

**Comment Set C1 – Morongo Band of Mission Indians**

MORONGO  
BAND OF  
MISSION  
INDIANS



A SOVEREIGN NATION

September 22, 2015

VIA E-MAIL ([westofdevers@aspenege.com](mailto:westofdevers@aspenege.com)) and U.S. Mail

CPUC/BLM  
c/o Aspen Environmental  
235 Montgomery Street, Suite 935  
San Francisco, CA 94014

Re: Morongo Band of Mission Indians Comments on the Draft Environmental Impact Report for the SCE West of Devers Upgrade Project

C1-1

The Morongo Band of Mission Indians (Morongo Band) appreciates the opportunity to comment on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) for the Southern California Edison (SCE) West of Devers Upgrade Project (Project). The Morongo Band's comments are limited to correcting an error in the DEIR/DEIS concerning the legal feasibility of the Phased Alternative.

The DEIR/DEIS, Appendix 5, Alternative Screening Report, states at Ap. 5-54:

Legal and Regulatory Feasibility. The Phased Build Alternative appears to be feasible considering legal and regulatory factors. The Proposed Project has been approved by the Morongo Tribe in a ROW Agreement with SCE (see EIR/EIS Appendix 3), and there is no language in the Agreement that conflicts with the components of this alternative.

The statement that there is no language in the Agreement that conflicts with the components of this alternative is incorrect. The Morongo Band included provisions in its Agreement with SCE that reserve the Morongo Bands right to cause the United States Department of the Interior to terminate SCE's rights of way across the Morongo Reservation -- including those for the Project (ROW) -- if by January 1, 2017, SCE has not obtained all required regulatory approvals for the Project as presented by SCE to the Morongo Band. These same rights to terminate SCE's ROW are included in each of the Department of the Interior's grants to SCE of Easements and Rights of Way across the Morongo Indian Reservation for both SCE's existing facilities and the Project.

The Phased Build Alternative is materially different than the Project as presented by SCE to and accepted by the Morongo Band. Therefore, the Morongo Band could conclude that approval of the Phased Build Alternative, rather than the Project as described in Exhibit A to the DCA, does not satisfy SCE's obligation under the Agreement and the federal grants of easements and rights of way to obtain the required

**Comment Set C1 – Morongo Band of Mission Indians (cont.)**

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regulatory approvals by January 1, 2017, and the Morongo Band could exercise its right to direct the Department of the Interior to terminate the ROW, which would affect not

C1-1  
cont.

only SCE's proposed Project, but also the continued presence on the Morongo Reservation of SCE's existing 220 kV and 115 kV transmission facilities.

The DEIR/DEIS should be revised to reflect the possibility that if the Morongo Band were to conclude that the Proposed Phased Build Alternative does not satisfy SCE's obligation to timely obtain all required regulatory approvals of the Project as described in Exhibit A to the DCA, the Morongo Band could direct the Department of the Interior to cancel the ROW, in which event there would be a legal impediment to the Project.

C1-2

The Morongo Band appreciates the Commission's careful and expeditious consideration of this matter.

Respectfully submitted,



Robert Martin

Chairman

Morongo Band of Mission Indians

## Responses to Comment Set C1 – Morongo Band of Mission Indians

C1-1 The comment refers to provisions in the Morongo Band’s ROW Agreement with SCE and states that it seeks to correct an alleged error in the Draft EIR/DEIS concerning the legal feasibility of the Phased Build Alternative. The commenter makes two statements that are addressed in this response; each is addressed below.

**Comment (a)** The Morongo Band included a provision in its ROW Agreement with SCE that reserves the Morongo Band’s right to cause the United States Department of the Interior to terminate SCE’s rights of way across the United Reservation – including those for the Project (ROW) – if by January 1, 2017, SCE has not obtained all required regulatory approvals for the Project as presented by SCE to the Morongo Band.

**Response to (a):** It appears that the comment is referring to the “Additional Morongo Termination Right” as described in Section V.D. of the ROW Agreement, which details the Morongo Band’s conditional contract right to terminate its ROW Agreement with and seek the termination of the Federal Grant of ROW to SCE. The conditional contractual right is duly noted and acknowledged. Selection of the Phased Build Alternative would not reduce the likelihood that SCE could obtain all required regulatory approvals by January 1, 2017, as compared with SCE’s Proposed Project. Except on Morongo land, this alternative would require substantially less construction because the existing double-circuit towers would remain in place.

**Comment (b)** The Phased Build Alternative is materially different than the Project as presented by SCE and accepted by the Morongo Band.

**Response to (b):** The comment does not describe “the Project as presented by SCE to and accepted by the Morongo Band,” but this response assumes that the comment is referring to the WOD Upgrade Project SCE proposed in its application for a Certification of Public Necessity and Convenience (“CPCN”) and that is very generally described as the “Project” in Exhibit A to the Development and Coordination Agreement (“DCA”), attached as Appendix J-3 to the ROW Agreement; also presented is Appendix 3 to the EIR.

While the Phased Build Alternative does not completely replicate SCE’s Proposed Project off the Reservation, the Phased Build Alternative was developed specifically to match precisely both the Proposed Project’s specific locations and structure types on Morongo lands. As defined in the Alternatives Screening Report (Appendix 5, Section 4.4; see excerpt below), on Morongo lands, the Phased Build Alternative would be located in the specific locations and using the tower types defined for the Proposed Project and generally consists of the tear down and rebuild of the four existing 220 kV transmission lines with new 220 kV transmission lines that cross the Reservation. The comment neither addresses these consistencies nor explains specifically why it is believed that the Phased Build Alternative is materially different than the Project. In addition, while the ROW Agreement provides that the Morongo Band possesses a termination right if the defined project does not receive permits and approvals by January 1, 2017, the Morongo Band has not indicated that it would indeed elect to terminate the ROW Agreement if a project alternative were selected by the CPUC, particularly an alternative whose footprint and components on the reservation is identical to that of the defined project.

Please note the following description of the Phased Build Alternative (EIR Appendix 5, page Ap.5-47):

**Segment 5 (including all Morongo Land)** would be configured as follows:

- In the westernmost 3 miles of tribal land, all transmission facilities in the existing ROW would be removed and relocated south to new ROW closer to I-10.
- In this westernmost segment, 19 pairs of new double-circuit tubular steel poles would be installed and the high-capacity conductors (795 Drake ACCR) would be installed on the new poles.
- On the eastern portion of the Morongo land, 30 pairs of new double-circuit lattice steel towers would replace the existing single-circuit towers; high capacity conductors (795 Drake ACCR) would be installed on these new towers.

Therefore, the alternative appears consistent with the Project (both as proposed by SCE and defined in Exhibit A to the DCA) that would be constructed on Morongo land should the Phased Build Alternative be approved.

C1-2 The comment requests revision of the EIR to reflect that if the Morongo Band were to conclude that the Phased Build Alternative does not satisfy SCE's obligation to timely obtain all required regulatory approvals of the Proposed Project, the Morongo Band could direct the U.S. Department of Interior to cancel the ROW, which would create a legal impediment to this project alternative.

The discussion of the feasibility of the Phased Build Alternative in Section 4.4 of the Alternatives Screening Report has been modified as shown below. Similar text has been modified in EIR Section 3 (Alternatives) and in the Executive Summary (Section ES.3.2).

### ***Feasibility***

**Legal and Regulatory Feasibility.** While the Morongo Band has a conditional contractual right to terminate its ROW Agreement with SCE, the Phased Build Alternative appears to be preliminarily feasible considering legal and regulatory factors, because it is currently uncertain whether the Morongo Band may or will exercise that right, and particularly because on Morongo lands the alternative is entirely consistent with the Project (as defined in Exhibit A to the DCA). Although the alternative is designed to meet the same project objectives as the Project described in the ROW Agreement and DCA and the tower structures would be exactly the same as SCE's Proposed Project on Reservation lands, comments from the Morongo Band assert that this alternative may be legally infeasible given the right of the Morongo Band to terminate the ROW Agreement if the SCE does not secure approvals by January 1, 2017 for the project described in the DCA (which arguably differs from the Phased Build Alternative in the tower locations off the Morongo Band lands, but is wholly consistent on Morongo Band lands). That termination right, however, has not been exercised and thus no such legal infeasibility currently exists. If that right is properly and timely exercised by the Morongo Band in the future, no transmission upgrades could be constructed across the Reservation absent the subsequent execution of a replacement ROW Agreement.

In summary, the CPUC and BLM are aware of the Morongo Band's conditional contractual right to terminate the ROW agreement and seek the termination of the Federal Grant. However, based on the information and evidence currently before the CPUC and BLM, the Phased Build Alternative continues to appear preliminarily feasible. A final decision and findings regarding the feasibility of all Project alternatives will be made by the CPUC commissioners in association with the Commission's ultimate decisions on the EIR and CPCN.

Comment Set C2 – Colorado River Indian Tribes



## COLORADO RIVER INDIAN TRIBES

*Colorado River Indian Reservation*

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September 22, 2015

*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:

C2-1

Comment Set C2 – Colorado River Indian Tribes (cont.)

**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.

C2-1  
cont.

C2-2

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## Comment Set C2 – Colorado River Indian Tribes (cont.)

### 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.

C2-3

### 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

C2-4

C2-5

C2-6

C2-7

**Comment Set C2 – Colorado River Indian Tribes (cont.)**

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.

C2-7  
cont.

- 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.

C2-8

**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.

C2-9

## Comment Set C2 – Colorado River Indian Tribes (cont.)

### 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.

C2-10

### 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.

C2-11

C2-12

C2-13

**Comment Set C2 – Colorado River Indian Tribes (cont.)**

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](mailto:rloudbear@critdoj.com) and Nancy Jasculca, Deputy Attorney General, [njasculca@critdoj.com](mailto:njasculca@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.

**C2-13  
cont.**

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

## Responses to Comment Set C2 – Colorado River Indian Tribes

C2-1 The commenter notes that the Colorado River Indian Tribes, whose ancestors occupied much of the Colorado Desert, have a direct interest in the infrastructure and development of utility-scale renewable energy projects in the region, including transmission lines. The commenter is concerned about the consistency of the projects identified as connected actions throughout the DEIR/DEIS. Specifically, the commenter states that the cultural resource section identifies the Desert Harvest Project and the Blythe Mesa Solar Project, but makes no mention of the Palen Solar Power Project in the analysis of connected actions. Thus, the commenter is concerned that the cultural resource connected actions analysis failed to consider the Palen Solar Power Project and therefore is an inaccurate and inadequate representation of all cultural resource impacts that will result from the proposed Project.

To clarify, background context for the cultural resource analysis (Section D.7.1.3) was summarized from the Desert Harvest Project and the Blythe Mesa Solar Project. As described in Section B.7.2 (Description of the Proposed Project, Descriptions of Connected Actions), because the confidential projects do not yet have environmental review documents, the Blythe Mesa Solar Project EIR/EA was used as a model for impacts as it is a solar PV project in similar nearby areas and habitats and would connect to the same substation as the confidential projects. However, when discussing Known Resources within the Desert Center Area (Section D.7.1.3), specific cultural resource information from both the Desert Harvest Project and the Palen Solar Power Project was used, thus portraying the cultural resource sensitivity of the area. In addition, cultural resource information from the Palen Solar Power Project was used for the cultural resource connected actions analysis in Section D.7.3.4 (Impacts of Connected Actions). Therefore, no change has been made to the text in Sections D.7.1.3, D.7.3.4, and D.7.3.5.

C2-2 This comment requests an updated description of the Palen Solar Project including an update to the analysis of the connected actions reflecting the new technology for the project.

Please see Response to Comment B4-7. Section A (Introduction), Table A-4 (Projects Contributing to Need for WOD Upgrade Project) has been updated to reflect the Energy Commission's extension of time to construct. The Palen Project would not be a solar photovoltaic project as mentioned in the comment, it would be amended to be a solar trough project as noted in the Energy Commission Order Granting Extension of Time to Construct (TN#:206118). Section B.7 (Description of the Proposed Project, Connected Actions), including Table B-22 (Connected Actions – Solar Generation Projects) and Section B.7.2.1 (Description of the Proposed Project, Known Projects) and the analysis of the Connected Actions throughout Section D have been updated to reflect the revised status of the Palen Solar Project.

C2-3 The commenter urges adoption of the Phased Build Alternative because of less ground disturbance, reducing the risk of unearthing or harming unknown cultural resources.

The commenter's support for the Phased Build Alternative is noted.

C2-4 The commenter requests that "APM CUL-1 should be revised to allow for in-situ reburial as a mitigation measure for prehistoric resources where avoidance is not feasible" and cites BLM policies with regard to reburial.

SCE's APM CUL-1 provides for the avoidance, minimization, and mitigation of cultural resource impacts. It also provides that for traditional cultural property SCE will consult with Native American stakeholders on effects and will negotiate mutually agreeable treatment. In-situ reburial could be one such treatment where authority exists to do this. It should be noted that only a small portion of the proposed Project crosses BLM-administered lands. The majority of the Proposed Project is located on private land, over which the BLM has no authority. Artifacts recovered from private lands during the course of a project remain the property of the landowner. The disposition of those artifacts is at the sole discretion of the landowner, with the exception of human remains, associated grave goods, and items of cultural patrimony. In the event that such remains are found on private land during project construction or operation, and cannot be avoided, provisions of the Public Resources Codes 5097.98 and the Health and Safety Code 7050.5 will be enforced.

In the event that human remains, associated grave goods, or items of cultural patrimony are discovered on the small portion of this project located on federal lands administered by the BLM, and cannot be protected, it is assumed that the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA; 43 CFR 10) will be enforced by implementing a NAGPRA Plan that will be developed as part of the Memorandum of Agreement under Section 106 (36 CFR 800) of the National Historic Preservation Act (54 U.S.C. 4321 et seq.) in BLM's consultation with interested tribes. It is assumed that other prehistoric and historic artifacts from BLM land will be curated in accordance with National Park Service guidelines (36 CFR 79).

Mitigation Measure CL-1b (Develop Cultural Resource Management Plan [CRMP]) also requires preparation and approval of a CRMP to guide all cultural resource management activities during construction.

C2-5 The commenter is concerned that "the DEIR/DEIS dismisses isolated artifacts from consideration early in its cultural resource analysis" and the commenter notes that "the DEIR/DIES should be revised to allow for reburial of all prehistoric isolated artifact."

While it is recognized that isolated artifacts have cultural importance to the commenter, analysis of isolated artifacts is required to be conducted in accordance with the guidelines set forth in the National Register of Historic Places (NRHP) and California Register of Historical Resources (CRHR). These guidelines note that in order to be considered eligible for the NRHP/CRHR, resources must have integrity and association, or be of exceptional significance. The inability to make associations between isolated finds and nearby cultural deposits diminishes their ability to contribute to the archaeological record and the history of the region. Therefore, isolated finds do not meet the eligibility guidelines for NRHP or CRHR listing. As detailed in the Response to Comment C2-4, disposition of isolated artifacts discovered on private property will be at the sole discretion of the landowner, while the BLM will curate isolated artifacts from federally administered land in accordance with 36 CFR 79 guidelines. No change was made to the text in Section D.7.3.3 (Cultural Resources, Impacts and Mitigation Measures).

C2-6 The commenter states that fugitive dust and increased travel to construction sites should be considered as indirect impacts to cultural resources.

Mitigation Measures AQ-1a (Control fugitive dust) and AQ-1c (Control helicopter emissions) in Section D.3.3.3 (Air Quality, Impacts and Mitigation) address the control and prevention

of fugitive dust. The commenter did not specify the nature of indirect impacts from fugitive dust, but these mitigation measures would reduce fugitive dust and, therefore, reduce the chance for indirect impacts.

The Proposed Project would use existing roads or, if needed, new access roads within an existing ROW with existing transmission structures. Although the use of these roads during construction is not likely expected to increase indirect impacts to cultural resources, the CPUC and BLM agree that increased travel to construction sites is a potential indirect impact to cultural resources and have modified appropriate sections of the EIR accordingly. See Impact CL-1 (Construction, operation, and maintenance, and restoration could cause an adverse change to known historic properties) in Sections D.7.3.3, D.7.3.5, and D.7.4.3.

- C2-7 The commenter requests Mitigation Measure CL-1b be revised to state that SCE will consult with affiliated Native American tribes in drafting the Cultural Resources Management Plan (CRMP), that the CRMP will be submitted to affiliated Native American tribes for comment and review prior to submission to the CPUC and BLM for review and approval, that the CRMP will be finalized at least 60 days prior to ground-disturbing activities, and that there will be an archaeological and tribal monitor present during all ground-disturbing activities, not just construction in high-sensitivity areas. The commenter also requests revisions to Mitigation Measure CL-1b and CL-1d to allow for archaeological monitoring during all ground-disturbing activities, not just in areas identified as having high-sensitivity, and that Mitigation Measure CL-1d include provision for a tribal monitor.

To clarify, in Section D.7.3.3, Mitigation Measure CL-1b (Develop Cultural Resource Management Plan) notes that “Mitigation and treatment plans for unanticipated discoveries shall be reviewed by appropriate Native Americans and approved by the BLM, CPUC, and the California Office of Historic Preservation (OHP) prior to implementation.” Mitigation Measure CL-1b assures that a CRMP will be prepared for the proposed Project. The CRMP is being developed as part of the Memorandum of Agreement (MOA) under Section 106 to enforce appropriate measures, including archaeological and Native American monitoring, to ensure protection of sensitive resources and areas. Specific locations of monitoring will be developed during government-to-government consultation with appropriate Native Americans, the BLM, and the CPUC and will be formalized within the CRMP as part of the MOA. No change were made to Mitigation Measures CL-1b and CL-1 .

- C2-8 The commenter requests Mitigation Measure CL-2a 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.

Procedures for treatment of unanticipated discoveries are described in Mitigation Measure CL-1b (Develop Cultural Resource Management Plan). As noted in Mitigation Measure CL-1b, a CRMP will be prepared for the proposed Project. The CRMP is being developed as part of the MOA under Section 106 to ensure appropriate evaluation and treatment of any resources discovered during construction. Details of specific treatments and protocols for consulting the tribes and other agencies are being developed in the CRMP, in consultation with appropriate Native Americans, the BLM, and the CPUC. Therefore, no change was made to Mitigation Measure CL-2a.

C2-9 The commenter believes the socioeconomic and environmental justice impacts of the project are overlooked by considering only current census data and sociopolitical boundaries and the EIR ignores the effects of the project and connected actions on traditional cultural heritage areas of tribes. The commenter also feels the Socioeconomic and Environmental Justice section of the EIR ignores Native American environmental justice impacts by not considering the cultural and spiritual values of the landscape to tribes. The commenter feels this must be addressed in terms of direct, indirect, and cumulative impacts.

Cultural landscapes are evaluated under the National Historic Preservation Act as are other cultural resources and may be found eligible as Traditional Cultural Properties. Traditional Cultural Properties were addressed in Section D.7 (Cultural Resources); none were identified in the area of the Proposed Project, which would upgrade facilities in an existing previously disturbed ROW. In the EIR, Connected Actions are identified. These are future renewable energy projects that would make use of the transmission capacity of the project if built, but are not part of the project itself. These separate actions would be evaluated and approved independent of the Proposed Project. Section D.7.3.4 (Impacts of Connected Actions) discloses that for connected actions, unidentified cultural resources could be located where the connected actions would be occur.

The topic of Traditional Cultural Properties is addressed in Section 106 consultation. The Environmental Justice analysis in Section D.8 complies with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). It focusses attention on the environmental and human health effects of federal actions on minority and low-income populations, to determine if there are adverse impacts and, if so, whether they would disproportionately affect covered populations as compared to other affected population groups.

C2-10 The commenter asserts that that the EIR does not adequately acknowledge the visual resource impacts of the Proposed Project or connected actions on sacred and traditional landscapes. The commenter states that the project and “connected actions it facilitates” would significantly undermine the “openness” of sacred viewsheds and requests that additional analysis be provided.

As discussed throughout Section D.18.3.3 (Visual Resources, Impacts and Mitigation Measures), along most project segments the Proposed Project would be replacing two existing transmission lines with one transmission line within an existing utility right-of-way, thereby reducing the number of structures and the industrial appearance within the right-of-way. The vast majority of the resulting visual impacts identified in this section would either be Beneficial (Class IV) or Adverse but Less Than Significant (Class III). Therefore, visual resource impacts of the proposed Project have been adequately acknowledged, and no additional analysis is required.

Construction and operation of the solar projects comprising the Connected Actions in the Desert Center and Blythe areas do, however, have the potential to adversely impact sacred and traditional landscapes as noted in Section D.18.3.4 (Visual Resources, CEQA Significance Determination) where it is stated that the characteristics of the solar projects (Connected Actions) would noticeably contrast with the predominantly natural appearance of the northern Chuckwalla Valley landscape (Desert Center area) and eastern Chuckwalla Valley and Palo Verde Mesa landscape (Blythe area), as well as the background mountains that define

these valleys. As further noted in the Section D.18.3.4 discussion, the resulting overall visual impacts would typically be substantial.

As for the visual impacts on specific viewsheds (e.g., song trail sites), impact determinations would need to be made on a case-by-case (project-by-project) basis and would depend on specific project location and viewshed and location of sacred and traditional landscapes and sensitive resources of concern. While this level of analysis would typically be accomplished at the individual project level, it is reasonable to conclude that in instances where the projects would be prominently visible from sensitive landscapes, the resulting visual impacts would typically be substantial, as noted in Section D.18.3.5 (Visual Resources, CEQA Significance Determination).

C2-11 The commenter requests that the EIR update Table E-1 (West of Devers Upgrade Cumulative Project List). The environmental setting for an EIR is generally the environmental conditions as they exist at the time the notice of preparation (NOP) is published (14 Cal Code Regs §15125(a)). While the cumulative projects may have changed during preparation of the environmental document, they would not normally be continually updated. However, under NEPA, the baseline can be updated if resources have changed such that this is appropriate. Because a basic objective of the Proposed Project is to support achievement of State and federal renewable energy goals and a number of projects are driving the need for SCE to construct the Proposed Project, the renewable energy projects presented in Section E.2 (Cumulative Projects) and Table E-1 have been updated for the public's information.

C2-12 The commenter states that the cumulative impacts analysis should be revised to provide a clearer sense of how the connected actions are analyzed as they do not appear on the Cumulative Project List (Table E-1) nor are they mentioned in the analysis. The commenter notes that the connected actions have the potential to cause significant impacts especially on cultural resources.

The connected actions were not included in the cumulative list of projects because they were considered in detail in Section D, Environmental Analysis, to provide the public with an understanding of the Proposed Project's total effects. Within each discipline's analysis in Sections D.2 through D.21, the EIR includes both a description of the environmental setting for the connected actions and analysis of the impacts of these actions. Section D.7.3.4 (Cultural Resources: Impacts of Connected Actions) has been revised to include additional details of the known connected action projects to provide the public with a clearer understanding of the total effects of the Proposed Project, as requested by the comment.

The commenter is correct in that including more cumulative projects in Table E-1 would increase the overall number of resources cumulatively affected, but it would not change the overall significance of the cumulative effects nor the contribution of the Proposed Project to cumulative impacts. Instead, having more cumulative projects would reduce the contribution of each individual project. The cumulative analysis for cultural resources already notes that there would be adverse effects from the cumulative projects to unknown and known cultural resources including human remains that would result in a cumulative adverse effect. The Proposed Project's contribution to these effects is minor, but given the sensitivity of this region, would result in a significant cumulative impact absent mitigation. With the mitigation measures described in Section D (Cultural Resources) the Proposed Project's contribution would be less than cumulatively considerable. This significance determination would not change if the connected actions were included in Table E-1.

C2-13 The commenter strongly disagrees with the DEIR/DEIS significance finding for cumulative cultural resource impacts and requests to meet with the California BLM State Director to discuss substantive issues related to tribal consultation and adverse impacts of utility-scale renewable energy projects of cultural resources.

While the cultural resource analyses for projects under the cumulative scenario and for connected actions demonstrate that those projects will have significant impacts, the contribution of cultural resource impacts owing to the Proposed Project are relatively minor. There are no known historic properties (NRHP-eligible resources) within the Proposed Project that would be impacted. Impacts to cultural resources could be significant if new resources are discovered during construction. However, the CRMP being developed under Section 106, will ensure that any significant impacts to new discoveries are reduced to a level that is less than significant. Therefore, the Proposed Project does not contribute significantly to cumulative impacts.

The comment states that the Colorado River Indian Tribes wishes to consult with BLM regarding adverse impacts to cultural resources. The BLM has initiated government-to-government consultation for the Project under Section 106, seeking tribal input during development of the Memorandum of Agreement and accompanying CRMP, NAGPRA Plan of Action, and Tribal Involvement Plan, and BLM is aware of the Tribes' request.

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