

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	201321
Document Title:	CRIT's Corrections to the October 28, 2013 Transcript
Description:	N/A
Filer:	Sara Clark
Organization:	Shute, Mihaly & Weinberger LLP
Submitter Role:	Intervenor Representative
Submission Date:	11/22/2013 5:22:24 PM
Docketed Date:	11/22/2013

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
CORRECTIONS TO THE OCTOBER 28, 2013 TRANSCRIPT

REBECCA LOUDBEAR (Wisc. State Bar No. 1036107)
COLORADO RIVER INDIAN TRIBES
Office of the Attorney General
26600 Mohave Road
Parker, AZ 85344
Telephone: (928) 699-1271
Facsimile: (928) 669-1269
Rloubear@critdoj.com

WINTER KING (State Bar No. 237958)
SARA A. CLARK (State Bar No. 273600)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
King@smwlaw.com
Clark@smwlaw.com

Corrections to the October 28, 2013 Transcript

Page 88, Line 21: “involved” should be “enrolled”

Page 89, Line 1: “to my sometimes” should be “to my belief systems”

Page 99, Line 17: “expect” should be “accept”

Page 101, Line 16: “actual” should be “factual”

Page 102, Line 12: inaudible should be “Ford Dry”

Page 103 to 108: *see line edits on next page*

Page 112, Lines 13-15: There appears to be some missing testimony here. Mr. McGuirt isn't answering Mr. Galati's prior question (starting at Line 5), but a question from Ms. King that doesn't appear in the transcript. The question related to the extra work that CEC Staff completed in response to BrightSource's refusal to complete Data Request 27, but I don't have the question available.

Page 117, Line 15: Ms. Clark should be Ms. King

Page 119, Line 8: Ms. Clark should be Ms. King

Page 120, Line 19: Ms. Clark should be Ms. King

Page 122, Lines 1 and 5: Ms. Clark should be Ms. King

Page 123, Line 9: Ms. Clark should be Ms. King

Page 129, Line 20: Mr. Galati should be Mr. Bonamici

Page 129, Line 25: (inaudible) should be “it'll glow”

Page 130, Line 8: Mr. Galati should be Mr. Bonamici

Page 130, Line 17: “contrails” should be “song trails”

Page 103

1 identical across the BLM and the CEC.
2 So in the CEC we have a cultural resources
3 mitigation and monitoring plan and at the BLM we have a
4 historic property treatment plan, as well as a programmatic
5 ~~warrant agreement to (inaudible) protect cultural resources~~ --
And so CRIT reviewed those and we
6 sought to enforce the mitigation measures which we had, which
7 ~~they~~ would have required ~~us to go to the project site to~~
8 ~~receive the bones notification of any unanticipated find~~, and
it would have required other
9 procedural protections for the tribes.
10 Unfortunately, through the ~~(inaudible) Winter~~ and into the
11 spring of 2012 BLM was unwilling to enforce these
protections (inaudible) --- and CEC was actually
12 absent. We approached CEC, the CEC staff to enforce these
13 measures and that didn't happen. As actually everyone here
14 is aware of, that CEC ~~has not (inaudible)~~ --- is difficult to
challenge in court so we ended
15 turning to BLM to address these mitigation measures and were,
16 unfortunately, unable to do so.
17 The court ultimately decided that a TRO, a
18 temporary restraining order for intervention, was not
19 warranted and, consequently, construction continued at the
20 Genesis Project, resulting in the excavation of scores of
21 cultural resource artifacts. These include manos and
metates (inaudible) --- of
22 particular importance to tribal members. They involved other
23 archeological resources attendant as well, the fossil possible
cremation and,
24 as I said, ultimately, other resources were uncovered.
25 I do recognize ~~that the Project became~~ the differences between
the Palen

Page 104

1 Project and the Genesis Project that the Applicant or
2 Petitioner has brought up. The Palen Project has operated
3 (inaudible) -- and then the Genesis Project which is
4 (inaudible) -- of the entire site.

5 I am not a geo-archeological expert by any means,
6 but it states here that the ~~(inaudible)~~ in the testimony that
was provided about

7 the potential differences between the likelihood of
8 encountering various cultural materials at the project site,
9 but I do just want to note that no one has said that there
10 was zero percent change of encountering cultural material
11 here.

12 I think the testimony has shown that the ancestors
13 --

14 MS. GALATI: I'd like to object that this is legal
15 argument. She's not providing any new facts. She's telling
16 what I've seen in briefs.

17 HEARING OFFICER CELLI: Well, no, she was just
18 saying that there was zero -- how did you put it? There was
19 zero -- no one can guarantee that there won't be a disruption
20 of artifacts.

21 Yeah, it is argumentative, but keep --

22 MS. CLARK: (Inaudible)

23 HEARING OFFICER CELLI: Overruled for now.

24 MS. GALATI: You're not an expert to respond to
25 this, she can and the testimony is going to be limited to

1 what happened at Genesis.

2 HEARING OFFICER CELLI: And, actually, I want you -
3 - so I'm going to sustain that objection because your
4 testimony is limited to the fact that were --

5 MS. CLARK: I will continue.

6 HEARING OFFICER CELLI: Not just at Genesis because
7 Genesis is a done deal. We really need to hear about it as
8 it relates to this project. So please go forward on that
9 basis.

10 MS. CLARK: I was attempting to explain why what
11 happened at the Genesis Project is relevant to here. And so
12 I will just say that there is a likelihood of encountering
13 various cultural material at this project. There might be a
14 different likelihood but there is, nonetheless the
15 likelihood. And, therefore, our experience in

| ~~coordinating~~enforcing

16 the cultural conditions for certification are very

| ~~adjunct~~appropriate

17 and relevant.

18 So there are three main issues that we ran into at
19 Genesis. The first is issues of enforceability. And so at
20 the Genesis Project, so the conditions similar to the ones
| 21 proposed here, identical in fact, ~~the~~ provided that the owner
22 provide notification to Native American groups in the event
23 of a discovery within 48 hours. I know that CRIT was not
24 notified until two weeks after the discovery and after a
| 25 mitigation plan that involved ~~the~~data recovery was already

1 formulated. The court found that the condition was violated
2 in our ~~case~~ but found that there was no remedy available
for
3 that violation.

4 Similarly, again, we had entered a ~~(inaudible)~~ CRMMP
5 and an HTTP that was supposed to be developed after the fact,
6 after the approvals. And because of that activity the
7 project owner and the agencies found that these plans weren't
8 enforceable by CRIT or anyone other than the agencies.

9 And then, finally, I just want to say that

10 ~~(inaudible)~~ --it was never clear who was running the show
because there's a lot of talking that's going
11 on between the agencies. And so we would like to ensure the
12 enforceability of the proposed changes to the ~~(inaudible)~~
13 for verification conditions of certification, in AB-Exhibit
8020 and --

14 HEARING OFFICER CELLI: I'm sorry, can you say that

15 -- AB-8020 are --

16 MS. CLARK: AB-8020 --

17 HEARING OFFICER CELLI: -- are new conditions or
18 modifications to the --

19 MS. CLARK: Modifications, correct. And these will
20 provide for a greater involvement of the CEC as project
21 manager and make it clear that these subsequent plans are
22 required and enforceable. And it provides the financial
23 incentives to ensure that the notification is practiced
24 professionally and (inaudible) provided --

25 Second, I want to point out that we ran into difficulties
~~(inaudible)~~ in

Page 107

1 determining what to do with cultural resources once they were
2 encountered. CRIT ~~is as~~ extremely ~~(inaudible)~~ vocal, as
was the other

3 Area 5tribes that the preference was to avoid the site
~~and~~unless the

4 project couldn't be done. And the second ~~factor was a few~~
~~5 grave areas and material are in (inaudible)~~ preference was
to rebury the cultural material on site.

6 The project plans such as the CRMMP specify the methods
~~(inaudible)~~ for dealing with

7 cultural resources. And if the newly recent discovered

8 resources are significant, they must be avoided ~~(inaudible)~~

But from the beginning,

9 the agencies determined that they were going to perform

10 ~~(inaudible)~~data recovery on the project site and that the

11 materials would not be ~~(inaudible)~~avoided.

12 On the question of whether or not it is ~~incapable~~infeasible

13 of doing that, ultimately, ~~it's going to create a land use~~

14 ~~(inaudible)~~ that says CRIT received notice that that BLM

has d determined that the

15 avoidance of the project, of these cultural resources are

16 ~~(inaudible)~~ infeasible, but ~~and~~ no information was given
about why this

17 determination was made. There was no evidence given in

18 support.

19 And so we eventually sued ~~(inaudible)~~ -- saying that

20 avoidance was required under these plans and the court

21 determined that the language was sufficiently clear to

22 require avoidance.

23 And so then we provided changes in the

24 certification that would make that clear that avoidance is

25 the preferred method for dealing with any discoveries that

Page 108

1 might happen later, while the project was being constructed,
2 and that if there's ~~(inaudible)~~ a finding of infeasibility

3 Finally, and this is a little bit related to the

4 other two, Genesis ~~would~~ demonstrated to CRIT the failures
5 that occur when ~~of~~

6 the Commission fails to adequately involve the tribes in the
7 past planning and implementation phases.

8 ~~(inaudible)~~ a And without any involvement, there was a
9 failure to ~~(inaudible)~~ provide adequate notice to CRIT
10 ~~(inaudible)~~ a failure to avoid significant sites and there
11 was no involvement

12 ~~(inaudible)~~ Native American Monitors at the time the
13 discovery was made.

14 And so again we ~~(inaudible)~~ have provided recommendations
15 and

16 changes to certification that would include additional
17 involvement of a new tribe and require that the agency and
18 the project owner continue to do adequate consultation

19 prior to project approval ~~(inaudible)~~ .

20 So if you have any questions, I'd be happy to
21 answer them.

22 HEARING OFFICER CELLI: Thank you, Ms. Clark.

23 Then as I understand it, CRIT, that's the sum total
24 of your direct testimony, correct?

25 MS. KING: That's correct, in addition to the

26 written testimony that ~~(inaudible)~~ already submitted.

27 HEARING OFFICER CELLI: Okay, thank you.

28 Ladies and gentlemen, at this time we anticipate
29 taking a break.

30 I want to acknowledge that we've received four

DECLARATION OF SERVICE

I, Sara Clark, declare that on November 22, 2013, I served and filed copies of **Intervenor Colorado River Indian Tribes Corrections to the October 28, 2013 Transcript** dated November 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.

(Check one)

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

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**

Instead of e-filing or e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the attached Proof of Service List for whom a mailing address is given and to the

California Energy Commission – Docket Unit
Attn: Docket No. _____
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

[The e-filing system will serve an additional electronic copy on the other parties and Committee via e-mail when the paper document or CD is received, scanned, uploaded, and approved for filing. The electronic copy stored in the e-filing system is the official copy of the document.]

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: November 22, 2013

_____/s/ Sara Clark_____
[Name]



Proof of Service List

Docket: 09-AFC-07C

Project Title: Palen Solar Power Project - Compliance

Generated On: 11/22/2013 5:16:04 PM

Applicant

Amanda McCoy

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
amccoy@brightsourceenergy.com

Charlie Turlinski

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cturlinski@brightsourceenergy.com

Clay Jensen

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cjensen@brightsourceenergy.com

Applicant Representative

Marie Fleming

Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
mfleming@gb-lp.com

Scott Galati

Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-lp.com

Applicant Consultant

Andrea Grenier

Centerline
1420 E. Roseville Parkway, Suite 140-377
Roseville, CA 95661
andrea@agrenier.com

Intervenor

Alfredo Acosta Figueroa

Californians for Renewable Energy
424 North Carlton Avenue
Blythe, CA 92225
lacunadeaztlan@aol.com

Christina M. Caro, Counsel for Hildeberto

Sanchez, Eddie Simmons, and LiUNA
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
christina@lozeaudrury.com

Elizabeth Klebaner, Counsel for California

Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
eklebaner@adamsbroadwell.com

Ileene Anderson, Public Lands Desert Director

Center for Biological Diversity
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
ianderson@biologicaldiversity.org

Kevin Emmerich

Basin and Range Watch
P.O. Box 153
Baker, CA 92309
atomicoadranch@netzero.net

Laura Cunningham

Basin and Range Watch
P.O. Box 153
Baker, CA 92309
bluerockiguana@hughes.net

Rebecca Loudbear, Office of the Attorney

General
Colorado River Indian Tribes
26600 Mohave Road
Parker, AZ 85344
rloudbear@critdoj.com

Richard T. Drury, Counsel for Hildeberto

Sanchez, Eddie Simmons, and LIUNA
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
richard@lozeaudrury.com

Tanya A. Gulesserian, Counsel for California

Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

Intervenor Representative

Lisa T. Belenky, Attorney

Center for Biological Diversity
351 California Street, Suite 200
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

Sara A. Clark, Counsel for Colorado River

Indian Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
clark@smwlaw.com

Winter King, Counsel for Colorado River Indian

Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
king@smwlaw.com

Commission Staff

Christine Stora, Project Manager

California Energy Commission
Siting, Transmission & Environmental Protection

eFiling archive

California Energy Commission

Jennifer Martin-Gallardo, Staff Counsel

California Energy Commission
Office of the Chief Counsel, 1516 Ninth Street,

Division, 1516 Ninth Street, MS-2000
Sacramento, CA 95814
christine.stora@energy.ca.gov

Sacramento, CA
efilingPOSarchive@energy.ca.gov

MS-14
Sacramento, CA 95814
jennifer.martin-gallardo@energy.ca.gov

Committee

DAVID HOCHSCHILD, Associate Member,
Commissioner
California Energy Commission
Sacramento, CA

Eileen Allen, Commissioners' Technical Adviser
for Facility Siting
California Energy Commission
Sacramento, CA

Eli Harland, Adviser to Commissioner Douglas
California Energy Commission
Sacramento, CA

Gabriel Taylor, Adviser to Commissioner
Hochschild
California Energy Commission
Sacramento, CA

Jennifer Nelson, Adviser to Commissioner
Douglas
California Energy Commission
Sacramento, CA

KAREN DOUGLAS, Presiding Member,
Commissioner
California Energy Commission
Sacramento, CA

Ken Celli, Hearing Adviser
California Energy Commission
Sacramento, CA

Public Adviser

Alana Mathews, Public Adviser
California Energy Commission
Public Advisers Office, 1516 Ninth Street, MS-12
Sacramento, CA 95814
publicadviser@energy.ca.gov

Public Agency

California ISO
Folsom, CA
e-recipient@caiso.com

Mohsen Nazemi, Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
mnazemi1@aqmd.gov

Tiffany North, Supervising Deputy County
Counsel
Riverside County
3960 Orange Street, Suite 500
Riverside, CA 92501
tnorth@co.riverside.ca.us

Conditions of Use | Privacy Policy
Decisions Pending and Opportunities for Public Participation
Copyright © 1994-2013 California Energy Commission, All Rights Reserved
State of California, Edmund G. Brown Jr., Governor