seems to indicate the Section 106 programmatic agreement FEIS and amended CDCA Plan adopted by BLM with CEC and the project Applicant *purportedly* in government to government consultations pursuant to Section 106 by the BLM with Indian tribes is unlawful since they rely on authorizing the Applicant and private consultants like Environmental Science Associates (ESA)[35] and Tetra Tech to conduct specific identification efforts for this undertaking under a purported Section 106 programmatic agreement, by allowing the Applicant to retain an archaeological consultant to complete all of the investigations necessary to identify and evaluate cultural resources located within the Area of Potential Effect (APE) for both direct and indirect effects. The Section 106 consultation process handbook from the Advisory Council on Historic Preservation (ACHP)[36]seems to indicate the FEIS and amended CDCA Plan by BLM and the project Applicant *purportedly* in government to government consultations pursuant to Section

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[35] CARE questions how the BLM claims that an environmental firm like ESA is impartial to the developer's interests over the tribes when ESA works for Calpine? Clearly this is an example of bias against tribal sovereignty over their disposition of their own cultural resources and the same could be said for Tetra Tech. See http://www.esassoc.com/index.php?p=Our+Clients&s=107

[36] See http://www.achp.gov/regs-tribes2008.pdf

106 by the BLM with Indian tribes *is unlawful since they rely on authorizing the Applicant and their consultant ESA and Tetra Tech to conduct specific identification efforts for this undertaking by allowing the Applicant to retain an archaeological consultant to complete all of the investigations necessary to identify and evaluate cultural resources located within the Area of Potential Effect (APE) for both direct and indirect effects*. This also violates the BLM's existing MOU with the inter-tribal group the La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee.

The BLM has an existing Memorandum of Understanding with the La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee "to provide a means…to work in partnership to enhance cultural resource protection, conservation, and interpretation efforts on BLM lands…all projects conducted under this MOU will be carried out by qualified specialists. Contractors hired for projects must meet BLM standards. *Projects conducted under thus MOU include but are not limited to cultural resource survey, archaeological site recordation, National Register of Historic Places nominations, ethnographic studies with interested Native American tribes, design and installation of site protection and interpretation measures, and the production of interpretative materials for the pubic*."

The BLM has retained historian Dr. Lowell Bean to consult with the tribes and prepare his report for submission to BLM by October 1, 2010. If the BLM was truly serious about meaningful and informed Section 106 consultations with the tribes they would extend the comment period for 30 days following the public release of Dr. Bean's report.[37] In the attached *Kokopelli and Indigenous Sacred Sites Threatened by Mega Solar Power Plants in the California Desert* prepared by Alfredo Figueroa[38] addresses the lack of meaningful and informed Section 106 consultations by the BLM.

> The enclosures herein submitted by La Cuna de Aztlan Sacred Sites Protection Circle, include pictures of local native/indigenous sacred sites threatened by the proposed mega solar power plants. These Native American sacred sites and cultural resources will be destroyed by the construction of these solar power plants. Other enclosures are of maps, an MOD and correspondence pertaining to the mega-solar power plants. The Blythe Solar Power Project/Chevron, Genesis Solar Energy and Palen Solar Power Project/Chevron are part of the fast track large solar projects to be built on BLM land with a deadline of December, 2010, to qualify for Obama stimulus monies. *Though the Bureau of Land Management claims that it will ensure the protection of cultural resources, the fast-track renewable energy solar plants scheduled to be built on the I-10 corridor in Eastern Riverside County, are already in the implementation stages despite the fact that their cultural resources surveys have yet to be completed.* When members of the Sacred Sites Protection Circle met with the California Energy

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[37] See attached letter from La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee to BLM requesting a 30 days extension on the Comment/Protest period for the FEIS/PA.

[38] We incorporate this (attached) protest of La Cuna de Aztlan Sacred Sites Protection Circle by reference as if fully set forth by CARE.

Commission to inform them of their concerns, their presentation was shelved. The members made it clear that they were not against renewable energy, but were protesting the destruction of these specific sites and cultural resources. [*Emphasis* added]

X. CAN APPLICANTS FOR FEDERAL PERMITS OR CONTRACTORS HIRED BY THE AGENCY INITIATE AND CARRY OUT TRIBAL CONSULTATION?

No, federal agencies cannot unilaterally delegate their responsibilities to conduct government-to-government consultation with Indian tribes to non-federal entities. It is important to remember that Indian tribes are sovereign nations and that their relationship with the federal agency exists on a government-to-government basis. For that reason, some Indian tribes may be unwilling to consult with non-federal entities associated with a particular undertaking. Such non-federal entities include applicants[] for federal permits or assistance (which would include any contractors hired by the applicant), as well as contractors who are not government employees but are hired to perform historic preservation duties for a federal agency. In such cases, the wishes of the tribe for government-to-government consultation must be respected, and the agency must carry out tribal consultation for the undertaking. [Page 16 to 17]

In behalf of CARE's members I complain that the project adversely impacts Native American cultural resources and sacred sites and that the federal government has a duty to conduct direct government to government consultations with Native American tribes impacted by the project without the interference and biases of the CEC and Applicant and the BLM has failed to do so which violated Title VI of the Civil Rights Act of 1964 which therefore prohibits granting the requested amendment to the CDCA Plan by BLM therefore. I also complain that the project would not provide any jobs to Native Americans.

XI. RELIGIOUS FREEDOM RESTORATION ACT OF 1993

The proposed Genesis Solar Energy Project conflicts with local Native American tribes' freedom to practice American Indian religions. Under the Religious Freedom Restoration Act of 1993 ("RFRA"), the federal government may not "substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)." 42 U.S.C. § 2000bb-1(a). "Exercise of religion" is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A); see also id. § 2000cc-5(7)(B) (further specifying that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise"). Sub-section (b) of § 2000bb-1 qualifies the ban on substantially burdening the free exercise of religion. It provides, "Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." Approving the proposed action does not serve a compelling governmental interest in avoiding conflict with the Establishment Clause. The Supreme Court has repeatedly held that the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch*

v. Donnelly, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984). "Anything less would require the `callous indifference' we have said was never intended by the Establishment Clause." Id. (citations omitted); see also *Hobbie v. Unemp. App. Comm'n of Fla*., 480 U.S. 136, 144-45, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.")

The PA/FEIS inadequately analyzes the social and cultural impacts of the proposed action on these local Native American tribes. NEPA requires agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." 42 U.S.C. § 4332(2)(A). Agencies must "identify and develop methods and procedures ... which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." *Id*. § 4332(2)(B). Finally, agencies must prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." *Id*. § 4332(2)(C). The regulations define "human environment" broadly to "include the natural and physical environment and the relationship of people with that environment," and note that "[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment." [40 C.F.R. § 1508.14] The "effects" that should be discussed include "aesthetic, historic, cultural, economic, social, or health" effects, "whether direct, indirect, or cumulative." *Id*. § 1508.8

Under the RFRA, the federal government may not "substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)." [42 U.S.C. § 2000bb-1(a)] "Exercise of religion" is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A); see also id. § 2000cc-5(7)(B) (further specifying that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise"). Sub-section (b) of § 2000bb-1 qualifies the ban on substantially burdening the free exercise of religion. It provides, "Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."[39]

Approving the proposed action does not serve a compelling governmental interest in avoiding conflict with the Establishment Clause. The Supreme Court has repeatedly held that the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984). "Anything less would require the `callous indifference' we have said was never intended by the Establishment Clause." Id. (citations omitted); see also *Hobbie v. Unemp. App. Comm'n of Fla*., 480 U.S. 136, 144-45, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987) ("This Court has

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[39] This is why findings of overriding considerations for these "other concerns and policy considerations" must be adopted as part of the Final EIS.

long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.").

XII. 42 USC § 1996 PROTECTION AND PRESERVATION OF TRADITIONAL RELIGIONS OF NATIVE AMERICANS

The American Indian Religious Freedom Act (AIRFA) expresses the strong federal public trust policy in favor of respecting the traditional religious beliefs and practices Native Americans. AIRFA provides for the protection and preservation of traditional religions of Native Americans.

> On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

The proposed Genesis Solar Energy Project will endanger traditional religious, tribal, and cultural beliefs and interferes with native people's traditional rights and freedom to worship. The proposed Genesis Solar Energy Project will destroy many cultural sites. The BLM's analysis failed to properly analyze and to properly identify mitigation measures or remedial actions to prevent harm to the cultural sites of religious significance in consultation with the Most Likely Descendant(s) (MLD).

XIII. DUE PROCESS VIOLATIONS

The BLM's review did not include any direct consultation with the affected tribal governments and therefore the draft SA/EIS has not been made public for comment and review.

Section 1983 of title 42 of the U.S. Code is part of the Civil Rights Act of 1871. This provision was formerly enacted as part of the *Ku Klux Klan Act of 1871* and was originally designed to combat post-Civil War racial violence in the Southern states. Reenacted as part of the Civil Rights Act, section 1983 is today the primary means of enforcing all constitutional rights.

> Section 1983 provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Fourteenth Amendment to the United States Constitution protects individuals against the deprivation of liberty or property by the government without due process of law. *Portman v County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). A procedural due process claim under 42 U.S.C. § 1983 must allege three things: "(1) a liberty or property interest protected by the

Constitution; (2) a deprivation of the interest by the government; (3) lack of process." *Id.*

XIV. CONCLUSIONS

The Gold Rush of 1848 resulted in the economic, cultural and physical destruction of Native peoples, families and communities. The introduction of Large Thermal Solar, under the auspices and processes of the fast tracked ARRA Recovery Act Stimulus Program will deny the tribes their sovereign rights if allowed to go forward. We have to act quickly to challenge this new exploitation of the peoples in the territories of indigenous cultural groups. It is up to us to make this happen.

Respectfully submitted,

Michael E. Boyd President (CARE)
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September 29, 2010

Verification

I am an officer of the Protesting Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29th day of September 2010, at Soquel, California.

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Attachment 1

La Cuna de Aztlan
Sacred Sites Protection Circle

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To: Bureau of Land Management

September 14, 2010

Allison Shaffer, BLM Project Manager,
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By US Mail and e-mail:
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BLM Director (210), Protests
Attention: Brenda Williams, 1620 L
Street, NW. Suite 1075,
Washington, DC 20036,
By US Mail and E-mail:
Brenda_Hudgens-Williams@blm.gov

Re: Request for 30 days extension on Protests and Comments on the Final EIS and Proposed California Desert Conservation Area (CDCA) Plan Amendment for CACA 048811, Chevron Energy Solutions/Solar Millennium Blythe Solar Power Plant, CACA 048880, Genesis Solar, LLC Genesis Solar Energy Project, and Plan Amendment LLCAD06000.

Dr. Lowell John Bean has a contract with the BLM to gather all the information concerning the proposed solar panel sites and their sacredness. He had until September 17, 2010 to submit his findings to the BLM but during the time of the interviews we discussed among us that this date was too soon and would not allow Dr. Bean to gather enough information. However, Dr. Bean was able to contact the BLM and he was granted an extension for October 1, 2010.

The tribes need additional time therefore to consult with Dr. Bean and therefore in behalf of our inter-tribal group La Cuna de Aztlán Sacred Site Protection Circle we respectfully request the BLM grant a 30 days extension on Protests and Comments on the Final EIS and Proposed California Desert Conservation Area (CDCA) Plan Amendment for CACA 048811, Chevron Energy Solutions/Solar Millennium Blythe Solar Power Plant, CACA 048880, Genesis Solar, LLC Genesis Solar Energy Project, and Plan Amendment LLCAD06000.

Sincerely,

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Alfredo A. Figueroa
Elder/Historian of Protection Circle
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DECLARATION OF SERVICE

I, Michael Boyd, declare that on 9/29, 2010, I served and filed copies of the attached BLM Protest + Comments, dated 9/29, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[http://ww.energy.ca.gov/sitingcases/genesis_solar].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

✓ sent electronically to all email addresses on the Proof of Service list;

_____ by personal delivery;

_____ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

✓ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Michael E. Boyd

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

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(Revised 8/5/10)

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