

## DOCKETED

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<b>Project Title:</b>	Palen Solar Power Project - Compliance
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STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for the

PALEN SOLAR ELECTRIC GENERATING  
SYSTEM

Docket No. 09-AFC-07C

**ENERGY COMMISSION STAFF'S MOTION FOR RECONSIDERATION OF  
DECISION TO EXCLUDE LOREY CACHORA FROM PARTICIPATING ON STAFF'S  
CULTURAL RESOURCES PANEL**

At the Prehearing Conference held on October 24, 2013, staff requested that Lorey Cachora, a Tribal Elder of the Quechan Indian Tribe and a consultant to staff in the development of the Cultural Resources section of the Final Staff Assessment, be allowed to participate as to his concurrence with Staff's testimony at Evidentiary Hearings as a member of Staff's panel. The Committee denied this request. Staff is now requesting reconsideration of the Committee's decision.

**1. No prejudice to the parties.**

Mr. Cachora served as a consultant to staff in the development of the FSA and was quoted significantly therein (see the FSA, Part B, 4.3-75 and 141). The project owner and intervenors have had this testimony since the FSA was published on September 23, 2013. Mr. Cachora's participation on Staff's panel would be limited to Staff's pre-filed testimony in this matter, and he would be available to answer any questions of the

Committee or other parties regarding the information or quotations attributed to him in the FSA. He is not going to testify to anything beyond the scope of staff's FSA.

## **.2. Native American Tribes are sovereign nations.**

As a sovereign nation, a Native American Tribe should have as much if not more standing than a federal, state or local agency whom we normally allow on panels. In this case, as well as many other siting cases, other agencies (such as the California Department of Fish and Wildlife, Bureau of Land Management, United States Fish and Wildlife Service) are sworn in at Evidentiary Hearings together with staff and participate on staff's panel – even if not previously identified as staff's witness. They are available to answer questions and verify their concurrence with staff's pre-filed testimony. Because Native American Tribes are sovereign nations, this situation should certainly be no different.

## **3. The Governor's Executive Order Demands Agencies to Confer with Native American Tribes.**

The Governor's EXECUTIVE ORDER B-10-11, dated September 19, 2011, "ORDERED that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities."

In response to the Governor's Executive Order, the Natural Resources Agency instituted a Tribal Consultation Policy on November 20, 2012. The Tribal Consultation Policy requires agencies to "identify the Native American tribes to consult at the earliest possible time in the planning process and allow a reasonable opportunity for tribes to respond and participate. Each department is responsible for meaningful consultation with Native American tribes that promote regular and early consultation through communication and collaboration. Each department will identify participants in the

process - including the decision-makers and staff with an appropriate level of responsibility - that can ensure that tribal concerns will be brought forward.” Furthermore, “The Departments will be open to communication opportunities initiated by tribes and seek opportunities for collaboration by communicating regularly with tribes. Each Department should establish a mechanism to request relevant and available information, studies and data from tribes when conducting research or studies that relate to, or could impact, tribal lands or cultural resources.”

Energy Commission staff is committed to establishing the relationships required by the Governor’s Executive Order and the Natural Resources Agency’s Tribal Consultation Policy. Staff has developed a very good working relationship with Mr. Cachora, and per the Governor’s guidance on conferring with tribes, the Committee should hear from Mr. Cachora as part of Staff’s panel.

Date: October 25, 2013

Respectfully Submitted,

s/ Jennifer Martin-Gallardo  
Jennifer Martin-Gallardo - Staff Attorney