

**OLD SPANISH TRAIL ASSOCIATION
MOTION FOR SUBPOENA DUCES TECUM
and
MOTION FOR EXTENSION OF TIME FOR REBUTTAL TESTIMONY
or, IN THE ALTERNATIVE,
MOTION TO STRIKE TESTIMONY**

I. SCOPE OF SUBPOENA DUCES TECUM

The Old Spanish Trail Association (OSTA) requests that the Hidden Hills Presiding Member issue a subpoena duces tecum pursuant to California Government Code Sections 11450.05-11450.50. The subpoena should include the following:

1. The complete Cultural Resources Technical Report, filed in August 2011, by CH2MHill, on behalf of the Applicant, BrightSource, as part of the Application for Certification of the Hidden Hills Solar Energy Generating System (HHSEGS). As posted on the California Energy Commission web site, this report includes [HHSEGS Appendix 5-3A Agency Consultation Letters.pdf](#), [HHSEGS Appendix 5-3B Cultural Resources Report.pdf](#), [HHSEGS Appendix 5-3C CHRIS Lit Search Results.pdf](#), [HHSEGS Appendix 5-3D Cultural Resources Specialist Resumes.pdf](#), [HHSEGS Appendix 5-3E Known Cultural Resources.pdf](#), and any and all attachments thereto.
2. All documents pertaining to and/or describing the pedestrian survey of the entire HHSEGS project area that was conducted by CH2MHill. This survey is mentioned on page 3 of BrightSource's Opening Testimony [Exhibit 71], filed January 22, 2013. OSTA seeks all documents, writings, notes and records pertaining to the pedestrian survey including, but not limited to, all directions, instructions or advisements given to the surveyors and/or any persons conducting or participating in the survey in any manner; any and all time sheets, maps, field notes and/or transcriptions thereof, and other documents, writings, notes and records documenting or relating to the scale, scope, time expended and methodology of the pedestrian survey.

II. NECESSITY FOR THIS SUBPOENA

BrightSource claims in its Opening Testimony (citation) and its Rebuttal (citation) to have discovered no undisturbed remnants of the Old Spanish National Historic

Trail/ Mormon Road Northern Corridor (OSNHT/MR NC) on the project site. This conclusion depends in large part on the results of the archaeological pedestrian survey conducted some time in 2011.

To properly assess the validity of this claim and evaluate the adequacy and reliability of the 2011 pedestrian survey, OSTA must be able to ascertain the following:

1. The methodology employed in the survey, for example spacing of the transects walked by the surveyors.
2. Weather conditions on the days of the survey. Days of high winds or other conditions can limit visibility and make careful observation difficult.
3. Instructions given to surveyors/participants specifically regarding the OSNHT and Mormon Road. For instance, were they advised of the existence, nature and/extend of the OSNHT/MR NC; and if so, in what manner and to what extent? Were they properly instructed in the properties of mule traces and wagon roads? Were they instructed to look for vegetation and/or other changes that might indicate subsurface or effaced tracks?
4. The duration, nature, extent and intensity of the survey (how many hours, by how many people, and proof of an intention to seek evidence of the OSNHT/MR NC).

Some of the information needed by OSTA may be contained in the Cultural Resources Technical Report requested in Point 1 of the subpoena. However, more important information bearing on the scope, nature, extent, quality, adequacy, and intensity of the archaeological survey will be found in the field documents requested in Point 2.

Throughout this Certification process, BrightSource has continuously hampered OSTA in its efforts to obtain access to the Cultural Resources data compiled by CH2MHill.

BrightSource sought, and received on August 5, 2011, a Confidential Designation for the entire Cultural Resources report. This designation initially blocked OSTA from reviewing the contents of the CH2MHill report. Eventually, through intervention by the Public Advisor, OSTA received several pages of Appendix 5-3B and Appendix 5-3A (E-mail to Jack Prichett from CEC Cultural Resources staff member, Kathleen Forrest, dated December 12, 2011). OSTA never obtained Appendix 5-3E, the most relevant for OSTA's purposes.

Similarly, BrightSource designated as Confidential the Cultural Resources study entitled Historic Trails and Roads Technical Study (Confidential Attachment to

DR125, dated March 30, 2012). Only by signing a non-disclosure agreement was OSTA able to obtain a copy of this report.

OSTA is chartered and sanctioned by the Federal government's Trail administrators, the National Park Service and the Bureau of Land Management, to help preserve, protect, and interpret the Old Spanish National Historic Trail. It is in that capacity that OSTA is acting as Intervenor in this Application for Certification. In that capacity, as well, OSTA should be treated as competent stewards of Trail data. OSTA should also be able to inspect BrightSource's archaeological data and methods in reaching conclusions regarding the Trail. To that end, we seek the documents requested in this subpoena.

OSTA is disappointed by BrightSource's failure to cooperate, despite continuous requests and efforts. Its failure to provide the requested documents and information about its survey, which is part of the basis for its conclusion that no remediation and/or mitigation is necessary, demonstrates an effort to prevent a full and transparent consideration of all essential evidence supporting OSTA's contentions. OSTA has no other alternative than to seek the information via the subpoena duces tecum described above and to request that BrightSource's testimony and evidence relating to the pedestrian survey referenced herein, and any and all conclusions resulting therefrom, be stricken in its entirety if it fails to produce the specified items in full.

III. ISSUING THE SUBPOENA WILL PRESERVE THE SCHEDULE AND AVOID WASTED TIME AT THE EVIDENTIARY HEARINGS.

BrightSource's cooperation with the terms of the requested subpoena should not change the hearing schedule. By this filing, OSTA requests that it and other parties be granted up to and including four additional days to file any rebuttal testimony, restricted only to the information regarding the survey, with such filing due on or before February 27, 2013. All other rebuttal testimony would not be affected and hearing dates could proceed as scheduled.

The power of parties/intervenor to subpoena is an inherent power in adjudicatory hearing, as reflected in both the Commission's regulations and the California Administrative Procedure Act. (Government Code, sections 11450.05 et seq.) OSTA assumes that BrightSource will comply with the subject subpoena; however, if it fails to do so, OSTA hereby moves that the Commission strike the testimony relating to BrightSource's pedestrian survey and any conclusions therefrom in full and not allow such testimony and evidence to be submitted to the evidentiary record.

IV. CONCLUSION

The information identified in this motion is necessary and appropriate under the Energy Commission's mandates to obtain information reasonably necessary to make a decision on an application for certification of a proposed facility (Pub. Resources Code section 25519, subd. (b)), evaluate applications for proposed facilities for the public convenience and necessity, and ensure specific provisions are included in decisions on applications for certification relating to the manner in which the proposed facility is designed, sited and operated in order to protect environmental quality and assure public health and safety and to preserve cultural resources.

The Hidden Hills Presiding Member should issue an order issuing an administrative subpoena duces tecum directing BrightSource to produce the requested information specified here at the offices of the Energy Commission at 9:00 A.M. February 22, 2013, and serve all parties. The order should also grant OSTA and all other parties four additional days to file any rebuttal testimony, restricted only to the information regarding the pedestrian survey referenced herein, with such filing due February 27, 2013. The order should also state that if BrightSource does not produce the information requested herein, all BrightSource testimony and evidence, including any conclusions drawn therefrom, related to the pedestrian survey is stricken and may not be submitted to the evidentiary record herein.

V. DECLARATION

I declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Executed on February 18, 2013 in Venice, California



Jack Prichett
President, Tecopa Chapter of OSHNT
On Behalf of Intervenor, OSHNT

[PROPOSED] ORDER ISSUING
SUBPOENA DUCES TECUM
and
EXTENDING TIME FOR REBUTTAL TESTIMONY
or, IN THE ALTERNATIVE,
STRIKING TESTIMONY

For the reasons stated in OSTA's Motion for Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony, or, in the alternative, Motion to Strike Testimony, filed herein February 18, 2013, the Hidden Hills Presiding Member hereby adopts this Order issuing an administrative subpoena duces tecum directing BrightSource to produce the requested information specified herein at the offices of the Energy Commission at 9:00 A.M. on February 22, 2013.

OSTA and all other parties are hereby granted four additional days to file any rebuttal testimony, restricted only to the information regarding the pedestrian survey referenced herein with such filings due February 27, 2013.

If BrightSource does not produce the information requested herein, all BrightSource's testimony and evidence relating to the pedestrian survey referenced herein, and any and all conclusions resulting therefrom, may not be submitted to the evidentiary record herein.

All other aspects of the Notice of Prehearing Conference and Evidentiary Hearing and Order, dated December 21, 2013, remain unchanged.

DATED:

KAREN DOUGLAS
Commissioner and Presiding Member
HHSEGS AFC Committee