



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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Via Email and Facsimile

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Re: Comments of the Colorado River Indian Tribes on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for Southern California Edison Company's (SCE) Proposed West of Devers Upgrade Project

To Whom It May Concern,

The Colorado River Indian Tribes (Tribes) writes to express its concerns regarding the Proposed West of Devers Upgrade Project (Project) and the accompanying Draft EIR/EIS. The Colorado River Indian Tribes is a federally recognized Indian tribe comprised of over 4,200 members belonging to the Mohave, Chemehuevi, Hopi, and Navajo tribes. The approximately 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Colorado River Indian Tribes' members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Colorado River Indian Tribes' Mohave and Chemehuevi members since time immemorial. Because of this, the Tribes are very concerned with preserving the footprint of these Mohave and Chemehuevi ancestors for future generations of tribal members.

The Colorado River Indian Tribes has a direct interest in the infrastructure and development of utility-scale renewable energy projects in this region, including transmission lines. The Tribes have not forgotten the devastating effects of the Palo Verde-Devers II Transmission Project, where construction workers unearthed previously unknown burial sites and damaged a known, well-documented rock circle site. With these concerns in mind, the Tribes reviewed the Draft EIR/EIS and now provide a number of comments:

Inconsistent Treatment of “Connected Actions”

- The Tribes appreciate the DEIR/EIS’s acknowledgement of “connected actions” under NEPA – actions that “cannot or will not proceed unless the proposed action occurs first or simultaneously.” 40 C.F.R. § 1508.25(a)(1)(ii). Yet, the Tribes have concerns about the inconsistent treatment of these connected actions throughout the DEIR/EIS. For instance, the Executive Summary identifies only the Palen Solar Electric Generating System, the Desert Harvest Solar PV Project, and five unnamed solar PV projects as connected actions. DEIR/EIS at ES-5. This list of connected actions is the same for the Project Description. *Id.* at B-66 to B-70. Later, however, the cultural resources section of the DEIR/EIS identifies the Desert Harvest Project and the Blythe Mesa Solar Project (as representative of the unnamed solar PV projects) as connected actions, but makes no mention of the Palen Project. *Id.* at D.7-19 to 7-21. The DEIR/EIS provides no explanation as to the variations between the list of connected actions in different parts of the analysis. The DEIR/EIS should be revised to provide a consistent treatment and analysis of all connected actions across its entire analysis. Also, to the extent the agencies are in receipt of responsive information, the Colorado River Indian Tribes requests disclosure on the “confidential projects” referenced in the DEIR/EIS Project Description at B-67.
- The DEIR/EIS’s failure to consider the Palen Solar Electric Generating System in the cultural resources analysis is especially egregious in light of the well-documented cultural resource concerns surrounding the Palen Project. *See, e.g.*, California Energy Commission, Dkt. No. 09-AFC-07C, TN # 202933 (Intervenor Colorado River Indian Tribes Opening Brief, Aug. 15, 2014); TN# 200564 (Final Staff Assessment, 4.3-1 to -244). In its current form, the DEIR/EIS analysis provides an inaccurate and inadequate representation of all cultural resource impacts that will result from the proposed Project. The DEIR/EIS should be revised to consider the direct, indirect, and cumulative cultural resource impacts of the Palen Project as a connected action that cannot or will not proceed unless the proposed transmission upgrade occurs.
- The DEIR/EIS also needs to be revised to provide an accurate and updated description of the Palen Project. The Project Description characterizes the Palen Project as a 500 megawatt solar power tower, but Palen SEGS I, LLC (the Palen Project owner) recently clarified that it will be pursuing the original solar trough technology: “the Project Owner has determined that a solar trough project, similar to that approved in the original application for certification, will be pursued for this site, and design will include energy storage.” California Energy Commission, Dkt. No. 09-AFC-07C, TN # 205854 (Response Letter to Comments on Petition, Aug. 27, 2015). Thus, the DEIR/EIS must be further revised to analyze the Palen Project connected action as a solar photovoltaic project, rather than a solar power tower. This revised analysis is especially important when considering potential cultural resource impacts, as a solar trough project would involve far more grading than a solar power tower and could have more direct impacts on buried resources.

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Alternatives

- While the Tribes would prefer the curtailment of desert development and utility-scale renewable energy siting in its ancestral lands, if this Project is approved, we urge BLM and the CPUC to adopt the phased build alternative, which will result in the least construction and the fewest ground disturbing actions, thereby reducing the risk of unearthing and/or harming unknown cultural resources.

Mitigation Measures

- APM CUL-1 (CL-1b) should be revised to allow for in-situ reburial as a mitigation measure for prehistoric resources where avoidance is not feasible. Removal of artifacts from the ground is contrary to Mohave cultural and religious practices. The use of data recovery and excavation to “mitigate” impacts undermines the Colorado River Indian Tribes’ efforts to preserve the Mohave and Chemehuevi footprint on our ancestral lands. The Tribes have experienced the tragic consequences of BLM’s anti-reburial policy in connection with utility-scale solar energy development along the I-10 corridor near Blythe, California. Items such as manos, metates, flakes, cores, and hammerstones are closely associated with the people who used them and are part of the footprint of the land. These artifacts cannot be removed from the ground without causing irreparable spiritual and cultural harm to our people. For this reason, the DEIR/EIS should be revised to state that where avoidance is not feasible, in-situ reburial will be the preferred mitigation measure.
- The DEIR/EIS dismisses isolated artifacts from consideration early in its cultural resource analysis, explaining that “by definition, [isolated artifacts] lack immediate cultural context and therefore lack the data potential that would be required to be considered eligible for the NRHP or CRHR.” *Id.* at D.7-32. This cursory analysis fails to take into account the cultural importance that prehistoric isolated artifacts may have for tribal groups. The Colorado River Indian Tribes view the removal and/or destruction of *any* prehistoric artifacts, including isolates, as eroding their cultural identity and connection with their ancestors. The DEIR/EIS should be revised to allow for reburial of all prehistoric isolated artifacts, as BLM has done for isolates unearthed during construction of the Modified Blythe Solar Power Project and Riverside County has done for isolates discovered during construction of the Blythe Mesa Solar Power Project.
- The DEIR/EIS acknowledges the possibility of indirect impacts from “inadvertent or malicious vandalism or unauthorized collection of cultural resources on the surface of sites,” but fails to address the possibility of indirect impacts from fugitive dust or increased travel to construction sites. *Id.* at D.7-33. In light of the damage that occurred during the Palo Verde-Devers II Transmission Project, the DEIR/EIS should be revised to consider these types of indirect impacts.
- CL-1b should be revised to state that SCE will consult with affiliated Native American tribes in drafting the CRMP. CL-1b should be further revised to state that the CRMP will be submitted to affiliated Native American tribes for comment and review prior to its submission to the CPUC and BLM for review and approval. Lastly, CL-b should be

revised to state that the CRMP approval process must be *finalized* at least 60 days prior to the start of *ground-disturbing* activities. See D.7-43.

- CL-1b and CL-1d should be revised to allow for archaeological monitoring during all ground-disturbing activities, not just construction in identified high-sensitivity areas. *Id.* at D.7-34, 7-44. The constant presence of archaeological monitors is necessary as it is impossible to know when construction efforts will encounter unknown, buried cultural resources; indeed, the presence of monitors can help ensure proper response and treatment. Moreover, CL-1b should be revised to clarify that archaeological monitoring includes the presence of a tribal monitor to ensure proper identification and treatment of discovered resources.

CL-2a should be revised to state that upon discovery of an unidentified cultural resource unearthed during construction activities, SCE will immediately notify affiliated Native American tribes and invite them to consult in assessing the potential significance of the resource and crafting an appropriate evaluation and treatment plan for the find. See D.7-45.

Socioeconomic and Environmental Justice Impacts

- The DEIR/EIS utilizes a 0.5 mile radius outside the ROW to identify low income or minority populations, but this method only considers current census data and sociopolitical boundaries –thereby overlooking the relationships that modern day tribes have to their ancestral territories. As explained above, the Colorado River Indian Tribes have deep spiritual and cultural connections to lands far beyond the political boundaries of their reservation. In looking only at where local populations currently live and considering only socioeconomic census data, the DEIR/EIS ignores the damaging effects of the Project and its connected actions on the traditional cultural heritage of area tribes.
- Indeed, the transformation of an entire cultural landscape has significant environmental justice implications that are not addressed by the DEIR/EIS. The DEIR/EIS’s Socioeconomic and Environmental Justice section completely ignores Native American environmental justice impacts. This is unacceptable. The benefits of the connected action renewable energy projects made possible by the Project will flow to energy customers in southern California and the shareholders of large energy companies. The impacts of such projects, however, will be uniquely felt by the Colorado River Indian Tribes and its members whose interests in this area extend beyond economics to its cultural and spiritual value. As acknowledged by CEC Commissioner Karen Douglas in another proceeding, “Indian tribes maintain long-standing ancestral and traditional practices that connect their identities as Indian people to the environment, unlike other populations that do not have territories linked to their collective identities.” Palen Solar Electric Generating System PMPD at 6.3057. Shifting the burden of renewable energy development to unique communities that have occupied this landscape since time immemorial, while providing such communities with no identified benefits, is the very definition of environmental injustice. The DEIR/EIS agencies must both recognize and address such realities, in terms of direct, indirect, and cumulative impacts.

Visual Impacts

- The DEIR/EIS fails to acknowledge the visual resource impacts of the Project's connected actions on sacred and traditional landscapes. The integrity of certain desert viewsheds plays a key role in various tribal ceremonies and rituals. As ethnographer Lowell John Bean explained when analyzing the impact of utility-scale solar energy development:

“These [song trail] sites are still connected to people today through oral history and some through contemporary use [of] known sacred areas and the plant and animal life that continues as it has for thousands of years. The loss of these lands and resources to the energy fields and transmission lines is incalculable from the standpoint of people whose roots are so deeply entwined with its openness and integrity.” Ethnographic Overview of the Historic Trails Network Cultural Landscape, Genesis Solar Energy Project, Historic Properties Treatment Plan, Appx. H-8.

The Project, as well as the connected actions it facilitates, could significantly undermine the “openness” of sacred viewsheds. The DEIR/EIS visual resources analysis should be revised to consider that potential impact.

Cumulative Impacts

- The DEIR/EIS should be revised to provide more updated and accurate information about the actions listed on the Cumulative Project List, Table E-1. For instance, the List states that the “McCoy [Solar Project] is approved by BLM but construction has not started,” but construction of the McCoy Project has been taking place throughout 2015. Table E-1 should be revised to give a more exact representation of these projects and their current status.
- The DEIR/EIS cumulative impacts analysis should also be revised to give the public a clearer sense of how the connection actions are analyzed in this section. None of the connected actions appear on the Cumulative Project List in Table E-1, but the DEIR/EIS also makes no mention of the connected actions in its analysis of the Project's cumulative impacts. Given that the connected actions have the potential to cause significant impacts, especially on cultural resources, they must be included in the DEIR/EIS's analysis in order to provide the public with an accurate understanding of the Project's cumulative effects.
- The Tribes strongly disagree with the DEIR/EIS's significance finding for cumulative cultural resource impacts. Given the DEIR/EIS's determination that buried cultural resource impacts cannot be fully mitigated, an action like the Project that encourages and facilitates the development of this desert region will have a significant cumulative impact on those buried cultural resources. Here, BLM and CPUC's conclusion appears to result from their failure to consider the Project *and* its connected actions. The DEIR/EIS cumulative impacts analysis should be revised accordingly.

Thank you for the opportunity to comment on the DEIS/EIR for the Proposed West of Devers Upgrade Project. To help facilitate the Tribes' review of BLM and CPUC's response to these comments, we request that these agencies provide a written response to this letter, either directly or in the Final EIS/EIR. Please copy the Colorado River Indian Tribes Office of the Attorney General on any further correspondence to help facilitate our internal review (Rebecca Loudbear, Attorney General, rloudbear@critdoj.com and Nancy Jасulca, Deputy Attorney General, njасulca@critdoj.com). Finally, the Colorado River Indian Tribes welcomes the opportunity to meet with representatives on behalf of the CPUC, and renews its request to meet with the California BLM State Director, Jim Kenna, to discuss substantive issues related to tribal consultation and adverse impacts of utility-scale renewable energy projects on cultural resources.

Sincerely,



Chairman Dennis Patch
Colorado River Indian Tribes

CC: Tribal Council of the Colorado River Indian Tribes
Wilene Fisher-Holt, Director, Colorado River Indian Tribes Museum
David Harper, Chairman/Spokesperson, Mohave Elders Committee