COLORADO RIVER INDIAN TRIBES

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California Energy Commission
Dockets Unit, MS-4
Docket No. 11-AFC-04
1516 Ninth Street
Sacramento, CA 95814-5512
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Re: Comments of the Colorado River Indian Tribes on the Preliminary Staff Assessment for the Rio Mesa Solar Electric Generating Facility (11-AFC-04)

Dear California Energy Commission Staff:

The Colorado River Indian Tribes ("CRIT" or "the Tribes") submit these comments on the California Energy Commission's Preliminary Staff Assessment ("PSA") prepared for the Rio Mesa Electric Generating Facility ("Rio Mesa" or the "Project"). CRIT is a federally recognized Indian tribe whose members include Mohave, Chemehuevi, Navajo, and Hopi people. CRIT's reservation is approximately 15 miles from the Project site, and CRIT's members have lived and traveled in the Project area since time immemorial. Given the short timeframe allowed for public comments, this letter focuses on impacts to cultural resources and the proposed mitigation for these impacts. The lack of comments on other sections—such as water and visual resources—does not indicate approval. CRIT reserves the right to raise other concerns later in the review process.

Because of the Tribes' past, present, and future connection to the land on which the Project is proposed, CRIT has grave concerns about Rio Mesa's potential for significant cultural resource impacts. The Rio Mesa Project is one of dozens of renewable energy projects in the area either approved or under consideration by the California Energy Commission and the Bureau of Land Management. The collective impact of this transformation of the desert has had, and will continue to have, considerable adverse impacts on the Tribes and the cultural, spiritual, and religious practices of CRIT members. CRIT is increasingly concerned that the state and federal governments intend to approve all renewable energy projects in this region, no matter what the cost to affected tribes, native plants and animals, and the desert ecosystem as a whole.

The PSA confirms that the Rio Mesa Project is one of the most threatening utility-scale renewable energy projects to cultural resources and the traditional practices of CRIT members

proposed to date. The area that would be affected by the Project falls within two of the most significant trail corridors still in active use by CRIT members and other traditional practitioners in the region. It also threatens to disturb, remove, and potentially damage or destroy many cultural resource artifacts left in the desert landscape by the ancestors of CRIT members. CRIT takes seriously the very real threat to the cultural, religious, and spiritual practices of its members.

I. Any Project with Significant Adverse Impacts to Three Different Ethnographic Landscapes, and Countless Archaeological Resources, Should Not Be Approved.

The lengthy cultural resources section[1] of the PSA illustrates the numerous significant and adverse impacts that the Rio Mesa Project will cause to the ancestral homeland of CRIT members. In particular, the Project will have incalculable impacts on both the Salt Song Trail Landscape (sacred to CRIT's Chemehuevi members) and the Keruk Trail/Xam Kwatcan/Earth Figures Landscape (sacred to CRIT's Mohave members).

The PSA notes that "the Salt Song trails cross, reverberate, and provide passage for deceased Southern Pauite, including Chemehuevi, in the vicinity of and to the immediate north and south of the project site." PSA at 4.3-70. The Project would also create "a physical, visual, and mental barrier to those who travel the Keruk Trail/Xam Kwatcan Trail," irreparably damaging "the ability of the traditional practitioners to fulfill their spiritual obligations to the deceased to move them from their places of death through the landscape and on to the afterlife." PSA at 4.3-130. The loss of the landscapes' integrity and spiritual context caused by Project construction cannot be mitigated. The PSA concedes that the Project will significantly "increase the burden and challenges to traditional practitioners to continue traditions vital to their community and heritage." *Id.* at 4.3-123 to 124.

In addition, the Project would include the excavation, collection, and potential damage and destruction of scores of prehistoric artifacts, including potential cremation/funerary sites, ceramics and pot drops, and cleared circles use for sleeping, dancing, teaching and/or dreaming. These cultural resource artifacts are both sacred and finite. According to the belief system of CRIT's Mohave members, the disturbance of any cultural resources affiliated with their ancestors is taboo, and thus considered a severe cultural harm.

CRIT cannot support any project that will result in such severe cultural resource impacts. More importantly, under the regulations implementing the Warren-Alquist Act, the Commission cannot certify an electrical generation facility like Rio Mesa unless "the benefits of such facility outweigh its unavoidable adverse effects." 20 C.C.R. § 1741(b)(1). It is unclear to CRIT how the Commission, acting under this requirement, could legally approve the Rio Mesa Project given the severity of its known impacts.

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[1] CRIT requests that the FSA include a table of contents for the cultural resource section for ease of review.

II. Given the PSA's Omission of Critical Cultural Resource Information, the Document Must Be Re-Released When the Information Is Available.

Given the evident cultural resource impacts of the Rio Mesa Project, CRIT is alarmed at the PSA's repeated deferral of both analysis and mitigation to a later time. Throughout the cultural resources section, the PSA indicates that additional information will be provided in the Final Staff Assessment ("FSA"). For example:

- Phase II of the Geoarchaeological Research Design plan has not been implemented. Therefore, the PSA is lacking in "information on the age and the depositional origin of the landforms [affected by the Project]." PSA at 4.3-42. This lack of information makes it difficult to evaluate the potential for buried archaeological resources and has encouraged Commission Staff to require additional evaluation-phase excavations, which, as described below, are extremely problematic for the Tribes. *Id.*

- Phase II of the Archaeological Research Design and Testing Plan has not been designed or implemented. Given Commission Staff's recent criticisms of the draft plan (see Commission Staff Letter to Todd Stewart, TN # 67873 (Oct. 19, 2012)), it is not clear when this effort will be completed. Though CRIT has significant concerns regarding this plan, as described below, the delay in implementation means that crucial information regarding eligibility and mitigation measures for impacts to archaeological resources will not be formulated until the FSA. PSA at 4.3-87, 4.3-89, 4.3-174.

- The Applicant has failed to complete a trail study of the Project area. Consequently, Commission Staff's conclusions regarding prehistoric use of the Bradshaw trail will not be released until the FSA, the impacts of Project access roads on the Keruk Trail/Xam Kwatcan Trail are unknown, and the Ethnographic Study has failed to incorporate relevant trail information. *Id.* at 4.3-50, 4.3-130.

- The Project's Ethnographic Study is not yet complete, and interviews with tribal members are still ongoing. PSA at 4.3-119. CRIT firmly believes that these documents should form the basis of any cultural resources analysis and thus should have been completed prior to the release of the PSA. Moreover, Commission Staff has not completed consultation with affected tribes, including CRIT. As such, certain mitigation measures will not be identified until the FSA. *See, e.g., id.* at 4.3-187 (CUL-7).

- Cumulative impacts to ethnographic resources will not be identified until the FSA. *Id.* at 4.3-173.

- Development and approval of the Cultural Resource Mitigation and Monitoring Plan ("CRMMP") will not occur until after the Project is approved. Given that this document will "identify measures to minimize potential impacts to sensitive cultural resources," the plan must be developed *prior* to Project approval with the opportunity for public comment and Commission review. 20 C.C.R. § 1741(b)(1) (application proceeding must ensure that the

applicant incorporates "all measures that . . . substantially lessen or avoid the project's significant adverse environmental effects").

Delaying discussion of these topics to the FSA essentially insulates the document from public review. Given that the FSA serves as the Commission Staff's testimony before the Commission, and is intended to incorporate revisions responsive to public comment, Commission Staff must re-release the PSA with missing information for additional public comment.

CRIT also notes that the vast majority of this delay has occurred because the Applicant has been unable or unwilling to supply information necessary for a robust analysis. *See, e.g.*, PSA at 4.3-47 (noting that the "applicant has not provided the archaeological or geoarchaeological information within the time frames to which they committed at the March 19, 2012 status conference . . . ."). CRIT acknowledges that Commission Staff is working under tight statutory deadlines, but shortchanging the opportunity for public comment cannot be the correct response to an applicant's recalcitrance. If the Applicant is unwilling to supply the necessary information, it should not receive the benefit of a fast-tracked review process.

III. CRIT Objects to the Invasive Activities Described in the Applicant's Archaeological Plans.

According to the PSA, Commission Staff is requiring the Applicant to conduct testing to provide data necessary to determine whether sites are "historic resources" for the purpose of the California Environmental Quality Act. PSA at 4.3-88. This testing is inherently destructive, including excavation, collection, and laboratory testing of artifacts. CRIT members view activities that disturb and potentially damage cultural resource artifacts—regardless of their ultimate "educational purpose"—as a significant cultural harm. While the PSA acknowledges that other affected tribes share this view (*E.g.*, *id.* at 4.3-26 ("The Tribes present were adamantly opposed to subsurface testing, collection, and laboratory testing, but acknowledged that mapping and photographic documentation was acceptable."), the PSA offers no response to these legitimate concerns.

CRIT urges Commission Staff to work with the Applicant to pursue less invasive options for determining resource eligibility. In particular, the information contained in the Ethnographic Study, once finalized, can help guide eligibility in place of destructive excavation and testing. Consultation with affected tribes should also be used to gather information related to the eligibility of these sites.

With respect to the recently approved Geoarchaeological Research Design Plan (TN # 68207), CRIT questions the necessity of using backhoes to trench areas of the site that do not appear to require grading or other earthmoving activities for Project construction (i.e., the heliostat field). While CRIT does not approve of the proposal to auger and vibrate-in-place the heliostat pedestals given the potential to damage buried cultural resources, it appears that the trenching proposal will result only in the disturbance and excavation of additional resources.

IV. Consideration of Mitigation Measures for Impacts to Archaeological Resources Must Include Preservation in Place.

The PSA does not contain mitigation measures for impacts to prehistoric archaeological resources, instead deferring the decision to the FSA. PSA at 4.3-87, 4.3-93, 4.3-174. Under CEQA, a lead agency must give a strong preference to preservation in place. In preparing the mitigation measures for the FSA, Commission Staff must take care to comply with these requirements.

Under section 15126.4(b)(3), "[p]reservation in place is the preferred manner of mitigating impacts to archaeological sites." In *Madera Oversight Coalition, Inc. v. County of Madera*, the California Court of Appeal held that this section requires a lead agency to evaluate, in its environmental review documents, whether preservation in place is a feasible mitigation option. (2011) 199 Cal.App.4th 48, 86-87. A lead agency must evaluate the four specific preservation in place options listed in the Guidelines (avoidance, incorporation into open space elements, capping, and the use of conservation easements), as well as any other feasible preservation in place measures. *Id. Madera Oversight* also dictates that a lead agency *must* adopt feasible means of preservation in place "unless [a] lead agency determines that another form of mitigation . . . provides superior mitigation of the impacts." *Id.* at 87. If Commission Staff concludes that preservation in place is not feasible, it must support this conclusion with substantial evidence.

It appears that Commission Staff is considering the use of data recovery measures without first considering whether preservation in place is feasible. *See., e.g.*, PSA at 4.3-187 (CUL-6, though currently "under development," includes data recovery for prehistoric sites and features). CRIT does not consider excavation and data recovery mitigation for the cultural harm caused by disturbance of cultural artifacts. As such, it would be improper for Commission Staff to conclude that data recovery measures reduce Project impacts to these artifacts to a less-than-significant level. The FSA must recognize that any disturbance to such resources constitutes a significant, adverse, and unmitigable harm.

V. Commission Staff Should Consider Whether the Prehistoric Quarries Archaeological District Is Also Eligible Under California Register of Historic Resources Criterion 1.

The PSA concludes that "[t]he resources that make up the [Prehistoric Quarries Archaeological District] are significant under [] Criterion 4," which relates to the information potential of the District. PSA at 4.3-92. No mitigation is yet proposed (*Id.* at 4.3-174), though it appears that Commission Staff will propose data recovery for at least some sites. *See id.* at 4.3-187.

The PSA, however, does not appear to analyze whether the District is eligible under Criterion 1, reserved for resources that are "associated with events that have made a significant contribution to the broad patterns of our history." This omission is significant. The typical mitigation proposed for archaeological resources classified under Criterion 4 is data recovery. As described above, CRIT does not consider excavation and data recovery adequate to mitigate cultural harms. If the Prehistoric Quarries Archaeological District has cultural value—as determined by the Ethnographic Study and proper consultation with affected tribes—then it should be classified as eligible under Criterion 1 and the FSA should consider alternative mitigation, such as preservation in place.

VI. The PSA Fails to Support Its Conclusion that Impacts to the Palo Verde Mesa Ethnographic Landscape Can Be Mitigated to a Less-than-Significant Level.

The PSA's consideration of the Palo Verde Mesa Ethnographic Landscape suffers from similar flaws. The PSA concludes that "[t]his landscape is eligible for the [California Register of Historic Resources] under Criterion 1 at a local level for its broad contributions to the unique historic events associated with the development of agriculture in the New World." PSA at 4.3-118. The PSA also concludes that the landscape is eligible under Criterion 4.

However, when considering appropriate mitigation for this resource, the PSA focuses exclusively on the landscape's information potential, rather than its cultural significance. Therefore, the PSA concludes that "[i]t is possible to avoid or reduce the adverse direct and indirect impacts . . . to a less-than-significant level. Commission Staff propose Condition of Certification CUL-7, which would require that the Rio Mesa [] project owner monetarily compensate each of the Tribes for their losses of subsistence knowledge, as that knowledge is informed by the landscape, and the long-term opportunity that would otherwise be available within the lands currently proposed for permanent Rio Mesa [] project-related land use." PSA at 4.3-132. The PSA has not supported its conclusion that this mitigation measure alone will reduce the impact to this particular resource to a less-than-significant level. As the PSA elsewhere acknowledges, compensatory mitigation is generally insufficient to mitigate the loss of tribal cultural resources. *See, e.g.*, *id.* at 4.3-128 (noting that compensatory mitigation can only be a "token sign[] of goodwill").

VII. The PSA Fails to Support its Conclusion that Impacts to 42 Prehistoric Archaeological Resources Are Not Significant.

In addition to the cultural resources that Commission Staff conclude are likely to contribute to the eligible Prehistoric Trails Network Cultural Landscape and Prehistoric Quarries Archaeological District,[2] the Project will also directly impact 41 lithic quarry/workshop sites and 1 artifact scatter. Commission Staff has recommended, however, that these sites are "ineligible for listing in the [California Register of Historic Resources] . . . under Criterion 4." PSA at 4.3-87. At this time, however, site descriptions, more detailed discussions of these resources, and the rationale behind the ineligibility determination are not yet available to the public. *Id.*

Similarly, the Applicant apparently uncovered a number of isolated finds during the pedestrian surveys of the site. However, the Applicant provided "no information" about these isolates to Commission Staff. *Id.* at 4.3-45. Consequently, Commission Staff excluded these resources from its analysis, presumably concluding that any impacts to these isolates are insignificant.

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[2] The same concerns raised in this paragraph would also apply to any sites that Commission Staff concludes are not contributing to either district after the completion of "testing" conducted under the Archaeological Research Design and Testing Plan.

CRIT notes that eligibility in the California Register of Historic Places is not a prerequisite to a finding of significance with respect to archaeological resources. Public Resources Code § 21084.1; CEQA Guidelines § 15064.5(a). It appears from the PSA that little, if any, effort has been made by Commission Staff to determine the potential cultural importance of these artifacts. Given the potential significant cultural harm that may be caused by disturbing, excavating, or damaging these archaeological sites and isolate finds, Commission Staff must reconsider the determination of insignificance. If the FSA continues to classify impacts to these artifacts as insignificant, the determination must be supported with substantial evidence.

VIII. The PSA Fails to Adequately Protect Against Harm to Potential Buried Resources.

As the PSA indicates, there is a very real possibility of encountering buried resources on the Project site during Project construction. PSA at 4.3-88. Given CRIT's recent experience with the Genesis Solar Energy Project, the Tribes are understandably concerned about this possibility. At the Genesis Project, measures were developed to protect cultural resources uncovered during project construction, including provisions to halt construction, notify and consult with affect tribes, and avoid any new, significant resources. When a significant deposit of cultural resource artifacts was uncovered along the former shore of Ford Dry Lake during project construction, the Bureau of Land Management ("BLM") waited a few days to halt construction and over a week to notify CRIT about the find. BLM and the project developer then developed a treatment plan without adequate tribal consultation. Eventually, BLM determined that project construction could proceed, without making any finding that avoidance was infeasible. These activities caused great cultural harm to the Tribes and its members. CRIT is concerned that construction at the Rio Mesa Project could result in a similar, seemingly intractable, situation.

The Applicant has yet to implement Phase II of the Geoarchaeological Research Design plan, which is intended to give a more complete picture of the potential for buried cultural resources on the Project site. Surprisingly, the PSA concludes, without access to the results of that study, that the implementation of seven mitigation measures, will reduce "impacts to an unknown number of buried prehistoric archaeological resources" to a less-than-significant level. PSA at 4.3-5; *see also id.* at 4.3-93. Review of the identified mitigation measures does not support this conclusion:

- CUL-3: This measure requires the Project developer to hire a Cultural Resources Specialist and other Cultural Resources Monitors with certain qualifications. This measure provides no substantive assurances as to how unanticipated resources will be handled.

- CUL-4: This measure requires the Project developer to provide certain maps and documentation to the Cultural Resource Specialist. Again, no substantive assurances are included.

- CUL-5: This measure requires the development of a CRMMP. While the document must "specify that the preferred treatment strategy for any buried archaeological deposits is avoidance," the actual plan will not be developed until after Project approval. Given that a preference for avoidance was ineffective in preventing serious harm to buried resources at

the Genesis Project, CRIT has grave concerns about relying on this mitigation measure to assume that impacts will be reduced to a less than significant level.

- CUL-11: This measure requires use of Worker Environmental Awareness Program Training. While such training may be helpful in identifying cultural resources discovered during Project construction, this measure offers no assurance that such artifacts will not be damaged, disturbed, or eventually removed from the Project site.

- CUL-12: While this measure requires notice to interested tribes and other Native Americans, this list should be prepared in advance of Project approval to ensure that all appropriate parties are included. Again, this measure provides no substantive assurance regarding treatment of buried resources.

- CUL-13: In order for this measure to be at all effective, Native American Monitors must be given the authority to halt ground disturbance in the event of a cultural resources discovery. Moreover, while CUL-5 indicates a general preference for avoidance of buried resources, this measure appears to contemplate that most discoveries will be subject to data recovery, rather than avoidance. This mitigation measure thus exacerbates the cultural harm from disturbance of buried resources, rather than resolving it.

- CUL-14: This measure does not appear to relate to buried cultural resources, but rather surface cultural resources present at borrow and disposal sites.

- CUL-15: This measure requires a final Cultural Resources Report. Again, this measure contains no substantive assurances regarding buried resources.

Commission Staff has provided no substantial evidence that these mitigation measures will reduce the impact to unknown buried resources to a less-than-significant level. To remedy this error, Commission Staff should (a) adjust the Project boundary to avoid sites with a high potential for buried cultural resources, as determined through the Ethnographic Study and non-invasive geoarchaeological studies, and (b) require a pre-Project-approval CRMMP, subject to public review and tribal consultation, that both provides for meaningful consultation with affected tribes and mandates avoidance of significant buried cultural resources unless the California Energy Commission makes a finding of infeasibility supported by substantial evidence.

Finally, the PSA indicates Commission Staff's preference that the scope of the geoarchaeological study "should be limited to those areas where the construction and operation of the proposed project would entail the disturbance of natural ground deeper than 1m below the present surface." PSA at 4.3-41. Please provide a justification for this limitation. Given that the Project area is largely undisturbed, it appears that buried cultural resources artifacts could be present in the first meter of natural ground. CRIT notes that the buried cultural artifacts uncovered at the Genesis project were generally found within the first 18 to 36 inches.

IX. The PSA's Conclusion Regarding Compliance with LORS is Premature.

The PSA offers only a rote conclusion regarding the Project's conformance with all applicable local, state, and federal laws, ordinances, regulations and standards: "When the additional requested data are received and analyses are complete, staff would find that full implementation of all cultural resources conditions of certification would ensure compliance with all applicable LORS, plan, and policies . . . ." PSA at 4.3-177. Given that the data is not yet available and the analyses are not yet complete, any conclusion regarding Project compliance is patently premature and unfounded. CRIT reserves the right to make additional comments on the Project's compliance with LORS after this analysis is complete.

X. The Analyses To Be Included in the PTNCL Mitigation Program Constitute Analysis, Rather than Mitigation, and Therefore Should Be Completed Prior to Project Approval.

The mitigation suggested for the Project's cumulative impacts to prehistoric resources includes the PTNCL Documentation and Possible NRHP Nomination Program. PSA at 4.3-161 to 167. CRIT is concerned that many of the specific items included in this Program are analyses that should have been completed *before* site selection and Project approval, rather than proposed for after Project construction begins. In particular, if the goal of the Ethnographic Study is to identify traditional cultural properties and mitigation measures for significant impacts, the study should have been completed in time for it to inform the decision-making process for Rio Mesa and the other solar energy projects. Similarly, while Commission Staff's intent use this information to "predict high density resource locations to assist in the siting of future projects" would be a welcome change to the haphazard approval process used to date (PSA at 4.3-30), the offer comes far too late—much of the land surrounding CRIT's reservation has already been proposed for utility-scale solar development. Given the current timing, the Program appears to be little more than an after-the-fact effort to document the resources the Project is destroying.

XI. The Commission Should Delay Moving Forward With Further Review Until Consultation with Tribes Has Progressed.

Under Governor Edmund G. Brown's Executive Order B-10-11, state agencies, such as the California Energy Commission, must engage in meaningful consultation with California Indian Tribes on matters that may affect tribal communities. CRIT notes that meetings with Commission Staff to date have been largely "informational." PSA at 4.3-25. While CRIT appreciates the efforts of Commission Staff to inform affected tribes about the scope and likely impacts of the Project, such informational meetings do not fully qualify as consultation. Under the Executive Order, tribes must be permitted to "provide meaningful input" to proposals made by state agencies—in other words, consultation must be a two way street. *See also Quechan Tribe of the Fort Yuma Reservation v. U.S. Dep't of Interior* (S.D. Cal. 2010) 755 F. Supp. 2d 1104, 1119 (holding that "public informational meetings, consultations with individual tribal members, . . . and written updates" do not constitute consultation under the analogous federal consultation requirements).

Moreover, the lack of meaningful and complete consultation at this point in time negatively impacts the substance of the cultural resource analysis. As one example, the PSA acknowledges that Commission Staff does not know whether "certain archaeological resources have potential

associative values for Native Americans," thus preventing Commission Staff from making an accurate assessment of the Project's impacts. PSA at 4.3-178. Commission Staff have also not consulted with the Tribal Council regarding monetary compensation for various cultural resource impacts, despite noting the necessity of such consultation. *See, e.g.*, PSA 4.3-128 (mitigation for Salt Song Trail impacts); *id.* at 4.3-131 (mitigation for Xam Kwatcan Trail impacts). This lack of meaningful consultation must be remedied in advance of the FSA's completion.

XII. The PSA's Environmental Justice Analysis Is Artificially Constrained.

One of the most substantial environmental costs of the proposed Project is the destruction of cultural resources. This cost is borne exclusively by the people who are indigenous to the area, including CRIT's members. The power produced at the proposed Project, however, will likely go to serve residents of urban areas in southern California. The climate change benefits will be spread across the globe. This imbalanced allocation of costs and benefits, which disproportionately disadvantages a minority population while providing them little or no benefit from the project, satisfies any recognized definition of environmental injustice. *See, e.g.*, Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (Feb. 11, 1994) (defining environmental justice as addressing "disproportionately high and adverse [] environmental effects of [] programs, policies, and activities on minority populations and low-income populations").

Nonetheless, the PSA concludes: "[T]here is no environmental justice or minority population within a six-mile buffer of the proposed project. Therefore, there would not be a disproportionate environmental impact resulting from construction and operation of the proposed project to an environmental justice population." PSA 1.1-7. When asked to explain the selection of a six-mile buffer at the first public workshop on the PSA, Commission Staff indicated that it was relying on the six-mile air quality study, rather than any specific statute or recommendation. This choice of study area is not supported by substantial evidence. While it may make some sense to select the air-quality buffer area for considering the environmental justice impacts of poor air quality, it is illogical to use the air-quality radius in considering the environmental justice implications of adverse cultural resource impacts. This section must be revised to acknowledge the significant environmental justice impacts to the Tribes.

XIII. The FSA Must Give Full Consideration to a Distributed Generation Alternative.

As one if its core substantive requirements, CEQA provides that "public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects." § 21002. Accordingly, a major function of the environmental review process "'is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.'" *Laurel Heights*, 47 Cal.3d at 400 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197). To achieve this purpose, the PSA must consider a "reasonable range" of alternatives "that will foster informed decisionmaking and public participation." CEQA Guidelines § 15126.6(a). By artificially constraining the Project's

objectives and unreasonably removing the distributed generation alternative from consideration, the PSA fails to present a reasonable range of alternatives and thus violates CEQA.

CRIT urges Commission Staff to adopt a statement of Project Objectives that allows for a broader range of alternatives, including distributed generation and disturbed lands alternatives. Such alternatives would significantly reduce, or, in the case of distributed generation, completely eliminate, any harms to cultural resources. The PSA currently rejects a distributed generation alternative, arguing that both distributed generation and utility-scale solar are necessary to meet the Renewable Portfolio Standard goals. This argument, however, lacks persuasive force in light of the California Public Utility Commission's decision to reject one of the power purchase agreements for the Rio Mesa Project, noting that the high price of the Rio Mesa solar project made it a poor mechanism for meeting the Renewable Portfolio Standard ("RPS"). Even if both utility-scale and distributed generation facilities are ultimately necessary to meet the RPS, it may be that this particular utility-scale facility fairs poorly when compared to distributed generation alternatives. Under CEQA's mandate to consider alternatives that would substantially lessen the significant environmental impacts of a project—including, in this case, the significant cultural harms—a distributed generation and/or disturbed lands alternative must be included.

XIV. Additional Time Must Be Provided for Comments on the Cultural Resource Section.

CRIT strongly concurs with the request made by the County of Riverside to extend the deadline for public comments on the PSA. As noted in the County's letter of November 6, 2012, the third public workshop concerning cultural resources is tentatively scheduled for November 28, 2012. Commission Staff has provided no guarantee that comments made at that workshop, or written comments made in response to topics raised in the workshop, will be addressed in FSA. The sheer volume of material and the number of issues still left unresolved in the PSA also raise questions about the efficacy and fairness of a limited public comment period.

Finally, CRIT respectfully requests that Commission Staff provide thorough and detailed responses to the issues raised in this letter. A critical element of the CEQA process is public comment *and response*. CEQA Guidelines § 15088 (requiring "good faith, reasoned analysis in response" to public comments). By providing clarity regarding the agency's position, lead agency responses can potentially eliminate later conflict. CRIT looks forward to the timely resolution of the many issues raised by the PSA.

Sincerely,

Chairman Eldred Enas
Colorado River Indian Tribes