

DOCKETED

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STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the matter of:

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

DOCKET NO. 09-ACF-7C

COLORADO RIVER INDIAN TRIBES

**Rebuttal Testimony of Rebecca Loudbear, Winter King and Sara Clark
regarding Cultural Resources**

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INTRODUCTION

On October 9, 2013, Palen Solar Holding, a subsidiary of BrightSource and the proponent of the Palen Solar Electric Generating System, (referred to herein as BrightSource) filed its Opening Testimony related to Cultural Resources in the above-captioned proceeding. CEC staff has carefully explained that the proposed amendment will cause additional and significant impacts to a landscape that CRIT members consider sacred, a conclusion that is amply supported by evidence in the record, including CRIT's own. Nonetheless, BrightSource now argues that the new Project presents few impacts beyond those already considered by the California Energy Commission when it approved an earlier version of the project. As described below, it is our opinion that these assertions are both inaccurate and misguided.

QUALIFICATIONS

The relevant qualifications of Rebecca Loudbear, Winter King and Sara Clark have been set forth in the Opening Testimony of the Colorado River Indian Tribes and are not repeated here.

STATEMENT

CRIT strongly concurs with the FSA's conclusion that the new visual impacts associated with the Project result in a significant impact to the cultural landscape, identified in the FSA as the Chuckwalla portion of the Pacific to Rio Grande Trail Landscape (PRGTL). As described in the testimony of CRIT's Museum Director and in the statements of Tribal Elders, trails throughout the Chuckwalla Valley connect numerous sites of cultural significance (including sacred sites and traditional cultural properties). Construction of the Project will fundamentally change the visual integrity of this landscape, interfering with ongoing use of these trails and sites by CRIT members.

BrightSource's Opening Testimony errs in three fundamental ways. First, BrightSource urges the Commission to rely on a map that allegedly presents "a clear delineation of where the [Project] can now be seen in areas where the Approved Project was not visible." PSEGS Cultural Resources Opening Testimony. Yet this map cannot take into account the comparative *magnitude* of the visual intrusion resulting from the two projects. With its 750-foot, brilliant illuminated towers, it is obvious that the proposed Project will be far more visible than the previous project, which was comprised of solar troughs only 30 feet tall.

Second, BrightSource claims that CEC staff failed to provide "any objective analysis or specificity" as to why the Project will result in this new significant impact. This statement ignores staff's careful analysis of the existing integrity of the landscape and the changes to integrity of setting, feeling, and association that will result from the Project's visual intrusion. To CRIT members, the Chuckwalla Valley conveys its significance based on its continued relation to the landscape associated with CRIT's ancestors. The industrialization of the landscape fundamentally changes the ability of the landscape to convey that relationship. The FSA correctly recognizes this impact. Consequently, in our opinion, CEC staff's analysis of the Project's impacts on the resources that contribute to the Chuckwalla Valley portion of the

PRGTL complies with CEQA methodology: staff sets a threshold of significance, compares the proposed Project to that threshold, and then proposes mitigation to reduce the impact to the extent feasible.

Finally, it remains our opinion that the Commission must consider the *entire* impact of the proposed Project, not just the changes that result from the proposed amendment. BrightSource's Opening Testimony asks the Commission to ignore new information that has been developed since the initial approval almost 3 years ago. In that time period, the on-the-ground impacts associated with utility-scale renewable energy projects have moved from projected or hypothetical to known. CRIT bore witness to the disturbance and destruction of thousands of cultural resources at the Genesis Solar Energy Project. The impacts to avian species resulting from solar flux and to desert kit foxes from distemper are now readily apparent. And the CEC is now finally making modest steps to consult with affected Tribes about the impacts of these projects, allowing area tribes to raise serious concerns. To make a simple comparison to information gathered exclusively prior to 2010 turns a blind eye to relevant information and new knowledge.

Conditions of Certification

CRIT objects to BrightSource's assertion that the Commission should reject proposed CUL-1 as the proposed Project has similar impacts to the prior project. As outlined above, in the FSA, and in CRIT's opening testimony, the proposed Project has significantly greater impacts on cultural resources due to the Project's visual presence. CRIT also continues to maintain that the proposed surveys must be completed as *analysis* of Project impacts, rather than as after-the-fact mitigation. CRIT would not oppose a reasonable cap on the financial obligations required as part of CUL-1, and proposes that such a cap be tied to either an estimate of the potential costs or a percentage of expected Project revenue.

CRIT also objects to BrightSource's proposed inclusion of CUL-16. In order to proceed with the proposed Project, BrightSource must obtain Commission approval. In its consideration of the Project, the Commission serves as the lead agency under CEQA and must comply with other state laws, such as the Governor's Executive Order on consultation, in reviewing the proposed amendment. Consequently, BLM is not the only arbiter of cultural resource requirements—the Commission must comply with state law requirements applicable to it, and cannot simply ignore these requirements because another government agency also has an interest in protecting cultural resources. If BrightSource is permitted to do away with Commission-imposed mitigation measures after Project approval, simply because of a perceived conflict with a BLM requirement, the Commission cannot be certain that it has reduced the significant impacts of the Project as required under CEQA.

Declaration of Rebecca Loudbear regarding Cultural Resources

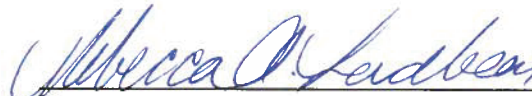
I, Rebecca Loudbear, declare as follows:

1. I am currently the Attorney General for the Colorado River Indian Tribes. I have worked with CRIT for three years.
2. My relevant professional qualifications and experience are set forth in the testimony and resume previously submitted in this proceeding.
3. I prepared in part the attached testimony relating to the proposed Amendment to the Palen Solar Electric Generating System.
4. It is my professional opinion that the attached testimony is true and accurate with respect to the issues that are addressed.
5. I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.

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

DATED: October 21, 2013

AT: Parker, AZ



Rebecca Loudbear

Declaration of Winter King regarding Cultural Resources

I, Winter King, declare as follows:

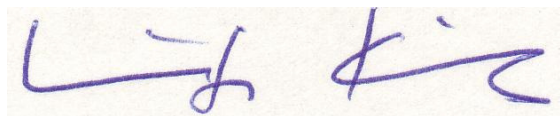
1. I am a Partner at Shute, Mihaly and Weinberger LLP, outside counsel to the Colorado River Indian Tribes. I have worked with CRIT on cultural resource protection issues and other matters for 7 years.
2. My relevant professional qualifications and experience are set forth in the testimony and resume previously submitted in this proceeding.
3. I prepared in part the attached testimony relating to the proposed Amendment to the Palen Solar Electric Generating System.
4. It is my professional opinion that the attached testimony is true and accurate with respect to the issues that are addressed.
5. I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.

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

DATED: October 21, 2013

AT: San Francisco, CA

By:



Winter King

Declaration of Sara Clark regarding Cultural Resources

I, Sara Clark, declare as follows:

1. I am currently an Associate Attorney at Shute, Mihaly and Weinberger, LLP, outside counsel to the Colorado River Indian Tribes. I have worked with CRIT on cultural resource protection issues for two and a half years.

2. My relevant professional qualifications and experience are set forth in the testimony and resume previously submitted in this proceeding.

3. I prepared in part the attached testimony relating to the proposed Amendment to the Palen Solar Electric Generating System.

4. It is my professional opinion that the attached testimony is true and accurate with respect to the issues that are addressed.

5. I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.

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

DATED: October 21, 2013

AT: San Francisco, CA

By: 

Sara A. Clark

DECLARATION OF SERVICE

I, Sean Mulligan, declare that on October 21, 2013, I served and filed copies of the Rebuttal Testimony of Rebecca Loudbear, Winter King and Sara Clark regarding Cultural Resources, all dated October 21, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

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

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

_____ I e-mailed the document to doCKET@energy.ca.gov and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.] **or**

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

Dated: October 21, 2013

/s/ Sean Mulligan_____