

## DOCKETED

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# Memorandum

To: **Christine Stora**  
**Compliance Project Manager**  
**California Energy Commission**

Date: April 4, 2014

Telephone: (916) 654-4745

From: **Jon Hilliard, AICP**  
**Supervisor, Cultural Resources Unit**  
Environmental Protection Office  
California Energy Commission  
1516 Ninth Street  
Sacramento CA 95814-5512

Telephone: (916) 654-3936

Subject: **Condition of Certification CUL-1: Staff Response to Committee Direction from the January 7, 2014 Committee Conference on the Presiding Member's Proposed Decision, Palen Solar Electric Generating System (09-AFC-7C), Riverside County**

## Introduction

The December 2013 Presiding Member's Proposed Decision (PMPD) for the Palen Solar Electric Generating System (PSEGS) found that the project would have a significant effect on the Chuckwalla Valley portion of the Pacific to Rio Grande Trails Landscape (PRGTL), a significant cultural resource under CEQA, and that the project's effect on that resource would require mitigation. Staff prepared testimony on the potential character of the more specific effects that the construction and operation of PSEGS would have on the Chuckwalla Valley portion of PRGTL and other historical resources on and in the vicinity of the proposed facility site (CEC 2013b). The focus of the cultural resources testimony was the proposed project's potential to damage *places* of historical significance, and how to resolve or mitigate the physical or visual damage to any *place* where project damage could reasonably be anticipated to compromise that place's essential historical significance. Staff was unable to devise the means to avoid or resolve PSEGS significant effect on the Chuckwalla Valley portion of PRGTL, and recommended that the Siting Committee adopt **CUL-1** in the FSA to mitigate, to the extent feasible, PSEGS significant effect on that landscape, that *place*.

## The Regulatory Intent of CUL-1 and the Presiding Member's Direction to Staff

The version of **CUL-1** recommended in staff's original September 2013 testimony addresses very particular regulatory requirements for historical resources under CEQA. CEQA requires the lead agency to condition its approval of a discretionary action in a manner that would avoid, resolve, or mitigate for the loss of historical significance to which an historical resource would be subject, were the action to be approved. Staff came to the conclusion that the Chuckwalla Valley portion of PRGTL is historically significant for specific associative, design, and information values. **CUL-1** of the September 2013 testimony was a revision of the September 2010 **CUL-1** in the original final decision for the original solar trough project. The exclusive purpose of the original **CUL-1** and the September 2013 revision of that condition was to address the significant effect that either project would have on a particular historical *place*, originally referred to as the Prehistoric Trails Network Cultural Landscape and, subsequently, as the Chuckwalla Valley portion of PRGTL. **CUL-1** focuses on *place* because, under CEQA, the scope of a cultural resources analysis is limited exclusively to the consideration of whether and how a project may cause significant damage to historical resources, to *places*, not *people*.

The Presiding Member's direction to staff in the January 7, 2014 committee conference in Sacramento (CEC 2014a), with regard to cultural resources, was to give more attention to the losses that the project would inflict on local Native American tribes, the *people* to whom the Chuckwalla Valley portion of PRGTL has particularly strong cultural significance, relative to the "conservation and documentation ... of the many and varied cultural and historical resources" in the project area of analysis. Staff understands this direction to call for more explicit consideration of the PSEGS's potential effects on local Native American tribes, to the project's effects on *people*, in addition to staff's extant testimony on the project's potential effects on historical resources, on *places*. These latter effects are the exclusive focus of what is referred to in the present revision as **CUL-1A**. Staff believes that the mitigation measures in **CUL-1A** are still appropriate and has adjusted some of the line item budgets for those measures in response to our ongoing coordination with the BLM Palm Springs Field Office. Footnotes in the **CUL-1A** budget table below identify and clarify each adjustment. Staff's analysis of the Presiding Member's January 7 direction may be found below in Attachment 1.

### **Methodology of Revisions to Staff's Recommended Conditions of Certification in the FSA**

Pursuant to the Presiding Member's January 7 direction, staff has drafted revisions to **CUL-1** for the Siting Committee's consideration. The primary focus of these revisions, which were developed in consultation with potentially affected local Native American tribes, is the injury the tribal members would suffer as a result the project's damage to the Chuckwalla Valley portion of the PRGTL, the injury that this damage would inflict on tribal *people*. In order to facilitate the clear distinction between the project's potential effects to historical resources, to *places*, which are the focus of **CUL-1A**, and its potential effects on local Native American tribes, the tribal *people* (Figure 1), staff recommends the Siting Committee's consideration of the adoption of **CUL-1B**, which addresses the tribal interest and cultural perpetuation issues related to these minority populations. **CUL-1A** has been revised to take into account staff's consultation with local Native American tribes and the Palm Springs Field Office of the BLM, and input from the project owner, and **CUL-1B**, which is entirely new, also incorporates the outcomes of recent tribal consultation.

#### *Development of the Baseline Language for the Revision of the Recommended Conditions of Certification*

To initiate the revision process, staff first sought to develop baseline language for staff's revision of the cultural resources conditions of certification for the project. Staff compared the language of **CUL-1** in the September 2013 FSA with the language of **CUL-1** in the PMPD. Staff notes that the PMPD language for **CUL-1** includes 1) various edits of a non-substantive nature, such as stylistic deletion of commas, the correction of capitalization, and corrections of numerations of condition and verification subparts, 2) an increase in the treatment of the project's cumulative effects on the Chuckwalla Valley portion of PRGTL from \$35 per acre to \$70 per acre, and 3) the deletion of the verification for the Treatment for Cumulative Effects. Staff has verified with the Siting Committee that the increase in the per acre cost of the mitigation for the project's cumulative effects was a typographical error, incorporates all of the grammatical corrections, as well as the stylistic edits, and assumes that the lack of a verification for the treatment of cumulative effects is an error of omission and reinserts that verification, as drafted in the September 2013 FSA, back into the revision of **CUL-1** here.

### *Coordination with BLM, Partner Federal Agency*

In February and March 2014, staff met with BLM Palm Springs Field Office staff and management to review and discuss the original version of **CUL-1** and the initial budget for that condition which was published as part of staff's November 26, 2013 opening brief (CEC 2013c:6), and to discuss the **CUL-1B** concept and the project owner's proposed budget for the mitigation of "Native American spiritual interests" (PSH 2014:4). The field office staff and management gave their verbal support for the suite of mitigation measures, provided comment on the scope and costs of particular line items in the initial budget for what is now **CUL-1A**, and made the broader comment that the overall mitigation suite for PSEGS, the mitigation measures for both **CUL-1A** and **CUL-1B**, was underfunded, given the scale of PSEGS's potential effects. The revisions here to **CUL-1A** and the draft of **CUL-1B** reflect, in part, staff's response to particular BLM field office comments.

### *Consultation with Native Americans*

Staff has invited (CEC 2014b) all NAHC- and BLM-listed affected Native American tribes to renew discussion on **CUL-1**. Staff has discussed the various concepts proposed for the revision of what are now **CUL-1A** and the **CUL-1B** concept with those tribes that responded to the invitation. These tribes include the Chemehuevi Tribe, Colorado River Indian Tribes, Fort Mojave Tribe, Fort Yuma Quechan Tribe, Agua Caliente Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians.

### *Consideration of the Project Owner's Perspective*

Staff has also taken into consideration the petitioner's *Proposed Revisions of Staff's Condition of Certification CUL-1* (PSH 2014).

## REFERENCES

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- CEC 2013a. California Energy Commission (tn200442), *Final Staff Assessment for the Palen Solar Electric Generating System, Part A, Amendment to the Palen Solar Power Project* (09-AFC-7C). September 10, 2013.
- CEC 2013b. California Energy Commission (tn200564), *Final Staff Assessment for the Palen Solar Electric Generating System, Part B, Amendment to the Palen Solar Power Project* (09-AFC-7C). September 23, 2013.
- CEC 2013c. California Energy Commission (tn201338), *Energy Commission Staff Opening Brief, Palen Solar Electric Generating System* (09-AFC-7C). November 26, 2013.
- CEC 2013d. California Energy Commission (tn201434), *Presiding Member's Proposed Decision, Palen Solar Electric Generating System* (09-AFC-7C). December 13, 2013.
- CEC 2014a. California Energy Commission (tn201546), *Palen Transcript of the Committee Conference held January 7, 2013, Palen Solar Electric Generating System* (09-AFC-7C). January 10, 2014.
- CEC 2014b. California Energy Commission (tn201619), *Invitations to Tribes and Tribal Leaders to Participate in California Energy Commission/Tribal Consultation, Palen Solar Electric Generating System* (09-AFC-7C). February 3, 2014.
- PSH 2014. Palen Solar Holdings (tn201700), *Palen Solar Holdings, LLC's Proposed Revisions of Staff's Condition of Certification CUL-1, Palen Solar Electric Generating System* (09-AFC-7C). February 10, 2014.

## Revisions to CUL-1

The following revision to what is now **CUL-1A** and the draft language for **CUL-1B** reflects staff's synthesis of all of the above sources of information. Proposed budget matrices are provided at the end of the verifications for each subpart of the condition.

## **CONDITIONS OF CERTIFICATION**

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(Additions in **Bold**, deletions in ~~strikethrough~~)

### **CUL-1A TREATMENT OF THE CHUCKWALLA VALLEY PORTION OF THE PACIFIC TO RIO**

#### **GRANDE TRAILS LANDSCAPE (PRGTL)**

**The project owner shall contribute a total of \$3,068,873.00 to the Energy Commission's PRGTL account. The Energy Commission will create this account to finance the completion of the multiple programs set out in this condition, the collective purposes of which are to mitigate, in part, for the amended project's direct visual effects and cumulative physical and visual effects on the Chuckwalla Valley portion of the PRGTL, and to integrate tribal participation in such programs. The Compliance Project Manager (CPM) will administer the disbursement of these funds and will provide regulatory oversight of the implementation of the multiple programs.**

#### **Treatment for Direct Visual Effects**

##### Field Inventory and Documentation of PRGTL Contributing Elements

The project owner ~~PRGTL account~~ shall **fund the** design and conduct of reconnaissance pedestrian (class II) surveys of the Palen Mountains Resource Area; the Coxcomb Mountains Resource Area; the Eagle, Chuckwalla, and McCoy Mountains Resource Areas, as these areas are depicted in the FSA; the Coxcomb Fringe and Raceway Mesquite Areas, as also depicted in the FSA; ~~and the BLM's Palen Dry Lake ACEC;~~ **and Palen Dunes/Palen Lake, Ford Dry Lake, McCoy Spring, Chuckwalla Spring, Corn Spring, North Chuckwalla Petroglyph District, North Chuckwalla Mountain Quarry District, Long Tank, Alligator Rock, Dragon Wash, and San Pascual Well Traditional Cultural Properties, as depicted in the FSA.**

The scope of the Palen Mountains reconnaissance is limited to the portions of the mountains in Sections 13, and 24–26, T. 4 S., R. 17 E. and east of those sections into the unsectioned areas of T. 4 S., R. 18 E.; in sections 1 and 13, T. 5 S., R. 17 E., and east of those sections into the unsectioned areas of T. 5 S., R. 18 E.; and north of sections 31–33, T. 5 S., R. 18 E. into the unsectioned portions of that township. The scope of the Coxcomb Mountains reconnaissance is limited to the portions of the mountains in sections 11 and 14, T. 4 S., R. 16 E. and northwest of those sections into the unsectioned areas of that township; in section 22, T. 4 S., R. 16 E., and north of that section into the unsectioned areas of that same township; and in section 16, T. 4 S., R. 16 E. and northeast into, again, the unsectioned portions of that

township. The principal purpose of these surveys is to document a statistically valid sample of the archaeological deposits, and the potential prehistoric and ethnographic sources of natural resources in each of the subject areas. The primary, although not exclusive focus of the surveys shall be prehistoric archaeological resources that have the potential to be eligible for listing in the CRHR under Criteria 1 or 3. Resources encountered would typically include, but would not be limited to, rock art, intaglios, caves or other natural features that may evidence ritual use, apparent altars or shrines, cleared circles, rock alignments, rock cairns, caches, and trail segments. One secondary focus of the surveys shall be natural resource locales, places in the mountain and mesquite resource areas which may have been used as water sources, or places where plant, animal, or mineral resources may have been extracted. Such places may include springs, seeps, tanks, or plunge pools; stands of plants which have the potential to have been food sources or sources of medicinal compounds; habitats of high value animal populations; or mineral resource outcrops or deposits where materials such as high quality toolstones, quartz crystals, or turquoise may have been extracted. Another secondary focus of the surveys shall be any source of paleoenvironmental data such as packrat middens or pockets of perennially moist, organic sediments.

The research designs and the methods used for these class II surveys shall reflect the character of the different resource areas and include thorough documentation of each archaeological resource, natural resource extraction locale, and source of paleoenvironmental data. The sample design and the field methods for each mountain and mesquite resource area shall evidence a balanced consideration of local topographic constraints and the requirement to acquire a statistically valid sample of each area. ~~The project owner shall completely document~~ **PRGTL account shall fund the complete documentation of** every archaeological site found on California State Parks DPR 523 Series forms per California State Parks instructions (CA State Parks 1995). The descriptions of resource assemblages and the spatial distribution internal to those assemblages shall be detailed enough on the subject forms to facilitate meaningful archaeological analysis of the surface manifestation of each archaeological resource. Documentation of potential natural resource extraction locales and sources of paleoenvironmental data shall include field notes and photographs of each such locale or source, vicinity and larger-scale location maps, submeter GPS coordinates, and, for rock and mineral sources, hand samples of the rocks or minerals sufficient for formal identification. The research designs for the mountain and mesquite resource areas shall also provide for chronometric, source, and other germane laboratory analyses.

The research design for the BLM's Palen Dry Lake ACEC survey shall include a thorough review of the BLM's extant documentation on the ACEC and any other extant peer-reviewed and proprietary literature to determine whether a statistically valid sample of the archaeological inventory of the area already exists, and, if that sample does not exist, the project owner shall design and conduct a further class II pedestrian survey to acquire the requisite supplementary data to complete that sample.

The project owner shall provide for **PRGTL account shall fund** Native American involvement in the design, **monitoring**, and execution of the fieldwork for these surveys, and in the interpretation and presentation of the results of the surveys. **Eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley. These tribes are listed after the verification for CUL-1B.**

The project owner **PRGTL account** shall conclude **fund the conclusion of** the efforts to inventory and document the above contributing elements of the PRGTL with the preparation and submission of one or multiple, comprehensive technical report(s).

#### Paleoenvironmental Study

The project owner **PRGTL account** shall develop **fund the development**, conduct, and prepare **preparation of** a report of a paleoenvironmental study germane to the period of significance for the Chuckwalla Valley portion of the PRGTL. The purpose of the study is to provide an updated and more reliably informed paleoenvironmental context to enhance the interpretation of the Chuckwalla Valley portion of the PRGTL. The research design for the study shall make use, at a minimum, of the available peer-reviewed and proprietary Quaternary science literatures, recent Quaternary research conducted in conjunction with the licensing and construction of the Genesis Solar Energy Project, the geoarchaeological research done in conjunction with the licensing and amendment processes for the amended project, new packrat midden analyses, and new Palen Dry Lake sediment core data.

The project owner **PRGTL account** shall provide for **fund** Native American involvement in the design, **monitoring**, and execution of the fieldwork for ~~these surveys~~ **this study**, and in the interpretation and presentation of the results of the ~~surveys~~ study. **Eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley. These tribes are listed after the verification for CUL-1B.**

The project owner **PRGTL account** shall conclude **fund the conclusion of** the paleoenvironmental study effort with the preparation and submission of a comprehensive technical report.



## Petroglyph Study

The project owner **PRGTL account** shall develop **fund the development**, conduct, and submit **submission of** a technical report of a petroglyph study germane to the period of significance for the Chuckwalla Valley portion of the PRGTL. The purpose of this study is to provide for the integration of the numerous petroglyph sites within the PAA in one comprehensive study. The research design should incorporate recent studies conducted at the behest of Southern California Edison for mitigation related to the siting and construction of the Red Bluff substation's impacts to the North Chuckwalla Mountains Petroglyph District. Complete photo/GIS inventories of individual petroglyph motifs and of articulated motif panels shall be completed for Dragon Wash, Corn Springs, Chuckwalla Springs and McCoy Springs. In addition a reasonable sampling of the various smaller and disparate petroglyph motifs and panels throughout the Valley shall be inventoried. These disparate petroglyph sites can be ascertained from the list of known sites in the PAA that staff has collected as part of their independent analysis and from any newly discovered petroglyph sites located in conducting field inventories required above. Petroglyph data shall then be analyzed spatially to discern trends at a micro-site scale and at a macroscale across the Valley with other petroglyph sites and other cultural resources that contribute to the Chuckwalla portion of the PRGTL. A research design shall also propose targeted dating techniques (e.g., patina analysis), including super-impositioning analysis on a relevant subset of the sites in the Chuckwalla Valley.

The project owner **PRGTL account** shall provide for fund Native American involvement in the design, **monitoring**, and execution of the fieldwork for ~~these surveys~~ **this study**, and in the interpretation and presentation of the results of the surveys **study**. **Eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley. These tribes are listed after the verification for CUL-1B.**

The project owner **PRGTL account** shall conclude **fund the conclusion of** the efforts to inventory, and document, **and analyze** the above contributing elements of the PRGTL with the preparation and submission of one or multiple, comprehensive technical report(s).

## Revision of Prehistoric Trails Network Cultural Landscape Context (PTNCL) and Field Manual

The project owner **PRGTL account** shall contribute to a special fund set up by the Energy Commission an amount sufficient to finance the revision of the extant draft context for the Prehistoric Trails Network Cultural Landscape (PTNCL) and the PTNCL's draft companion field manual. The revision shall recast the subject context to more explicitly consider the trail routes in Chuckwalla Valley, and the cultural resources which are thematic constituents of those routes, as elements that may contribute to the historical significance of the Pacific to Rio Grande Trails Landscape. The final technical reports for the class II surveys of the mountain and mesquite resource areas, the

paleoenvironmental study, and the petroglyph study shall inform the context revision.

**The PRGTL account shall fund Native American involvement in the design and execution of the revised PTNCL Field Manual. Eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley. These tribes are listed after the verification for CUL-1B.**

#### Public Outreach

The ~~project owner~~ **PRGTL account** shall fund the production and distribution of video or web-based content the purpose of which is to interpret the Chuckwalla Valley portion of the PRGTL for the general public. The interpretive perspectives that are to inform said content shall derive from academe as well as from the Native American communities who ascribe heritage values to the valley. **Eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley. These tribes are listed after the verification for CUL-1B.**

The ~~project owner~~ **Tribal Interest account of CUL-1B** shall fund initiatives the purposes of which are to directly, albeit partially, compensate Native American communities who ascribe heritage values to Chuckwalla Valley and, more specifically, to the broader PRGTL for PSEGS' degradation of the associative and emic ethnographic values of their ancestral homelands.

#### Treatment for Cumulative Effects

The project owner shall contribute **\$134,400** to a special fund to be comprised of ~~multiple owners of cumulative project contributors set up the~~ **extant** PTNCL fund set up **previously** by the Energy Commission to help finance the completion of the documentation program for the Chuckwalla Valley portion of the PRGTL.

The amount of the contribution shall be ~~\$70~~**35.00** per acre that the project encloses or otherwise disturbs. Any additional contingency contribution is not to exceed an amount totaling 20 percent of the original contribution. The contribution to the special fund may be made in installments at the approval of the CPM, with the first installment to constitute one-third of the total original contribution amount.

If a project is not certified, or if a project owner does not build the project, or, if for some other reason deemed acceptable by the CPM, a project owner does not participate in funding the PRGTL documentation program, the other project owner(s) may consult with the CPM to adjust the scale of the PRGTL documentation program research activities to match available funding. A project owner that funds the PRGTL documentation program and then withdraws will be able to reclaim their monetary contribution, to be refunded on a prorated basis.

**CUL-1B TREATMENT OF TRIBES AFFECTED BY IMPACTS TO THE CHUCKAWALLA VALLEY PORTION OF THE PACIFIC TO RIO GRANDE TRAILS LANDSCAPE (PRGTL)**

The project owner shall contribute a total of \$2,000,000 to a Tribal Interest account that the Energy Commission will set up to finance the completion of multiple programs set out in this condition, the collective purposes of which are to mitigate, in part, for the amended project's impacts to tribes' abilities to perpetuate their cultures as those abilities will be degraded as a consequence of the project's physical and visual damage to the Chuckwalla Valley portion of the PRGTL. The Compliance Project Manager (CPM) will administer the disbursement of these funds and provide regulatory oversight for the implementation of the multiple programs.

**Native American Advisory Group**

The CPM shall develop and create a Native American Advisory Group that shall meet, deliberate, and recommend to the CPM the use of the funds dedicated to the specific programs of this condition. Each participating affected Tribe (eligible participating tribes shall include only those tribes listed with the BLM or the NAHC as affiliated with the Chuckwalla Valley and as listed at the end of this condition) shall designate one representative and one proxy and determine in writing the extent of representation that has been delegated to the representative. The Native American Advisory Group shall meet no less than every two months on a continuing basis until such time when all special interest tribal funds have been distributed or two years from the time that the special fund has been established by the Energy Commission, whichever comes first. The Native American Advisory Group shall operate informally and by consensus. Meeting minutes shall be kept by the CPM of all Native American Advisory Group attendances and consensus recommendations. Meetings shall be attended by Energy Commission staff for the purposes of documenting recommendations. Advisory group attendance and recommendations will be posted on the Energy Commission website.

Funds shall be used to facilitate the Native American Advisory Group and disbursed by the CPM among all or some of three broad programs for the direct benefit of any or all affected tribes, as those three programs are further specified below.

1) Resource Management Planning

Funds may be used to facilitate representative tribal involvement in resource management planning efforts that may result from approval of a) the Palen Solar Electric Generating System, b) other resource management plans proposed in, or that partially include the Chuckwalla Valley, or c) tribal resource management plans on or near reservations of the representative tribes. Funds could include but are not limited to, employee or consultant costs, including travel and per diem to attend meetings, provide draft language for management plans or to gather pertinent background information that may contribute to a specific planning process.

2) Conservation Easement Funding

Funds may be used to facilitate tribal understanding, identification, negotiation or holding of conservation easements that are intended solely, or in part, to protect cultural resources or natural resources of cultural value to the representative tribe(s). The specific Conservation Easement concepts that appeal to the affected tribe(s) shall be recommended to the CPM by the Native American Advisory Group.

3) Cultural Preservation and Education Grants

Funds may be used to facilitate cultural preservation and education grants as proposed by any or all of the affected tribes. The specific grant themes and per-grant maximum amounts shall be recommended to the CPM by the Native American Advisory Group. Grant themes may include, but not limited to such activities as

- land acquisition for the purposes of tribal historic preservation or tribal cultural education,
- archival or ethnographic research and cultural practice documentation,
- elder youth cultural perpetuation/mentoring opportunities,
- training and workshops concerning aspects of historic preservation, and
- capital improvement and related funding for historic preservation restoration, rehabilitation or interpretation.

**VERIFICATION 1A: Treatment for Direct Visual Effects**

Field Inventory and Documentation of PRGTL Contributing Elements

1. ~~Within 90 days of the start of ground disturbance, the project owner shall submit, for the review and approval of the CPM, separate draft research designs for reconnaissance pedestrian (class II) surveys of the Palen, Coxcomb, Eagle, Chuckwalla, and McCoy Mountains Resource Areas, the Coxcomb Fringe and Raceway Mesquite Areas, and the BLM's Palen Dry Lake ACEC. The research~~

~~designs may be developed as a single document, multiple separate documents, or in any combination convenient to the project owner. Whether prepared separately or as one or several bundles, the research designs shall be explicit about the methods to be used in the survey of each area and the anticipated routes of the pedestrian transects through each area.~~

- ~~2. Prior to the project owner's submission of any one draft technical report of the results of the class II pedestrian survey of any one of the areas in verification 1 above, or of any combination of multiple areas, the project owner shall first submit, for the review and approval of the CPM, California State Parks DPR 523 Series form sets, complete per California State Parks instructions (CA State Parks 1995) and in accordance with the language of this condition of certification.~~
- ~~3. Upon the approval of the CPM, the project owner shall, within 14 days of said approval, formally submit each approved DPR 523 Series form set for each cultural resource to the Eastern Information Center of the California Historical Resources Information System and to the BLM's Palm Springs-South Coast Field Office.~~
- ~~4. Within 120 days of the CPM's approval of any research design for any of the areas in verification 1 above, the project owner shall submit, for the review and approval of the CPM, a draft technical report of the results of the class II pedestrian survey for each such area. Draft technical reports for the subject areas may be developed separately or in any combination convenient to the project owner.~~
- ~~5. Upon the approval of the CPM, the project owner shall, within 14 days of said approval, formally submit each approved technical report of the results of each class II pedestrian survey to the Eastern Information Center of the California Historical Resources Information System and to the BLM's Palm Springs-South Coast Field Office.~~
- ~~6. Should the project owner petition to suspend or terminate the license for the subject facility, subsequent to the execution of any fieldwork that had been done in partial fulfillment of this condition, but prior to the submission of draft DPR 523 Series form sets or draft technical reports, the project owner shall, no later than 90 days prior to filing a petition to suspend or terminate said license, submit complete draft form sets for each field-observed cultural resource to the CPM, the Eastern Information Center of the California Historical Resources Information System, and the BLM's Palm Springs-South Coast Field Office, and further submit to the CPM and the BLM's Palm Springs-South Coast Field Office organized and legible copies of all of the field documentation for the surveys that have been completed by that time and the drafts, however incomplete, of any technical reports in preparation.~~

### Paleoenvironmental Study

- ~~1. Within 90 days of the start of ground disturbance, the project owner shall submit for the review and approval of the CPM and in accordance with CUL-1 a draft research design for a paleoenvironmental study of the Chuckwalla Valley portion of the PRGTL. The draft research design shall be explicit about the sources of the data and the analytic methods that would be used to inform the study.~~
- ~~2. Within 180 days of the CPM's approval of the research design for the subject Chuckwalla Valley paleoenvironmental study, the project owner shall submit, for the review and approval of the CPM, a draft technical report of the results of that study.~~

### Petroglyph Study

- ~~1. Within 90 days of the start of ground disturbance, the project owner shall submit, for the review and approval of the CPM and in accordance with CUL-1, a draft research design for a petroglyph study of the Chuckwalla Valley portion of the PRGTL. The draft research design shall be explicit about the sources of the data and the analytic methods that would be used to inform the study.~~
- ~~2. Within 180 days of the CPM's approval of the research design for the subject Chuckwalla Valley petroglyph study, the project owner shall submit, for the review and approval of the CPM a draft technical report of the results of that study.~~

### Revision of Prehistoric Trails Network Cultural Landscape Context

- ~~1. Within 30 days of the start of ground disturbance, the project owner shall make a contribution to a special fund set up by the Energy Commission the purpose of which would be to completely finance the revision of the extant draft context for the Prehistoric Trails Network Cultural Landscape (PTNCL) and the PTNCL's draft companion field manual.~~

### Public Outreach

- ~~1. Within 180 days of the finalization of all research related to the mitigation of the Palen Solar Energy Generating System project's effects on cultural resources the project owner shall facilitate the convention of a steering committee that shall represent the interests of academe, Native American stakeholders, and state and federal agency regulatory interests in the production and distribution of video or web-based content, the purpose of which is to interpret the Chuckwalla Valley portion of the PRGTL for the general public. Major goals of the steering committee will be to frame the content to be produced, select the medium for the content's distribution, and select a contractor to deliver draft and final products. The steering committee will accomplish this goal through the development and release of a request for proposals, and the review and selection of the actual contractor. The selection of the contractor will occur within 90 days of the date of the convention of the steering committee.~~

- ~~2. The project owner shall bear the complete cost of all expenses associated with the production and distribution of the subject video or web-based content. Such costs shall include, but shall not be limited to, the convention of the steering committee and all subsequent steering committee meetings, the contractor selection process, and all work associated with the production and release of said content. The project owner shall also bear all travel and per diem expenses for steering committee members and for the contractor, as such costs are made part of the project owner's ultimate contract with that party.~~
- ~~3. Within 180 days of the finalization of all research related to the mitigation of the Palen Solar Energy Generating System project's effects on cultural resources, the project owner shall facilitate the convention of a steering committee that shall represent the interests of Native American stakeholders and include the participatory facilitation of state and federal agency staff in the development of compensatory initiatives for Native American communities who ascribe heritage values to Chuckwalla Valley. The major goal of the steering committee will be to develop and select the suite of initiatives to be funded. The selection of the initiatives will occur within 270 days of the date of the convention of the steering committee.~~
- ~~4. The project owner shall bear the complete cost of all expenses associated with the development of compensatory initiatives for Native American communities who ascribe heritage values to Chuckwalla Valley. Such costs shall include, but shall not be limited to, the convention of the steering committee and all subsequent steering committee meetings, and all work associated with the implementation of said initiatives. The project owner shall also bear all travel and per diem expenses for steering committee members and for any contractors, as such costs are made parts of the project owner's ultimate contracts with those parties.~~

- 1. The project owner shall transfer \$3,068,873.00 to the Energy Commission's PRGTL account no later than 90 days prior to the initiation of ground disturbance anywhere on the project site.**
- 2. No later than 10 days after receiving notice of the successful transfer of funds to the Energy Commission's PRGTL account, the project owner shall submit a copy of the notice to the Energy Commission's Compliance Project Manager (CPM).**

#### **Treatment for Cumulative Effects**

- 3. The project owner shall transfer \$134,400.00 to the Energy Commission's previously established PTNCL account no later than 90 days prior to the initiation of ground disturbance anywhere on the project site.**
- 4. No later than 10 days after receiving notice of the successful transfer of funds for any installment to the Energy Commission's and/or BLM's special PTNCL fund PTNCL account, the project owner shall submit a copy of the notice to the Energy Commission's Compliance Project Manager (CPM).**

<b>Proposed Mitigation Budget for CUL-1A</b>			
<b>Programs</b>	<b>Cost</b>	<b>Tribal Integration Percentage and Cost of Study</b>	<b>Total</b>
<b>Program Management</b>	<b>\$185,550</b>	<b>10% or \$18,555</b>	<b>\$204,105</b>
<b>Class II Surveys</b>	<b>\$1,370,640</b>	<b>20% or \$274,128</b>	<b>\$1,644,768</b>
<b>Paleoenvironmental Study</b>	<b>\$300,000<sup>1</sup></b>	<b>15% or \$45,000</b>	<b>\$345,000</b>
<b>Petroglyph Study</b>	<b>\$400,000</b>	<b>40% or \$160,000</b>	<b>\$560,000</b>
<b>PTNCL/PRGTL Context and Field Manual Revision</b>	<b>\$100,000<sup>2</sup></b>	<b>5% or \$5,000</b>	<b>\$105,000</b>
<b>Public Outreach</b>	<b>\$200,000<sup>3</sup></b>	<b>5% or \$10,000</b>	<b>\$210,000</b>
<b>Treatment for Cumulative Effects</b>	<b>\$134,400</b>	<b>0%</b>	<b>\$134,400</b>
<b>TOTAL</b>	<b>\$2,690,590</b>	<b>\$512,683</b>	<b>\$3,203,273</b>

**VERIFICATION 1B**

**1. The project owner shall transfer \$2,000,000 to the Energy Commission’s Tribal Interest account no later than 90 days prior to the initiation of ground disturbance anywhere on the project site.**

<b>Proposed Mitigation Budget for CUL-1B</b>	
<b>Programs</b>	<b>Costs</b>
<b>Native American Advisory Group</b>	<b>\$150,000</b>
<b>Program Implementation Funds</b>	<b>\$1,850,000</b>
<b>TOTAL</b>	<b>\$2,000,000</b>

<sup>1</sup> This figure is \$100,000 greater than the figure proposed in staff’s opening brief (tn201338:6). The increase is responsive to new information from BLM Palm Springs Field Office staff that the costs of paleoenvironmental analyses have been higher on other recent projects in Palm Springs Field Office portion of the California Desert Conservation Area, and also that the costs of the laboratory analysts’ field collaboration on the collection of paleoenvironmental samples has been inadvertently left out of recent paleoenvironmental budgets.

<sup>2</sup> This figure is \$17,000 greater than the figure proposed in staff’s opening brief (tn201338:6). The increase is responsive to new information from BLM Palm Springs Field Office staff that the costs of the revisions to the PTNCL/PRGTL context and field manual, on the basis of their cost to date under 09-AFC-8C and 09-AFC-6C, would be greater than the initially budgeted amount.

<sup>3</sup> This figure is \$100,000 greater than the figure proposed in staff’s opening brief (tn201338:6). The increase is responsive to new information from BLM Palm Springs Field Office staff that the costs of public outreach initiatives have consistently exceeded the minimal budgets afforded them on other recent projects in the jurisdiction of the Palm Springs Field Office.



**Affected Native American Tribes Affiliated with the Chuckwalla Valley and Listed on**

**Either the BLM or NAHC Tribal Consultation Lists**

**Aqua Caliente Band of Cahuilla Indians**

**Augustine Band of Cahuilla Indians**

**Cabazon Band of Mission Indians**

**Cahuilla Band of Mission Indians**

**Chemehuevi Indian Tribe**

**Cocopah Indian Tribe**

**Colorado River Indian Tribes**

**Fort Mojave Indian Tribes**

**Fort Yuma Quechan Tribe**

**Moronggo Band of Mission Indians**

**Ramona Band of Mission Indians**

**San Manuel Band of Mission Indians**

**Soboba Band of Luiseno Indians**

**Torres-Martinez Desert Cahuilla Indians**

**Twenty-nine Palms Band of Mission Indians**

## Mitigation for Historical Resources and Native American Tribes, Palen Solar Energy Generating System (09-AFC-7C)

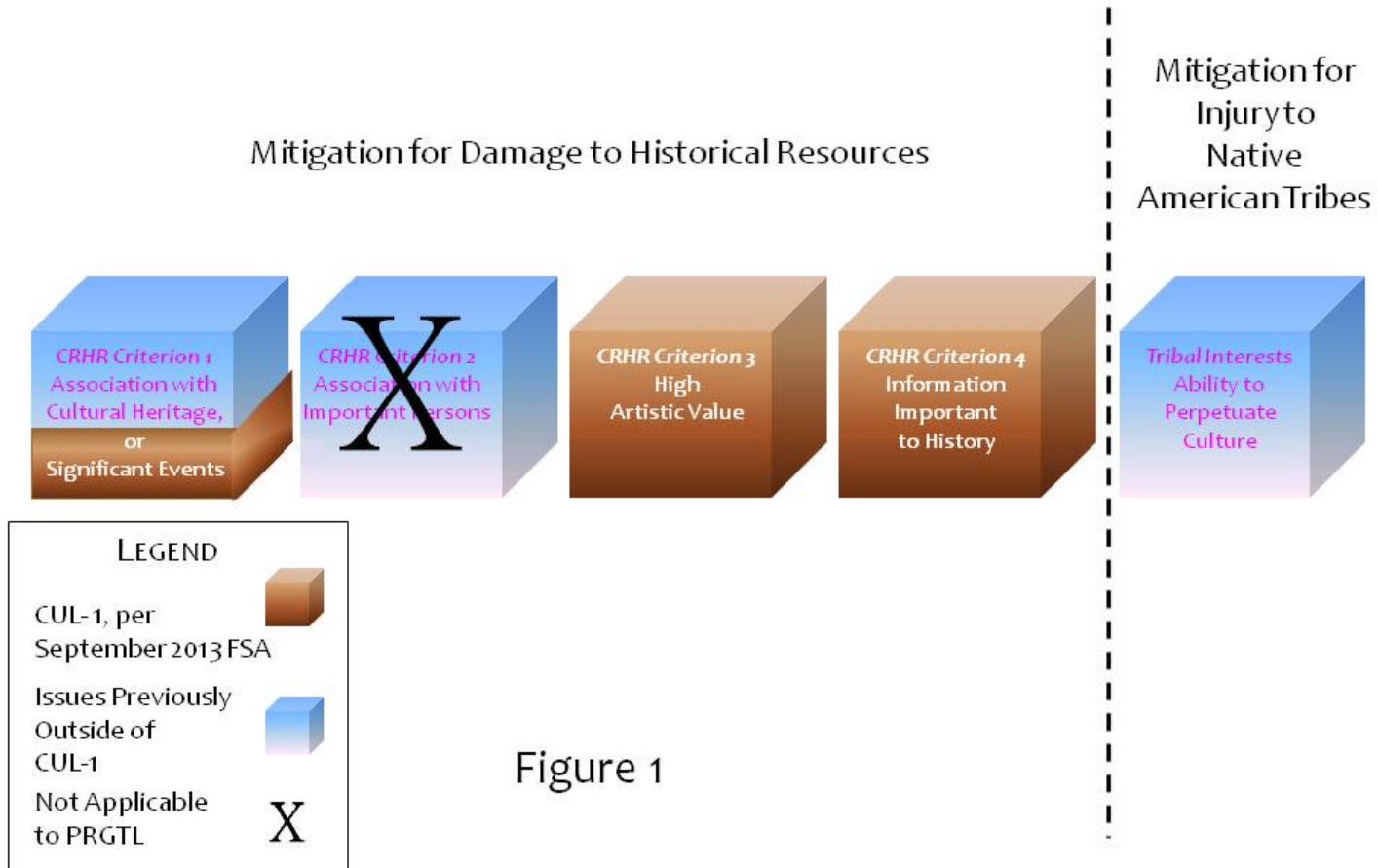


Figure 1

# Attachment 1

## Energy Commission Cultural Resources Unit's Proposal to Address the January 7, 2014 Committee Conference on the Presiding Member's Proposed Decision and the Siting Committee's Thoughts on the Renegotiation of CUL-1, Palen Solar Energy Generating System (09-AFC-7C)

### The Regulatory Context for CUL-1 in Part B of the Final Staff Assessment and What CUL-1

#### Actually Proposes to Do

The proposed revisions to condition of certification **CUL-1** in the Final Staff Assessment (FSA) for the Palen Solar Electric Generating System (PSEGS) amendment have carefully defined objectives, the purposes of which are to ensure that the Energy Commission adequately fulfills the agency's obligations, under CEQA, to protect significant historical resource values. The defined objectives are performance standards under CEQA that staff has developed to address multiple significant adverse effects the amended project would have on the different value sets for particular historical resources the Siting Committee determined to be significant (CEC 2013d:6.3-59 through 6.3-62). Each specific performance standard is a requisite and indispensable element of staff's portion of the FSA.

The revisions to the mitigation measures that staff recommends in the FSA for **CUL-1** implement performance standards to address *some* of the potentially significant adverse effects that the amended project would have on the Chuckwalla Valley portion of the Pacific to Rio Grande Trails Landscape (PRGTL). The revised mitigation measures in **CUL-1** address, more specifically, what would be the amended projects

1. dramatic visual degradation of the PRGTL's ability to convey the values it possesses, under the California Register of Historical Resources' (CRHR) Criterion 1, for its association with events that have made a significant contribution to the broad patterns of regional history, and Criterion 3 for its possession of high artistic value, and
2. cumulatively considerable contribution to the regional loss of the historic information values, under the CRHR's Criterion 4, which the archaeological deposits on the facility site represent.

It is important to the post-PMPD discussions about the revised mitigation measures in **CUL-1** to note what significant project adverse effects the measures do not address. **CUL-1** was not developed to address, nor does it address what would be the amended projects

1. dramatic visual degradation of PRGTL's ability to convey the values it possesses, under the CRHR's Criterion 1, for its association with the cultural heritage of California, more specifically, its association with regional Native American cultural heritages, and

2. effects on the different Native American tribes which have material or ancestral connections to the Chuckwalla Valley.

The intent of staff's proposed inclusion of tribal integration in the initial budget for **CUL-1** mitigation (CEC 2013c) is to increase the success of those programs and is not itself mitigation for significant effects either to the physical resources to which Native American communities ascribe cultural heritage values, or to the communities themselves.

### **Committee Conference's Opening Statement**

The opening statement at the January 7, 2014 Palen Committee conference, regarding **CUL-1** (CEC 2014a), can be summarized as follows:

- PSEGS would result in "significant unmitigable *cultural impacts* affecting Native Americans." [emphasis added]
- "... the approval of the project would be experienced as a cultural loss by Native American tribes."
- "... there are at least two interests that the Committee needs to consider when we look at *cultural resources impacts* ..." [emphasis added]
- [Interest 1] "...generalized state interest in the conservation and documentation and better understanding of the many and varied cultural and historical resources within the State of California." [Historic preservation of historical resources under CEQA—project effects to cultural resources or "cultural resources impacts" referred to above]
- [Interest 2] "...a particularized set of interests and concerns of Native Americans ... in these same resources and landscapes." [Native American issues which fall partly under CEQA and partly under environmental justice orders and guidelines—for the former, project effects to cultural resources or "cultural resources impacts," and for the latter, project effects to Native American culture, to the Native Americans themselves or "cultural impacts" referred to above]
- "**CUL-1** seems too oriented towards the State interests and not as well suited to the Native American concerns that the Committee heard in this proceeding."
- Commissioner Douglas acknowledged the applicant's previously stated belief that **CUL-1** is burdensome and open-ended, and noted staff's proposal of a budget for **CUL-1** in staff's opening brief (CEC 2013c).
- "We heard that that culture and that belief system is inextricably tied to the landscape and that a visual impact from this, or another project, has to them not just a visual implication [effect], but a cultural and a spiritual, even, implication [effect] within the belief system and the traditions, that they are working hard to pass on to future generations. This is a significant impact" (CEC 2013c:18).
- "Ideally, CRIT and other interested Native American tribes could take an opportunity now to work with staff and the Applicant to devise such a mitigation approach [An approach wherein tribes have a "significant voice in developing the mitigation proposal for cultural resources impacts"] (CEC 2013c:19)

- Alternately, Commissioner Douglas suggests that staff and the project owner could redraft the condition to accommodate open and responsive input from tribes subsequent to any approval of the amended project.
- “The PMPD found that the PSEGS project would have a disproportionate impact on Native Americans, therefore, to the extent possible, we think the mitigation should be devised to address the impact of the project on Native Americans” (CEC 2013c:19).

Staff believes the separation and articulation of the different effects that the proposed project would have on *places* and *people* could facilitate constructive and unambiguous negotiations over **CUL-1** that are more in line with the guidance in the opening statement.

The primary purpose of **CUL-1** is to mitigate the significant visual effects that the construction and operation of PSEGS would have on historical resources, the types of old, inanimate material remains and geographic places that are the exclusive focus of cultural resources analyses under CEQA. Considerations of how PSEGS, or any other project would affect *a people* and/or *a culture* are outside of the normal scope of CEQA cultural resources analyses.

For staff to be able to successfully enact the Siting Committee’s recommendation to better address “Native American concerns,” it is useful to identify which CEQA requirements **CUL-1** meets and which ones it does not meet, and what additions can be made to **CUL-1** to fulfill the Committee’s recommendations. **CUL-1** was developed and drafted by staff to mitigate for the fact that the construction and operation of PSEGS would irreparably destroy the ability of the Chuckwalla Valley portion of PRGTL to convey its historical significance under Criterion 1 of the CRHR, because the visual degradation of the project would compromise the integrity of the landscape’s setting, feeling, and association. The primary efforts set out to address the Criterion 1 effects was to better document the damaged landscape with the intent that additional, more in-depth information would inform outreach programs for the general, non-Native American and the Native American public’s. Provisions were set out to provide for the project owner’s production of a video or website for the general public, and to provide for the project owner’s support of unspecified initiatives to be developed and implemented by the broader Native American community. **CUL-1** also sought to mitigate, under CRHR Criterion 3, for the project’s degradation of the visual integrity of rock art panels that are contributing elements of many of the traditional cultural places that were identified in the FSA. A third purpose of **CUL-1** was to mitigate, under CRHR Criterion 4, for the project’s cumulatively considerable effects to the information values of archaeological deposits on the PSEGS facility site. Subsequent to the publication of the FSA and to the evidentiary hearings, staff included a proposal to fund **CUL-1** as part of staff’s opening brief (CEC 2013c). The draft budget in that proposal provides funds for the implementation of a suite of investigations to document the landscape, to address the project’s cumulative effects on onsite archaeological deposits, to develop and implement generally defined public outreach initiatives, and, in order to make these initiatives successful, for integration of tribal involvement in aspects of the investigations. What **CUL-1** does not do is explicitly identify substantive mitigations to compensate the broader Native American community, under Criterion 1, for the loss of their ability to experience the cultural heritage values associated with the Chuckwalla

Valley portion of PRGTL. The net result of **CUL-1** is that it somewhat mitigates for the project's significant environmental effects upon the Chuckwalla Valley portion of the PRGTL, but does not mitigate for the issues are most important to the affected Native American tribes.

### **How the Opening Statement at the Committee Conference Comports with the PMPD on the**

#### **Issue of CUL-1 (CEC 2013d: 6.3-48—6.3-57)**

The Siting Committee statements in the December 13, 2013 PMPD, reinforce staff's recommendation that the Chuckwalla Valley portion of PRGTL is eligible for listing in the CRHR, and thereby establishes a lead agency determination of CRHR eligibility for the full Commission's consideration. The Committee establishes this determination by reiterating how the construction and operation of the amended project would degrade the landscape's ability to convey its historical significance (CEC 2013d:6.3-51). The Committee statement further notes the construction and operation of PSEGS would constitute a significant impact on the environment, an impact which would require mitigation under CEQA (CEC 2013d:6.3-52). The Committee ultimately found that there is a clear nexus between the mitigations set out in **CUL-1** to address the amended project's direct visual effects to the subject landscape, and the character of those effects (CEC 2013d:6.3-54). The Committee found further that **CUL-1** served the public interest to gather information on the landscape and to disseminate it to "both compensate the public for the degradation of the landscape itself, and to foster a more comprehensive appreciation of the potential landscape loss associated with utility-scale renewable energy development" (CEC 2013d:6.3-55). The Committee concludes with the finding that **CUL-1** also constitutes reasonable mitigation for the amended project's cumulative effects (CEC 2013d:6.3-57).

The Siting Committee, in its opening statement at the January 7, 2014 committee conference, expands on its findings in the PMPD. The Committee's opening statement elaborates on the adverse effects of the amended project on the Native Americans experience of the landscape, and the need by the Commission to more fully consider and address the effects of the loss of that experience on the Native Americans' ability to perpetuate their respective cultures.

### **Colorado River Indian Tribe's (CRIT) and Petitioner's Positions on CUL-1 prior to and**

#### **Subsequent to the Publication of the PMPD**

CRIT statements regarding **CUL-1** can be summarized as follows:

- It is extremely difficult to figure out a way to mitigate the loss of an entire cultural landscape that comes close to addressing the tribal losses.

Petitioner's statements regarding **CUL-1** can be summarized as follows:

- **CUL-1** is burdensome, open-ended, and has insufficient nexus to the identified adverse impacts of the amended project (CEC 2014a:17)

- Staff can set workshop dates to start talking about **CUL 1**

### **How, in Theory, the Conference Committee's Thoughts on the Renegotiation of CUL-1 Could**

#### **Be Made to Comport with the Original Regulatory Intent of CUL-1**

In addition to the mitigation measures already proposed, negotiated revisions to **CUL-1** should include more robust provisions to mitigate for the loss of the broader Native American community's ability to experience the cultural heritage values associated with the Chuckwalla Valley portion of PRGTL, and new language developed and drafted to mitigate for the manner in which the loss of that experience significantly interferes with Native Americans' ability to perpetuate their respective cultures. Per the Siting Committee's recommendations, these revisions should reflect substantive input that is the result of intensive consultation with the Native American communities having material or ancestral affiliation to the area.

## REFERENCES

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- CEC 2013a. California Energy Commission (tn200442), *Final Staff Assessment for the Palen Solar Electric Generating System, Part A, Amendment to the Palen Solar Power Project* (09-AFC-7C). September 10, 2013.
- CEC 2013b. California Energy Commission (tn200564), *Final Staff Assessment for the Palen Solar Electric Generating System, Part B, Amendment to the Palen Solar Power Project* (09-AFC-7C). September 23, 2013.
- CEC 2013c. California Energy Commission (tn201338), *Energy Commission Staff Opening Brief*, Palen Solar Electric Generating System (09-AFC-7C). November 26, 2013.
- CEC 2013d. California Energy Commission (tn201434), *Presiding Member's Proposed Decision*, Palen Solar Electric Generating System (09-AFC-7C). December 13, 2013.
- CEC 2014a. California Energy Commission (tn201546), *Palen Transcript of the Committee Conference held January 7, 2013*, Palen Solar Electric Generating System (09-AFC-7C). January 10, 2014.
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- PSH 2014. Palen Solar Holdings (tn201700), *Palen Solar Holdings, LLC's Proposed Revisions of Staff's Condition of Certification CUL-1*, Palen Solar Electric Generating System (09-AFC-7C). February 10, 2014.