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California Energy Commission
Dockets Unit, MS-4
Docket Number: 09-AFC-07C
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Comments in Opposition to Petition for Extension of Deadline for
Commencement of Construction for the Palen Solar Power Project

Dear Members of the California Energy Commission:

The following comments are submitted on behalf of the Quechan Tribe of the Fort Yuma Indian Reservation in opposition to the Petition for Extension of Deadline for Commencement of Construction for the Palen Solar Power Project filed on August 4, 2015 by Palen SEGS I, LLC. The Tribe disagrees that Palen SEGS I, LLC has established good cause for the extension. The Tribe strongly opposes development of the Palen Solar Power Project in this culturally and biologically sensitive location. The Commission should deny the Petition for Extension and adhere to the existing deadlines found in the December 2010 Commission Decision.

I. Interest of the Quechan Indian Tribe

The Quechan Tribe's Fort Yuma Indian Reservation was established at its current site in 1884 as a permanent homeland for the Quechan people. The Quechan people and their ancestors have inhabited the area surrounding the confluence of the Colorado and Gila Rivers for centuries. The Quechan Tribe's traditional lands extend well beyond the boundaries of the present day Fort Yuma Indian Reservation. Traditionally, Quechan settlements, or rancherias, were scattered north and south along the Colorado River from the confluence area, and eastward along the Gila. Traditional lands to the west of the present day reservation were also utilized by the Quechan people. Historically, the northern territory extended to the vicinity of Blythe, California, the southern territory reached to Sonora, Mexico, the western territory extended to California's Cahuilla Mountains, and the eastern territory approached Gila Bend, Arizona. The lower Colorado River tribes, which include the Quechan, shifted up and down the Colorado and Gila rivers, utilizing the banks and floodplain on both sides of the rivers for subsistence and settlements at different historical periods. (Alfonzo Ortiz, *Handbook of North American Indians*, Volume 10, Southwest (Quechan) (Smithsonian Institution, Washington D.C. 1982). *See also*

Braun & Gates, *PSEGS Ethnographic Report Informing Final Staff Assessment* (August 2013), p. 36 (referring to traditional Quechan use of Chuckwalla, Cibola, and Palo Verde valleys).

The Quechan cultural landscape consists of a myriad of natural and cultural features. Natural features include the Colorado desert and river, mountains, hills, rock outcrops, flora, and fauna. Cultural features include mythology locales, sacred places, trails, settlement and battle site locations, and other resource use areas, along with prehistoric and historic archaeological sites. The latter include rock art (geoglyphs, petroglyphs, and intaglios), trails (stamped paths), trail markers, rock alignments, rock cairns, cleared (tamped) circles (sleeping, teaching, prayer, and dance circles), milling areas, pot drops, and other site features. *See, e.g.,* Birnbam, Charles A., *Preservation Brief 36: Protecting Cultural Landscapes: Planning, Treatment, and Management*. Technical Preservation Services, National Park Service, Washington D.C. (1994); Russell, John C.; Woods, Clyde M.; and Jackson, Underwood, *An Assessment of the Imperial Sand Dunes as a Native American Cultural Landscape*. Prepared for California State Office of BLM, Sacramento, California, by EDAW, Inc., San Diego, California (2002).

Energy development on public lands in the California desert directly and adversely affects the Tribe. As a result, the Tribe has been repeatedly forced to take legal action to protect its cultural heritage. In 2010, the Tribe sued the Department of the Interior based on Interior's unlawful approval of the Imperial Valley Solar (IVS) Project on lands within the traditional territory of the Tribe that contain sensitive cultural and natural resources of significance to the Tribe. *See Quechan Tribe of the Fort Yuma Indian Reservation v. United States Department of the Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010). On December 15, 2010, the Court enjoined construction of the IVS Project due to Interior's failure to comply with applicable law, including the National Historic Preservation Act. *Id.* In 2012, the Tribe again sued Interior based on its approval of the Ocotillo Wind Energy Facility on lands that constitute a Traditional Cultural Property in western Imperial County. That case is currently pending on appeal in the Ninth Circuit. *Quechan Tribe of the Fort Yuma Indian Reservation v. United States Department of the Interior*, Ninth Circuit Case No. 13-55704. The Tribe also filed a formal protest against Interior's approval of the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (2012) due to the impacts to cultural resources that would result from the proposed solar energy developments in Quechan's traditional territory.

II. This Proceeding on the Palen Solar Power Project Should Not Be Extended.

The Palen Solar Power Project (PSPP) is only the latest in a long line of large-scale energy proposals that, if developed, would result in destruction of a sensitive cultural landscape of significance to the Tribe. The Quechan Tribe as well as other "Yuman" groups were stewards of this land for hundreds of years establishing trails, managing water resources, harvesting plants, and hunting. One of the petroglyphs near Dragon Wash denotes "songs of many people were sung here," which would mean it was a major gathering site for social and spiritual ceremonies. The petroglyphs in this basin are linked to rock circles (some with directional stones placed in the center), intaglios, and cairns. When standing at these sites one can see they line up with trails and passes, and they also show the gathering/ceremonial sites, links and connections. This is further enhanced by the solstice tracking sites (petroglyphs or rock

formations) and the use of the North Star and rock cairns or circles for navigating. The viewshed of this area is critical to cultural, spiritual, and religious interpretation and meaning. The impacts resulting from development of the Palen Solar Power Project cannot be adequately mitigated. The Commission should not permit any further extension for construction of this Project.

Every iteration of the PSPP that has been evaluated over the past five years has confirmed that significant and unmitigable impacts to biological, cultural, and visual resources would result from development in this sensitive location. In December 2010, the Commission noted in its approval of the PSPP that “no feasible mitigation measures or site or generation technology alternatives to the project, as described in these proceedings, exist which would reduce or eliminate any significant environmental impacts of the mitigated project.” Commission Decision, at p. 2 (12/15/10). Regarding the initial Petition to Amend, the proposed decision in December 2013 concluded that based on evidence of avian species mortality (as well as impacts to cultural and visual resources), “the benefits of the PSEGS modified project do not outweigh its significant adverse environmental effects.” See December 2013 Override Findings, p. 8-2. In September 2014, after additional proceedings on a revised amended project, the Commission again found “significant environmental impacts that cannot be mitigated for visual resources and cultural resources.” September 2014 Override Findings, p. 8-1.

The Commission should not extend this proceeding any longer and should deny the Petition for Extension.

III. The Project Owner Has Failed to Show Good Cause to Extend this Proceeding.

Palen SEGS I, LLC (the “Project Owner”) argues it and the prior Project owners have been diligent in moving towards construction. The PSPP was initially approved by the Commission in a Decision dated December 2010. In December 2012, the Project Owner submitted a proposed amendment to change the Project design and technology. On September 15, 2014, the Commission released a Revised Presiding Member’s Proposed Decision (RPMPD) to approve an amended version of the Project. However, on September 26, 2014, the Project Owner withdrew its Petition to Amend, which resulted in an Order Terminating Proceedings on September 29, 2014.

The current Petition for Extension fails to explain why the Project Owner withdrew the Petition to Amend nearly one year ago or what has been done since that date to move the Project forward. No new Petition to Amend has been filed nor does the Petition for Extension give any idea about when a new Petition to Amend might be filed. The Project Owner vaguely states that it “anticipates submitting a proposed amendment to the license in the near future.”

The Project Owner cannot show that it has diligently proceeded towards construction of the Project when it unilaterally withdrew its Petition to Amend shortly after the RPMPD was released and then failed to take further action for nearly one year before asking for additional time in the pending Petition for Extension. The Project Owner could have proceeded with the Project as approved in either the December 2010 Decision or following proceedings on the September 2014 RPMPD, but it chose not to. It has failed to move the Project forward since

September 2014. Although it refers to itself as a “new owner” in the Petition for Extension, Abengoa has been involved in this Project since March 2013. Because the Project Owner has failed to show adequate diligence in moving the Project towards construction, the Commission should deny the Petition for Extension.

The Project Owner’s argument that “factors beyond its control prevented success” is not supported. First, there is no evidence that the bankruptcy of the original Project owner was beyond that entity’s control. Nor is there evidence that the bankruptcy of the original Project owner or transfer of ownership, which both occurred more than three years ago, prevented construction of the PSPP. The Project Owner decided not to proceed with the PSPP and instead pursued an amended project. The fact that the amendment proceedings took two years was also not outside of the Project Owner’s control. The amended Project, known as the PSEGS, was a poorly conceived and environmentally harmful proposal that was recommended for denial in the December 2013 PMPD. While the Project Owner could have proceeded with the PSPP as approved in December 2010, it was its own decisions and its own project design that led to the extended amendment proceedings between 2012 and 2014. Moreover, the Project Owner unilaterally decided to not proceed with the amended Project even after receiving the Revised PMPD in September 2014. The failure to commence construction between December 2010 and August 2015 is not the result of factors beyond the Project Owner’s control.

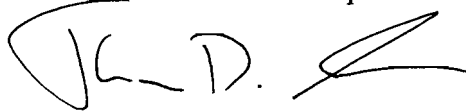
The Project Owner argues that “efficient use of the record developed for the PSPP supports granting an extension of the construction deadline.” This argument is speculative because the Project Owner has failed to submit any Petition to Amend in the eleven months since the previous Petition to Amend was unilaterally withdrawn. Nor has the Project Owner offered any timeframes or estimates regarding when it intends to submit a new amendment petition. Thus, at this time, it is not clear how the existing PSPP record would be used, if at all. Also, given the length of time that has passed since the previous environmental analysis and new information discovered regarding impacts to cultural and biological resources, the prior analysis is outdated and of minimal value going forward.

Granting an extension is not in the public interest. The PSPP, and every alternative variation of the PSPP that has been considered to date, would cause significant and unmitigable harm to cultural, visual, and biological resources. The Commission gave the various Project owners five years to commence construction and the Project owners have failed to do so. There is currently no pending petition to amend the PSPP. Nor is there any evident intent to commence construction on the approved PSPP. There is simply no basis to keep this proceeding open any longer. The Commission should deny the Petition for Extension.

The Tribe appreciates the opportunity to comment in this proceeding. Please contact the undersigned if you have any questions regarding the comments or require additional information.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE,
A Professional Services Corporation

A handwritten signature in black ink, appearing to read "Thane D. Somerville". The signature is stylized with a large, sweeping initial "T" and a long, horizontal flourish extending to the right.

Thane D. Somerville
Attorneys for Quechan Tribe of the Fort Yuma Indian
Reservation