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CALIFORNIA ENERGY COMMISSION

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July 18, 2014

California Energy Commission
Dockets Unit
1516 Ninth Street
Sacramento, CA 95814-5512

**RE: ENERGY COMMISSION STAFF CUL-1
PALEN SOLAR ELECTRIC GENERATING SYSTEM
DOCKET NO. (09-AFC-7C)**

Enclosed for filing is staff's clean version (without **bold underline** and ~~strikeout~~) of Condition of Certification **CUL-1** as distributed in supplemental testimony docketed on June 23, 2014, for the Palen Solar Electric Generating System (09-AFC-7C).

Sincerely,

CHRISTINE STORA
Compliance Project Manager
Siting Transmission and Environmental
Protection

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 \$3,203,273.00 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) in consultation with the US Bureau of Land Management (to avoid duplication of effort) 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 PRGTL account shall be used by the CPM to 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; 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 PRGTL account shall be used by the CPM to 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 PRGTL account shall be used by the CPM to 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 PRGTL account shall be used by the CPM to 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 PRGTL account shall be used by the CPM to fund the development and 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 PRGTL account shall be used by the CPM to fund Native American involvement in the design, monitoring, and execution of the fieldwork for this study, and in the interpretation and presentation of the results of the 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 PRGTL account shall be used by the CPM to fund the conclusion of the paleoenvironmental study effort with the preparation and submission of a comprehensive technical report.

Petroglyph Study

The PRGTL account shall be used by the CPM to fund the development, conduct, and 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 PRGTL account shall be used by the CPM to fund Native American involvement in the design, monitoring, and execution of the fieldwork for this study, and in the interpretation and presentation of the results of the 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 PRGTL account shall be used by the CPM to fund the conclusion of the efforts to inventory, 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 PRGTL account shall be used by the CPM to fund 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 be used by the CPM to 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 PRGTL account shall be used by the CPM to 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 non-Native American 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 Tribal People Interest account of **CUL-1B** shall be used by the CPM to 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 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 \$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 \$2,110,000 to a Tribal People 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) in consultation with the US Bureau of Land Management (to

avoid duplication of effort) 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. The Native American Advisory Group shall operate per parliamentary procedures. Meeting minutes shall be kept by the CPM of all Native American Advisory Group attendances and consensus or voted 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

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~~ to the Energy Commission's PTNCL account, the project owner shall submit a copy of the notice to the Energy Commission's Compliance Project Manager (CPM).

Verification 1B:

1. The project owner shall transfer \$2,110,000 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.

A Combined List of BLM and NAHC Listed Tribes Affiliated with the Chuckwalla Valley

Agua 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
Morongo 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