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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

INTERVENOR COLORADO RIVER INDIAN TRIBES

PRE-HEARING CONFERENCE STATEMENT

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INTRODUCTION

Intervenor Colorado River Indian Tribes (CRIT or Tribes) provides this Pre-Hearing Conference Statement regarding the proposed Amendment to the Palen Solar Electric Generating System (Palen or Project), pursuant to the Notice of Prehearing Conference and Evidentiary Hearing and Hearing Orders filed October 7, 2013.

Complete Subject Areas

CRIT is preparing to proceed to hearing on the following topics: Cultural Resources (including Native American Environmental Justice), Visual Resources, and Alternatives. However, as outlined in CRIT's Opening Testimony and described more fully below, the analysis necessary for an adequate evaluation of impacts to cultural resources has not yet been completed. CRIT has not evaluated—and therefore provides no opinion—on the readiness of other subject areas for evidentiary hearing.

Incomplete Subject Areas

CRIT contends that the evaluation of Project impacts on cultural resources is not yet complete and that this subject area is therefore not yet ready to proceed to evidentiary hearings. In particular, the following analysis remains incomplete, unavailable, or not fully incorporated into CEC staff's analysis: Class II surveys of the areas of direct visual impact, trail studies, prehistoric archaeological record search data, consultation with affected Indian tribes, and ethnographic interviews with CRIT tribal members. These activities must be completed and incorporated into the analysis of the Project before proceeding to evidentiary hearings. In addition, CRIT notes that it has had very little time to review documents associated with cultural resources. The FSA was not released until September 23, 2013. The ethnographic study was not provided until October 15, 2013. These are lengthy, complex documents, and additional time would allow for a more comprehensive response.

Disputed Subject Areas

At this time, CRIT believes the following areas remain disputed and require adjudication: Cultural Resources (including Native American Environmental Justice), Visual Resources, and Alternatives. CRIT has provided opening and rebuttal testimony outlining the specific details of these disputes. CRIT has not yet had the opportunity to thoroughly review rebuttal testimony filed yesterday. Consequently, CRIT reserves the right to raise additional topics or sub-areas during the Pre-Conference Hearing.

CRIT acknowledges that many of the disputed issues identified by CRIT involve both legal and factual disputes or predominantly legal issues. It does not appear that the Commission anticipates hearing testimony or argument following submission of briefing. Consequently, CRIT respectfully reserves the right to fully address each disputed issue, including those involving legal issues in whole or in part, during the evidentiary hearing.

Witnesses

CRIT intends to sponsor the following witnesses:

- 1) Wilene Fisher-Holt, CRIT Museum Director, Director of Cultural Resources, and Tribal Historic Preservation Officer. Ms. Fisher-Holt will testify about the cultural resource impacts of the proposed Project on CRIT and its members. Ms. Fisher-Holt's qualifications are set forth in her Opening Testimony. Ms. Fisher-Holt will present live testimony; her direct testimony will likely require 15 minutes.
- 2) Sara Clark, Attorney at Shute, Mihaly & Weinberger LLP. Ms. Clark will testify about Cultural Resources, including the adequacy of existing cultural resource analyses, proposed mitigation to address buried cultural resources, compliance with federal LORS, consultation efforts, and environmental justice, as well as Visual Resources (compliance with federal LORS), and Alternatives (environmentally superior alternatives). Ms. Clark's qualifications are set forth in her Opening Testimony. Ms. Clark will present live testimony; her direct testimony regarding Cultural Resources will likely require 20 minutes, while her direct testimony regarding Visual Resources and Alternatives will likely require 10 minutes each.

Cross Examination

CRIT requests cross examination within the following subject areas:

Cultural Resources: CRIT seeks cross examination of Matthew Braun, Thomas Gates and Michael McGuirt (witnesses for CEC staff) and Mary Barger, Fred Nials, and Matthew Stucky (witnesses for BrightSource) regarding the cultural resource analysis performed, the cultural resource analysis deferred, the conclusions reached regarding significance both before and after application of mitigation measures, and the extent of consultation with affected Tribes. Cross examination of each proffered witness is likely to take no more than 10 minutes.

Visual Resources: CRIT seeks cross examination of William Kanemoto and Gregg Irvin (witnesses for CEC staff) and Andrea Grenier (witness for BrightSource) regarding the Project's compliance with federal laws, ordinances, regulations and standards. Cross examination of each proffered witness is likely to take no more than 10 minutes.

Alternatives: CRIT seeks cross examination of Jeanine Hinde (witness for CEC staff) and Charles Turlinski (witness for BrightSource) regarding the comparative impacts of the considered alternatives. Cross examination of each proffered witness is likely to take no more than 10 minutes.

Exhibits and Declarations

Testimony Submitted

- 1) Testimony of Chairman Wayne Patch, Sr. regarding Impacts of Renewable Energy Projects on the Colorado River Indian Tribes
- 2) Testimony of Rebecca Loudbear, Winter King, and Sara Clark regarding General Comments on the Final Staff Assessment's Analysis of Cultural Resources, Visual Resources, Environmental Justice, Biological Resources, and Alternatives.

- 3) Testimony of Rebecca Loudbear, Winter King, and Sara Clark regarding Lessons Learned from the Unanticipated Discovery of Buried Cultural Material at the Genesis Solar Energy Project.
- 4) Testimony of Doug Bonamici regarding Consultation and the Ethnographic Study for the Palen Project.
- 5) Testimony of Wilene Fisher-Holt regarding Impacts of the Palen Project on Cultural Resources [*submitted to the Docket Unit with an Application for Confidentiality (TN# 200932)*]
- 6) Rebuttal Testimony of Rebecca Loudbear, Winter King, and Sara Clark regarding Cultural Resources.

Exhibit List

Exhibit	TN #	Title of Document	Subject Area
Exhibit 8000	200912	November 5, 2009 Presidential Memoranda on Tribal Consultation	Cultural Resources
Exhibit 8001	200548/ 200911	Letter from Chairman Wayne Patch, Sr. to California Energy Commission Staff re: Comments of the Colorado River Indian Tribes on the Preliminary Staff Assessment for the Palen Solar Electric Generating System (09-AFC-7C) (July 29, 2013)	Cultural Resources
Exhibit 8002	200361/ 200915	Letter from the Quechan Indian Tribe to the California Energy Commission re: Comments from the Quechan Indian Tribe on the Preliminary Staff Assessment for the Palen Solar Electric Generating System (09-AFC-7C) (August 27, 2013)	Cultural Resources
Exhibit 8003	70274/ 200914	Letter from Patricia Garcia-Tuck to Thomas Gates re: Palen Solar Energy Generating System (09-AFC-7C) – Invitation to Participate in California Energy Commission Tribal Consultation (March 26, 2013)	Cultural Resources
Exhibit 8004	70632/ 200913	Letter from Joseph Ontiveros to Roger E. Johnson re: Palen Solar Electric Generating System (09-AFC-7C) (April 11, 2013)	Cultural Resources
Exhibit 8005	200226 (copy provided at 200916 incomplete)	Email from Alfredo Figueroa to Christine Stora re: Preliminary Staff Assessment for Cultural Resources for the Proposed Palen Solar Electric Generating System Project Amendment (August 19, 2013)	Cultural Resources
Exhibit 8006	200918	Sustainable Preservation: California’s Statewide Historic Preservation Plan, 2013-2017	Cultural Resources
Exhibit 8007	200917	Declaration of Priscilla Eswonia in Support of Plaintiff’s Application for Temporary Restraining Order and Order to Show Cause, <i>Colorado River Indian Tribes v. U.S. Department of the Interior</i> (Case No. CV 12-04291 GW (SSx))	Cultural Resources

Exhibit	TN #	Title of Document	Subject Area
Exhibit 8008	200921	Declaration of Mamie Harper in Support of Plaintiff's Application for Temporary Restraining Order and Order to Show Cause, <i>Colorado River Indian Tribes v. U.S. Department of the Interior</i> (Case No. CV 12-04291 GW (SSx))	Cultural Resources
Exhibit 8009	200920	Declaration of David Harper in Support of Plaintiff's Reply in Support of Application for Temporary Restraining Order and Order to Show Cause, <i>Colorado River Indian Tribes v. U.S. Department of the Interior</i> (Case No. CV 12-04291 GW (SSx))	Cultural Resources
Exhibit 8010	200919	Supplemental Declaration of Lyle Balenquah in Support of Plaintiff's Application for Temporary Restraining Order and Order to Show Cause, <i>Colorado River Indian Tribes v. U.S. Department of the Interior</i> (Case No. CV 12-04291 GW (SSx))	Cultural Resources
Exhibit 8011	200923	Letter from Roger E. Johnson to Chairperson Eldred Enas re: Palen Solar Electric Generating System (09-AFC-7C) – Invitation to Participate in the California Energy Commission Tribal Consultation (February 25, 2013).	Cultural Resources
Exhibit 8012	200922	Excerpts of Palen Solar Electric Generating System Draft SEIS (Sections 3.19 and 4.18)	Cultural Resources
Exhibit 8013	200925	Amicus Brief in Support of Appellant Quechan Tribe of the Fort Yuma Indian Reservation by the Colorado River Indian Tribes, <i>Quechan Tribe of the Fort Yuma Indian Reservation v. United States Department of the Interior, et al.</i> , Docket No. 13-55704 (9th Cir.)	Cultural Resources
Exhibit 8014	200924	CEC News Release – Preliminary Staff Assessment Released for the Palen Solar Electric Generating System Project (June 28, 2013)	Cultural Resources
Exhibit 8015*		Written Statement of Phillip Smith, Chemehuevi Elder	Cultural Resources
Exhibit 8016*		Written Statement of Stacia Bailey, Mohave Elder	Cultural Resources

Exhibit	TN #	Title of Document	Subject Area
Exhibit 8017*		Written Statement of Anonymous CRIT Member	Cultural Resources
Exhibit 8018*		Written Statement of Betty Cornelius, CRIT Member (Chemehuevi)	Cultural Resources
Exhibit 8019	200926	KCET, Chris Clarke, August a Bad Month for Birds at Genesis Solar (October 8, 2013)	Cultural Resources
Exhibit 8020	not yet available	CRIT's Proposed Modifications to the Conditions of Compliance (Cultural Resources)	Cultural Resources

* These Exhibits have been submitted to the Docket Unit with an Application for Confidentiality (TN# 200932).

Override

The FSA identifies two environmentally superior alternatives to the proposed Project. The photovoltaic alternative, in particular, would address some of CRIT's concerns regarding the Project and represents a feasible alternative to the solar power towers. Consequently, CRIT contends that the Commission cannot make the necessary findings under CEQA that there are no feasible alternatives available that would substantially lessen the significant environmental impacts of the Project.

CRIT also urges the Commission to consider that cultural resources are both finite and irreplaceable. CRIT members have resided in the Project area since time immemorial and cannot move their ancestral homeland to another location. Consequently, CRIT contends that the Commission cannot make the necessary finding under CEQA that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects," particularly the significant effects on cultural resources.

Scheduling Matters

CRIT notes that Reply Briefs are due less than one week following submission of opening briefs. CRIT respectfully requests that the Commission provide at least one full week for preparation of reply briefs, so that parties can provide complete and accurate responses to the issues raised in opening briefs.

Proposed Modifications to the Conditions of Compliance

CRIT's proposed modifications to the Conditions of Compliance for Cultural Resources are submitted separately as Exhibit 8020.

DATED: October 22, 2013

COLORADO RIVER INDIAN TRIBES

By: /s/ Rebecca Loudbear
REBECCA LOUDBEAR

Attorneys for Intervenor Colorado River Indian
Tribes

DATED: October 22, 2013

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DECLARATION OF SERVICE

I, Sean Mulligan, declare that on October 22, 2013, I served and filed copies of the Intervenor Colorado River Indian Tribes Pre-Hearing Conference Statement and Exhibit 8020, all dated October 22, 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**

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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 22, 2013

/s/ Sean Mulligan_____



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