

Energy - Docket Optical System

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Subject: DRECP Draft NEPA/CEQA - Tribal Comments

California Energy Commission

DOCKETED

09-RENEW EO-1

TN # 75066

FEB 23 2015

Re: DRECP NEPA/CEQA, Tribal Comments on Draft EIS/EIR

These comments are submitted on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians. Overall, we observe that the project documentation is difficult to follow given its size, cumbersome structure and extensive cross referencing thereby undermining the Executive Summary's claim of a "transparent" approach. In fact, it is obvious from the Plan itself, that tribal and cultural concerns were a late "add on" to the core biological goals and have been given short shrift in the Plan. Overall, it is unclear in the documents why tribes should support this effort.

Ms. Lucas requests the following be incorporated into the DRECP Plan and EIS/EIR:

1. Once a specific project is proposed, new pedestrian surveys must be conducted with qualified Native American monitors. That such surveys should be done at 2 meter/six foot intervals (not 15 meter/45 foot) and that individuals are trained to look for cremated ancestral remains and midden soils as well as other desert prehistory. That should areas with ancestral bone or midden areas be encountered, or rock art, that the project be redesigned to completely avoid such areas and include a buffer to ensure future avoidance. The historical human remains detection canines also should be used to help determine such locations.
2. That ethnographic and cultural surveys must be conducted and reports produced prior to the release of specific project environmental documents. Without this, tribes are largely precluded from participating in the project design and alternatives analysis in a meaningful manner.
3. That every effort be made prior to finalization of the EIS/EIR to include the views of nonfederally-recognized tribes. Such tribes were brought in late and incompletely into the DRECP process. For example, the Kwaaymii Laguna are not indicated in Table III.9-1, Tribes with Traditional Ties to Plan Area. Also, Santa Ynez should be listed as having a Chumash affiliation - not Kumeyaay. Ms. Lucas requests consultation on this project with the CEC focused on the maps and resources within the San Diego and Imperial Counties and around Anza Borrego Desert State Park (ABDSP). She would like staff to review with her the large scale map with detail for these specific areas to which she has traditional ties to better understand the proposed overlays and locations. Also, please explain any NLCS or ACEC lands proposed in the Ocotillo area. Ms. Lucas supports putting as much of the Valley of the Dead into protective status as possible.
4. More emphasis must be placed in the documents on impacts to landscape viewsheds and methods to reduce such impacts. This should include interference with views to important landmarks and sacred peaks. In many cases, this is a 360 degree view, not just in one direction. Also, consideration should be made to avoid light pollution, such as flashing red lights in the evening as such project components interfere with tribal night viewing and detracts greatly from the tribal cultural experience.

5. The documents repeatedly note that TCPs and cultural landscapes were not factored into the document's analyses (i.e., page IV.9-3). When and how will such impacts/resources be assessed? How is cultural landscape being defined here? It must include both biological and cultural resources consistent with the NPS definition and include tribal viewpoints on biological resources. Please explain. What do tribes get in return for impacts to or loss of TCPs or cultural landscapes? This would seem to be an integral part of implementing Secretarial Order 3330 (2013). The reference to recent ethnographic reports and other studies should include those related to recent energy projects related to the Ocotillo, Jacumba and Obsidian Butte TCPs (Noah, Simmons, Trafzger, Carrico) and other projects such as The Imperial Project, Baja Norte Pipeline, etc. (Cleland, Baksh).

6. Where in the document is suggested mitigation for impacts of tribal concern? Page IV.9-19 - IV.9-20 contains a list of mitigation measures applicable to any project implemented in the absence of a Plan approval. Would this list be a source of mitigation for the DRECP as well? Where is the DRECP tribal mitigation list? If it is at pages IV.9-36 and IV.9-37, why does it not also reference existing mitigation options?

7. The mitigation list is incomplete and should 1) include items that reflect the priorities of tribal governments and leadership, 2) funds for acquisition and management of culturally-important lands; tribal museum construction, exhibits and programming; establishment of THPO offices; funding for tribally-lead surveys and nominations; co-management of sensitive lands, etc., 3) establish a programmatic framework so that the larger cost items may be funded across several projects if necessary. This part of the Plan is underdeveloped for tribal and cultural resources.

8. Tribal process concerns are noted in the document, but the process to date has done little to ameliorate those concerns. For example, it does not appear that funds were provided to tribes so that they could provide staff or consultants to more thoroughly review the voluminous documents and maps. This despite \$30 million being spent to prepare the documents according to media reports. Our ability to participate in the process has been hampered by a limitation on resources. This should include reimbursement for expenses and compensation for time, effort and knowledge. Will such resources be in place for upcoming consultations? If so, how should they be arranged?

9. Groundwater and that from natural ponds, lakes or springs should not be used for these projects. Projects should consider using reclaimed or recycled water, or water trucked or otherwise brought in from other areas, but not groundwater from other areas.

10. There should be no take of eagles, bighorn sheep or mountain lions. Allowing take permits open the door to abuse. These animals are too culturally-sensitive and are integral to cultural landscape and tribal values as demonstrated in historical accounts, tribal legends and rock art. Other animals killed through the project process should not be thrown into the garbage, but rather, treated with respect. This could include leaving them in an area where ravens and other animals could consume them.

11. References to trail systems should recognize that 1) historic trails were often placed over old Indian trails and 2) consideration should be given for treating prehistory trails with a similar level of protection being considered for historic trails, including avoidance, adequate buffers and consideration of trail settings.

12. The documents should include a table showing how many acres have already been developed with "green energy" and how many of those acres were of cultural or tribal value. A true consideration of cumulative impacts should be clearly expressed and mitigated in the documents. It should also

assess how much of the burden Imperial County is assuming relative other parts of the desert, and thereby how much more cumulative impact culturally-affiliated tribes will experience. Mitigation should be proportional. This is an environmental justice issue for tribes.

13. The documents appear internally inconsistent: in many places the body of the document states that "few definitive conclusions regarding impacts to tribal resources" across alternatives can be made (i.e., IV.9-73). Yet, the Executive Summary makes some conclusions in that regard at pages 53-54. Please explain. It also appears that alternatives were manipulated in a manner to make the preferred alternative appear to be the least impactful. Did the CEC determine that the preferred alternative was the Environmentally Superior Alternative in consultation with tribes? If not, how is that determination consistent with the Governor's Executive Order B-10-11 (2011)?

14. Funds must be allocated for NHPA Section 110 surveys to occur in the desert. Had these surveys been done over the last several decades, BLM would have a much better idea of the location and nature of the cultural resources under its management and not just relied on the dated Native American Element of the CDCA Plan. Please explain whether current CHRIS data was also factored into the impact comparisons, particularly for DFAs that are not on federal land. If it was not, then the impacts to cultural and tribal resources has been greatly underestimated. How would this be rectified in the analyses? It is Ms. Lucas's view that all areas previously identified in the NAE should be avoided. Also, every effort must be made to fund ACEC management plans for existing and new ACEC areas. Without such plans, the designations in themselves may be of limited utility.

15. Who drafted the summary of AIRFA on page III.9-4? Who considers AIRFA to have little relevance for environmental regulatory practice? Is this view shared by the agencies?

16. Since the publication of the draft EIS/EIR, AB 52 has been enacted by the State of California. Please add that law to sections III.9.1.2. and IV.9.1.2. and indicate how that law might change the Plan and EIS/EIR analysis including the flow chart at the Executive Summary pages 24-25.

17. Why can't details on project decommissioning be presented and considered now? In some cases (i.e. wind turbines) could decommissioning cause more impacts than during construction? If decommissioning is pushed decades into the future on a project basis, metrics that reflect tribal preferences in sensitive areas should nonetheless be developed now. These could include removal of all below ground infrastructure including footings, sub foundations, road removal, tribal consultation, etc.

18. The document says that BLM will monitor and evaluate management strategies. (Executive Summary page 21). Does BLM have the current staff and resources to perform this monitoring? If not, how will the resources be identified and integrated? Does this monitoring include for tribal and cultural resources? How will this be ensured for the life of the Plan? How will this effort differ from that of the CDCA Plan which never built or maintained the necessary cultural and tribal infrastructure? Additional funding will be needed, yet the Executive Summary (page 38) appears to indicate that no additional funding is anticipated. Please explain. Footnote 3 regarding cost and funding indicates that the costs of items of most importance to us (cultural resources, visual resources, wilderness and decommissioning) have not been factored into the Plan (Executive Summary page 38). Please explain what the ramifications of this may be?

19. Please provide a list of the professional backgrounds/expertise for the Independent Scientists shown in the DRECP Implementation Structure. Are there any cultural or tribal experts included in any of the boxes shown on Executive Summary page 22? If not, why not?

20. Has a tribally-preferred alternative been identified? Which alternative best meets the needs of tribes? Alternative 3? The Executive Summary at page 50 provides insufficient information.

21. The document references areas outside of the Plan that could be traversed by potential new transmission lines (Executive Summary, page 47). Please indicate with more specificity where these areas are and does it include ABDSP? Have such cumulative impacts been considered in the Draft EIS/EIR?

22. The environmental justice discussion in the Native American Interests section is important, but difficult to follow. Can you clearly explain what is meant by EJ in this context, what will the agencies do to see it achieved for tribal communities, and how it is linked to tribal cultural resources and cultural landscape (including plants and animals) preservation?

Ms. Lucas can be contacted regarding consultation on the maps:

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Please copy my office on all such correspondence at the address in the signature block below.

We also request to be provided responses to our comments and for the agencies to consider having a joint public review period on any Final EIS/EIR, in the spirit of federal-state partnership, to avoid process confusion and for revisions to be reflected in a redline format to promote efficiency.

Sincerely,
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Attorney for Carmen Lucas

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"Protecting, Preserving and Restoring Tribal, Cultural, Biological and Park Resource Landscapes"

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