

Steve Taffolla

From: Denise Strobbridge-Elwell <DStrobbridge@VIEJAS.com>
Sent: Friday, March 04, 2011 9:55 AM
To: ECOSUB
Subject: Comment Ltrs: Tule Wind Project & Round Potrero
Attachments: ltr_TuleWindProject_Comment_2011-0303.pdf;
Ltr_AddtlComments_SupportofManzanita_11-0303.pdf

Please find the attached comment letters.

Thank you!

Denise

Denise E. Strobbridge-Elwell
Paralegal
Viejas Office of Legal Affairs
619-659-5792

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March 3, 2011

Mr. Iain Fisher, California Public Utilities Commission
Mr. Greg Thomsen, Bureau of Land Management
c/o Dudek
605 Third Street
Encinitas, CA 92024

Re: DEIS Comments-- ECO Substation; Tule Wind Project; ESJ Gen-Tie Project

Dear Mr. Fisher and Mr. Thomsen:

Please accept this letter on behalf of the Viejas Band of Kumeyaay Indians as our comments to the record for the Draft Environmental Impact Statement ("DEIS") for the East County Substation ("ECO Substation"); Tule Wind Project ("Tule Wind"); and the Energia Sierra Juarez Gen-Tie Project ("ESJ Gen-Tie"), collectively referred to as the project.

First, Viejas appreciates the opportunity to comment, and emphasizes the importance of meaningful consultation on a government-to-government basis with local Indian tribal governments. Unfortunately, however, BLM appears to begin its consultation much later in the process than it should, and fails to conclude the consultations prior to making decisions on the projects. As a result, tribal concerns are not given the level of consideration that is required by federal statutes or policies. As Viejas has stated in our Sunrise Powerlink comments, we strongly recommend that meaningful consultation occur before project approvals are given so that tribal concerns can be addressed through project design, and mitigation measures acceptable to the tribe can be developed with their input.

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Second, while it may not be appropriate in the DEIS to inform the tribes as to the results of the ongoing consultation, periodic updates from the lead agency on the results of the consultation would be helpful. We understand that the Project is not part of the Sunrise Powerlink Project, about which we have extensively commented, but we do understand that the Project will interface with it. That Sunrise Powerlink is not a component of the current Project does not excuse its impacts from being considered as a part of the cumulative impacts of the Project, and we recommend that the DEIS be revised to better reflect this analysis.

Cultural resource studies that have been completed so far on this and the Sunrise Powerlink project have revealed the existence of thousands of recorded archaeological sites in San Diego and Imperial Counties. The cultural resources inventory report for the Project alone included approximately 200 "new" (previously unrecorded) sites, and confirm the existence of the Kumeyaay people in what is now San Diego and Imperial Counties for at least 10,000 years. The report notes a number of village sites, with at least one containing possible cremated human remains.

Missing from the DEIS analysis are maps (which should be confidential and provided only to interested tribes) that show the location of each of the sites identified in the report and, most importantly, their relationship to one another. As confirmed by the cultural resource inventories for all the planned energy projects, these sites lie within an extensive corridor utilized by Kumeyaay peoples to travel throughout their aboriginal homelands. Individual recorded sites cannot be adequately understood if viewed as discrete and isolated from another; rather, the sites must be considered in relationship to one another. If viewed from the tribal perspective, these sites will likely be seen as larger village sites and the village sites as part of larger cultural complexes and should be evaluated accordingly. Without this information, tribes cannot make informed comments or recommendations.

Also missing from the cultural resources information in the DEIS is information about the presence and the extent of participation of Native American monitors in the studies. Neither the Draft Cultural Resources Inventory Report, nor the information in the DEIS appear to include any input by monitors who may have been present, nor do they appear to incorporate any tribal cultural values in the assessment of the sites. While we understand that the requirements of National Register of Historic Places (NRHP) and

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California Registry of Historic Resources (CRHR) criterion for evaluating archaeological sites for significance are specific, Viejas nonetheless believes and encourages archaeology professionals to include in their significance and eligibility assessments under criterion A/1 tribal cultural values, which would only serve to enhance the analysis and evaluation of any given site. Often times, such assessment can be done by examining existing collections and information, without the need for additional excavation that could disrupt the site.

Viejas notes in the DEIS that a number of sites are potentially eligible for listing. We recommend that those sites be evaluated for significance and listed on both the NRHP and CRHR and that the research design should be developed in consultation with tribes. We further strongly recommend avoidance of all sites that are either potentially significant or are significant because these sites are irreplaceable and no acceptable mitigation exists other than complete avoidance.

The mitigation, monitoring, compliance and reporting measures ("MMCR") in the DEIS for cultural resources are inadequate. Currently a Historic Properties-Cultural Resources Treatment Program ("HPCP-CRTP") is to be developed among all federal, state, and local agencies. The development of the HPCP-CRTP should occur in meaningful and timely consultation with the tribes, rather than be developed and then presented to the tribes for comment as is presently stated. Additionally, as stated in the MMCR, Native American monitors would be required only at culturally-sensitive locations specified by the lead agency. Viejas' recommendation is that, given the number of "new" sites discovered during the initial survey, qualified, knowledgeable Native American monitors should be present during any additional surveying and any ground disturbing activities to ensure the proper documentation and treatment of inadvertent cultural resource discoveries. Given the cultural resources survey information, it appears highly likely that additional sites will be found.

The MMCR also requires monitoring by a qualified archaeologist in areas of the Project deemed sensitive for cultural resources, because significant portions of the Project site contain sedimentary deposits that have the potential to contain buried cultural resources. We agree that monitoring should take place, but that a qualified,

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knowledgeable Native American monitor should be on site as well. We further recommend that the archaeologist, in consultation with the Native American monitor, evaluate and determine the appropriate treatment for the inadvertent discovery of cultural resources during construction.

Finally, given the large scale of the Project and the significant impacts it will have on natural and cultural resources, Viejas recommends that biological components of the Project be inventoried, and that a photo recordation of the landscape be made. The landscape and its individual components are inextricable features to the tribal cultural resources found at each place, and the landscape itself is of significance to the cultural and historical understanding of the Kumeyaay heritage. If it has not been done, a cultural landscape assessment for the project area should be completed before project approval.

Thank you for your attention to the matter. We would appreciate a response to this letter to inform us of the mitigation measures you will adopt. If you have any questions or concerns, please contact either Lisa Haws at 619-659-2341 or Kimberly Mettler at 619-659-2441.

Sincerely,



Anthony R. Pico, Chairman
Viejas Band of Kumeyaay Indians

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Iain Fisher, CPUC
Greg Thompson, BLM
C/O DUDEK
605 Third Street
Encinitas, CA 92024

RE: Additional Comments by the Viejas Band in Support of the Manzanita Band of the Kumeyaay Nation Concerns for Protection of the Golden Eagle and Protection of Kumeyaay Ancestral Sites.

Dear Mr. Fisher and Mr. Thompson,

The Viejas Band of Kumeyaay Indians, (appearing in the U.S. Federal Register at Vol. 75, No. 190, p. 60810 as the Viejas (Baron Long) Group of the Capitan Grande Band of Mission Indians of the Viejas Reservation, California) is a self-governing federally recognized Indian Tribe exercising sovereign authority over the lands of the Viejas Indian Reservation.

The Viejas Band supports the Manzanita Government's request concerning the protection of the Golden Eagle population in the region and protecting significant cultural, historic, religious, or archaeological Kumeyaay ancestral sites in the region from negative impacts.

The Viejas Band supports the Manzanita Government's request for additional study prior to the approval of the EIR/EIS as the current environmental documents lacks adequate protection for the Golden Eagle and lacks protective measures for the significant ancestral Kumeyaay sites in the project areas.

The Viejas Band agrees "the Golden Eagle is an essential religious and spiritual co inhabitant of the land with the Kumeyaay people. This relationship dates back to before

recorded time. Over the past several decades the total population of the eagles in the region has been documented as significantly declining." In addition, "the primary reason for the decline in eagle population is due to the influx of human disturbance to and around the core nesting areas and foraging territories necessary to sustain a healthy eagle population."

The Viejas Band supports the Manzanita Governments request for the development of an Avian Protection Plan in conjunction with the proposed project and supports the Manzanita Band of the Kumeyaay Nation stands against any and all projects that endanger the Golden Eagles of the region and stands against any project that negatively impacts any of the last significant Kumeyaay ancestral districts left on earth.

Sincerely,



Anthony R. Pico, Chairman
Viejas Tribal Council

cc: Manzanita Band of the Kumeyaay Nation