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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

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

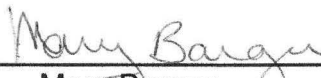
DOCKET NO. 09-AFC-07C

**DECLARATION OF MARY
BARGER**

I, Mary Barger, declare as follows:

1. I am an independent consultant currently under contract with Centerline.
2. A copy of my professional qualifications and experience was included with my Opening Testimony and is incorporated by reference in this Declaration.
3. I prepared the attached supplemental rebuttal testimony relating to Cultural Resources for the Petition for Amendment for the Palen Solar Electric Generating System (California Energy Commission Docket Number 09-AFC-07C).
4. It is my professional opinion that the attached prepared testimony is valid and accurate with respect to issues that it addresses.
5. I am personally familiar with the facts and conclusions related in the attached prepared testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on July 17 2014.



Mary Barger

STATE OF CALIFORNIA

Energy Resources
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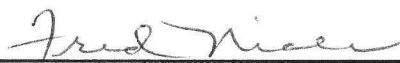
DOCKET NO. 09-AFC-07C

DECLARATION OF FRED NIALS

I, Fred Nials, declare as follows:

1. I am an independent consultant currently under contract with Centerline.
2. A copy of my professional qualifications and experience was included with my Opening Testimony and is incorporated by reference in this Declaration.
3. I prepared the attached supplemental rebuttal testimony relating to Cultural Resources for the Petition for Amendment for the Palen Solar Electric Generating System (California Energy Commission Docket Number 09-AFC-07C).
4. It is my professional opinion that the attached prepared testimony is valid and accurate with respect to issues that it addresses.
5. I am personally familiar with the facts and conclusions related in the attached prepared testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on July 17 2014.



Fred Nials

**PALEN SOLAR ELECTRIC GENERATING SYSTEM
CULTURAL RESOURCES
SUPPLEMENTAL REBUTTAL TESTIMONY**

I. Names:

Mary Barger
Fred Nials

II. Purpose:

We provide this Rebuttal Testimony to address cultural resource-related issues raised by Staff in its Supplemental Opening Testimony for the Palen Solar Electric Generating System (PSEGS) (09-AFC-7C).

III. Qualifications:

Our qualifications are highlighted and copies of our resumes are included in our previously filed Opening Testimony, Cultural Resources.

To the best of our knowledge all referenced documents and all of the facts contained in this testimony are true and correct. To the extent this testimony contains opinions, such opinions are our own. We make these statements and provide these opinions freely and under oath for the purpose of constituting sworn testimony in this proceeding.

IV. Rebuttal:

The guidance the Commissioner provided on January 7, 2014, stated, “**CUL-1** seems too oriented towards the State interests and not as well suited to the Native American concerns.” She also stated, “...the Committee would like the tribes to have a significant voice in developing the mitigation proposal for cultural resource impacts.” In response to that guidance, PSH proposed revisions to the version of Condition of Certification **CUL-1** contained in Staff’s Opening Brief. PSH’s approach was to redistribute the funding amount with approximately \$1,000,000 to be used by Staff to conduct studies to address the “state interest” and to provide \$1,500,000 for a Native American Advisory Group to apply to activities that it selects to address its cultural and spiritual interests. The reasoning behind the approach was to acknowledge that the tribes would know best how to use the funding to address those interests that may be confidential and which are distinctly different from benefits that may accrue from any of the studies proposed by Staff. Staff then published its own version of **CUL-1** that adopted PSH’s approach but arbitrarily and materially increased the funding for both the state interests and the Native American interests.

On April 8, 2014, the Staff and PSH attended a workshop to discuss cultural resources. One common theme clearly voiced by the tribal representatives at this workshop is that the funding approach was offensive and rejected on two main grounds. The first was an overwhelming sentiment that such funding was “blood money.” The second was that the mechanism of convening a Native American Advisory Committee was unworkable. The tribal representatives asserted that a similar mechanism employed in a settlement for the Genesis Solar Energy Project (GSEP) was not working. Further discussions at the workshop revealed that the main problems with the settlement program at GSEP is getting the tribal groups to agree on what activities should be done and, more importantly, that the tribal groups believe that the CEC and the BLM do not consider nor implement their suggestions.

In the Committee Hearing Order granting PSH’s Motion to Re-Open the Evidentiary Record, the Committee requested that Staff justify its increase and allocation of funding in its most recent version of **CUL-1**. We have reviewed Staff’s Opening Testimony and believe that they have not met their burden on justifying neither the funding nor its allocation as requested by the Committee. Further, Staff’s currently proposed version of **CUL-1B** is unresponsive to the tribal representatives’ rejection of the approach used in the settlement for GSEP. We have revised Staff’s current version of **CUL-1A** and **CUL-1B** to be more responsive to both requests. We propose to combine the Condition of Certification **CUL-1A** and **CUL-1B** into a single condition that would include the following:

- Address the concern that the Native American representatives would not be able to agree and manage the distribution of funds directly to participating tribes. Our proposed approach would be to enhance the tribal voice in the ultimate activities undertaken by the CPM by grouping all of the funding together and requiring the CPM to allocate the funds across a broad range of activities outlined in the condition. These activities include those activities that Staff has outlined to address the state’s interest as well as activities that the tribes may elect to address the tribal cultural and spiritual interests.
- Provide opportunities and funding for real tribal input to Staff’s state interests activities by requiring the CPM to integrate tribal requests in the upfront design and implementation of the Staff studies.
- Provide a reasonable cap of \$2,350,000 on the PRGTL Fund for treatment of direct visual impacts and \$35/acre for the treatment of cumulative effects to be allocated in accordance with the Revised Phasing Plan, Exhibit 1167.

- Provide an avian/insect cultural study as requested by tribal representatives.

Staff has proposed to add a Tribal Integration percentage to each of the **CUL-1A** programs (Staff's Cultural Resources Table 1). Percentages, however, varied from 0%-40% with no justification or explanation of how this integration would be accomplished or by which tribes. While Staff argues that including their perspectives would render the study methods and scientific and interpretive findings more valid, the programs and budgets listed in staff's Cultural Resources Table 1 were developed by Staff, not by the tribes or in any partnership with the tribes. As a result, Staff's proposal does not seem to address the Commissioner's concerns to make sure the tribes have a significant voice in developing mitigation. Our proposed revisions to the condition would give the tribes a significant and binding voice in developing the mitigation. We suggest the following projects to be retained as they have a nexus to the impacts and mitigation, following the guidance from the Commissioner.

- 1) Class II Surveys would still be conducted, but the locations for the surveys would be selected by the tribes based on tribal interests in the Chuckwalla Valley. CEC staff can work with the tribes, but actual locations or areas should be selected by the tribes. The areas the tribes select are likely to focus on locations of possible traditional cultural properties or traditional use areas which tie into the PTNCL/PRGTL system demonstrating a nexus to mitigating impacts to what makes the Chuckwalla Valley important to the tribes. This project would still meet the state's interests, as well.
- 2) The Petroglyph Study would be retained, but the selection of the petroglyph sites and methods for documentation and interpretation should be led by the tribes. The petroglyph sites are part of the PTNCL/PRGTL system which demonstrates a nexus to mitigating impacts to the characteristics that make the Chuckwalla Valley important to the tribes. This project would still meet the state's interests, as well.
- 3) Treatment for Cumulative Effects provides funds for documentation of the Chuckwalla Valley portion of the PRGTL. This project has a nexus to the potential impacts, since it would identify parts of the trail that are important to the tribes and which could be affected visually by the project. This is a state interest project.
- 4) Tribal Cultural and Spiritual Activities may be selected by using funds from the PRGTL account whereby tribes can apply for funds for projects for educational advancement or may directly allocate the funding to any of the activities outlined in the condition. If the tribes elected, projects could include, but not be limited to, training youth in cultural practices, establishing conservation easements or rehabilitating sites of interest to

the tribes. Tribes could meet and vote on these projects with each tribe having one vote. Whatever is agreed upon would be approved without the approval of the CPM.

We also propose to add the following project based on comments at the cultural workshop provided by several tribes.

- 5) A study of culturally significant birds and insects. This would be a project to primarily document the importance of the avian and insect community to the tribes. This project also would be designed by the tribes. This has a nexus, since the Project may have an effect on birds and insects of interest to the tribes.

We propose to remove the following projects:

- 1) The Paleoenvironmental Study is a state interest project based on packrat (*Neotoma* sp.) middens discovered in the Palen Mountains located north and east of the Project area. The Staff-proposed project is a \$560,000 science-based research project using peer-reviewed and proprietary Quaternary science literatures. Staff has not demonstrated indication of tribal interests or benefits to tribes. Based on an available USGS/NOAA Packrat Midden Database and extensive published data, numerous packrat midden studies have previously and extensively documented paleovegetation changes in the Mojave, Sonoran, and Great Basin deserts of southern California, western Arizona and southern Nevada (Fig. 1). Sample localities surround Chuckwalla Valley and more than a dozen are located within 50-100 miles of the area. Published data show that modern vegetation assemblages were established in the southwest 4,000-5,000 years ago. Previous archaeological surveys have not demonstrated earlier occupation in the project area. Prior significant climate changes, e.g., the Pleistocene/Holocene transition, are well-documented and verified by other types of proxy data. Human occupation prior to this time has not been documented in the Chuckwalla Valley. Previously analyzed pack rat middens should be adequate to enhance the interpretation of Holocene environmental events. Previous 500 meter+ sediment cores taken from Palen Dry Lake found no post-Pleistocene lacustrine sediments. Analysis of these cores would not be productive in reconstructing post-Pleistocene environments. Although additional paleoenvironmental study would be scientifically satisfying, it is unlikely that the proposed additional work would provide significant new information or meet tribal interests.
- 2) PTNCL/PRGTL Context and Field Manual Revision have not been identified by the tribes as important as a method to mitigate effects to their cultural values. Staff proposed that the tribes participate in the development and execution of this manual. However, this would be a revision of an existing context and manual, so tribal involvement is unlikely to change how the existing documents are revised. Also, the context and

manual will be tools for archaeologists working in the area, and less a document for tribal traditional practitioners.

- 3) Public Outreach was also proposed on the GSEP and has been difficult to implement. The purpose of this project is to interpret the PRGTL for the non-Native American general public. The content is to be derived from academe as well as from the Native American communities. However, of the \$200,000 budget, staff only identified 5% to support tribes in its development. If retained, a recommended change could be to develop work products from the Class II surveys and the petroglyph study that would be focused on publications for distribution to the public. Since the tribes have the burden of impacts from the project, the publications from the Class II surveys and petroglyph study could also include teaching materials targeted to be used for tribal children to educate them about their history. This project could have nexus in documenting the PRGTL for the non-Native American general public, but this is a state's interest, not a tribal interest.

Program Management would still be necessary for CUL-1 and would be funded.

We believe that budgets for each of Staff's proposed activities should not be written into the condition. While Staff provided reasons it increased the funding for its projects, it has never provided any basis (person hours, acres covered, scope of work of surveys, timing, etc.) for its original estimates. For illustrative purposes only, we have provided the table below as a potential alternative allocation of the funding that may reflect a more evenly distributed allocation of the funding, but ultimately the budgets and scope of work should be developed by Staff only after the tribes have determined which projects and the scope of such work should be performed. While we understand that this approach does not solve the potential problem of achieving unanimous agreement amongst the tribes, we believe that any meaningful ongoing consultation process rarely yields unanimous agreement.

Possible Allocation of Budget for CUL-1	
Program	Cost
Treatment For Direct Visual Effects	
Class II Surveys	\$1,000,000
Petroglyph Study	\$ 400,000
Avian/Insect Study	\$ 200,000
Tribal Cultural and Spiritual Activities	\$ 550,000
Program Management	\$ 200,000

Subtotal	\$2,350,000
Treatment For Cumulative Effects	
PTNCL Fund Contribution*	\$ 134,000*
Subtotal	\$ 134,000
TOTAL	\$2,484,400
*Estimate, based on \$35/acre paid on 3,840 acres. The actual amount will be calculated as \$35 for every acre disturbed or enclosed by the Project in accordance with the Revised Phasing Plan, Exhibit 1167.	

In summary, we think this approach and the attached revised **CUL-1** is responsive to the guidance provided by the Commissioner and allows a tribal voice to be more involved in the development of the activities that will be undertaken pursuant to the condition. It is written to allow input from the tribes after the PSEGS is certified.



Figure 1. Map showing distribution of packrat midden sample locations in the southwestern United States and northwestern Mexico. The circle is approximately centered on the PSEGS project and shows locations within an approximately 100-mile radius of the site. (Source: geochange.er.usgs.gov/midden/)