

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
 SACRAMENTO, CA 95814
 (916) 653-6251
 Fax (916) 657-5390
 Web Site www.nahc.ca.gov
 ds_nahc@pacbell.net



January 25, 2012

Ms. Amber Grady, Cultural Resources Analyst

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street, MS 40
 Sacramento, CA 95814

DOCKET**11-AFC-4**

DATE JAN 25 2012

RECD. MAR 06 2012

Sent by FAX to 916-652-8868
 No. of Pages: 5

Re: Sacred Lands File Search and Native American Contacts list for the "Rio Mesa Solar Project of Bright Source Energy, Inc.; a proposed 750 MW Project;" located 13 miles southwest of the City of Blythe; Riverside County, California

Dear Ms. Grady:

The Native American Heritage Commission (NAHC) conducted a Sacred Lands File search of the 'area of potential effect,' (APE) based on the USGS coordinates provided and **Native American cultural resources were not identified** in the project area of potential effect (e.g. APE): you specified. However, there are Native American cultural in close proximity to the APE. Also, please note; the NAHC Sacred Lands Inventory is not exhaustive and does not preclude the discovery of cultural resources during any project groundbreaking activity.

California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction.

In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

The California Environmental Quality Act (CEQA – CA Public Resources Code §§ 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential

effect (APE), and if so, to mitigate that effect. CA Government Code §65040.12(e) defines "environmental justice" provisions and is applicable to the environmental review processes.

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Local Native Americans may have knowledge of the religious and cultural significance of the historic properties of the proposed project for the area (e.g. APE). Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). We urge consultation with those tribes and interested Native Americans on the list the NAHC has attached in order to see if your proposed project might impact Native American cultural resources. Lead agencies should consider avoidance as defined in §15370 of the CEQA Guidelines when significant cultural resources as defined by the CEQA Guidelines §15064.5 (b)(c)(f) may be affected by a proposed project. If so, Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "substantial," and Section 2183.2 which requires documentation, data recovery of cultural resources.

The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Partnering with local tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C 4321-43351) and Section 106 4(f), Section 110 (f)(k) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The NAHC remains concerned about the limitations and methods employed for NHPA Section 106 Consultation.

Also, California Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery', another important reason to have Native American Monitors on board with the project.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. An excellent way to reinforce the relationship between a project and local tribes is to employ Native American Monitors in all phases of proposed projects including the planning phases.

Confidentiality of "historic properties of religious and cultural significance" may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not

eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibility threatened by proposed project activity.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,


Dave Singleton

Attachment: Native American Contact List

Rio Mesa SEG Facility
NAHC Native American Contact List per January 25th, 2012 NAHC letter

Twenty-Nine Palms Band of Mission Indians
Chairperson Darrell Mike
46-200 Harrison Place
Coachella, CA 92236

Joseph R. Benitiz
P.O. Box 1829
Indio, CA 92201

Chemehuevi Reservation
Chairperson Charles Wood
P.O. Box 1976
Chemehuevi Valley, CA 92363

Fort Mojave Indian Tribe
Chairperson Tim Williams
500 Merriman Ave.
Needles, CA 92363

Colorado River Indian Tribe
Ginger Scott, Museum Curator
26600 Mojave Road
Parker, AZ 85344

Fort Yuma Quechan Indian Nation
President Kenny Escalanti
P.O. Box 1899
Yuma, AZ 85366

AhaMaKav Cultural Society
Fort Mojave Indian Tribe
Director Linda Otero
P.O. Box 5990
Mohave Valley, AZ 86440

Morongo Band of Mission Indians
Michael Contreras, Cultural Heritage Program
12700 Pumarra Road
Banning, CA 92220

San Manuel Band of Mission Indians
Ann Brierty, Cultural Resources Department
26569 Community Center Drive
Highland Drive, CA 92346

Fort Mojave Indian Tribe
Nora McDowell, Cultural Resources Coordinator
500 Merriman Avenue
Needles, CA 92363

Cocopah Cultural Resources Department
Jill McCormick, Tribal Archaeologist
County 15th and Avenue G
Somnerton, AZ 85350

Agua Caliente Band of Cahuilla Indians
Patricia Tuck, Tribal Historic Preservation Officer
5401 Dinah Shore Drive
Palm Springs, CA 92264

Quenchan Indian Nation
John Bathke, Tribal Historic Preservation Officer
P.O. Box 1899
Yuma, AZ 85366

Ah-Mut-Pipa Foundation
Preston Arrow-weed
P.O. Box 160
Bard, CA 92222