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To : [claufenb@energy.state.ca.us]
Clare Laufenberg Gallardo, California Energy Commission, 1516 Ninth Street
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RE: Public Comment on Phase 2A Report.

Haku,

Thank you for allowing me to comment. My name is Frank Arredondo. I am Chumash. My family history goes back to 1774 in California record books. However my Native American pre-history goes back even further than that to at least 1640. As a Most likely Native American Descendent of the Chumash Territory, I have a very strong interest in the RETI project. As a Cultural resource preservationist I also have a strong interest in protecting and advocating avoidance of sacred sites and work towards active avoidance of impacts. As a member of the Native American Nation I also advocate for the rights and sovereignty of Native Americans and the laws that are currently in place meant to protect us and our resources from being lost forever.

I have read the Phase 1B, as well the Phase 2A reports and I have to object to what is missing from these reports. The lack of consultation with Native Americans, the lack of use of the current statewide data on Native American sites and the lack of the SSC members and their respective institutions to address gaps and policy conflicts not to mention the need for a methodology to be developed for consideration of potential impacts on these sites by CREZ development. I strongly suggest that the deficiencies are addressed with the inclusion of Tribal consultation.

My understanding is information generated by RETI will also likely impact the development and permitting of renewable projects, Support future energy policy and direct statewide planning process. RETI is comprised of several California entities and their output will inform on the planning process used by state agencies entities and POU's.

The RETI plan is for expanding the state's electric transmission grid to provide access to renewable energy resource. But this fails to meet its intent of minimizing the environmental impacts. The intent of the plan is to help expedite development and approval in ways to minimize economic cost, environmental impacts, and number of new transmission facilities. It appears in my review that the environmental impact is being ignored to facilitate the economic cost as well as the amount of transmission facilities.

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The organization of the RETI work is describes as three different phases. Phase 1, Phase 2, Phase 3 To identify, develop statewide plans, then develop detailed plans.

“RETI work is organized into three phases:

Phase 1: Identification and ranking of Competitive Renewable Energy Zones (CREZ) in California and neighboring regions;

Phase 2: Development of a statewide conceptual transmission plan to access priority CREZ, based on more detailed analysis of CREZ;

Phase 3: Development of detailed plans of service for priority components of the statewide transmission plan.”

The Phase 1b report set out to identify Competitive Renewable Energy Zones and the Phase 2A work focused on two major tasks, the development of a statewide conceptual transmission expansion plan to access the CREZ and more detailed evaluation and re-ranking of CREZ described in phase 1b.

The Phase 2A reports presents the results of these activities and the processes used to obtain them. It is divided into chapters on each major task. One of the primary functions of this report was to provide a recommendation as to which potential transmission projects should be considered priorities for future study, based upon information available today regarding the potential for renewable development. The conceptual transmission plan presented here evaluates the relative usefulness of potential lines for accessing and delivering renewable energy, under a limited set of assumptions. But all of theses findings are ill-relevant without the inclusion of Native American cultural resources and consultation. This leaves the environmental Impacts that are being addressed to be extremely varied.

Specifically what is left out is that it does not address the lack of defined research of sites to the development area. And it does not determine what impact this development would have on the Native American community ethnic values. With limitations of the preliminary conceptual plan understood, it is unclear as to the potential conclusions without the Native American consultation. The development of a transparent and objective methodology for evaluating the usefulness of lines to carry renewables is undetermined without the methodology for addressing Native American concerns. It does not provide information about the amount cost it would take place to mitigate development on a Native American Site. On-the-ground evaluation of permitting and project develop ability issues need the review and input from the local Native American groups to help identify and mitigate a resource in order to lesson its impact. This invaluable input from the communities will assist in the more accurate basis for estimating the development issues in those areas.

Lastly, the CREZ mapping revolves around identifying areas that can be most feasibly developed, considering resource quality, environmental concerns, proximity to existing transmission, distance to load centers, and capability of surrounding land uses to support this development. Unfortunately the environmental concern is not being addressed.

Therefore this process does not support active participation by a broad range of stakeholders especially those of environmental interest.

It is understood that the EWG evaluation cannot, and is not intended to represent the magnitude of environmental concern or impacts of projects which may be developed within a CREZ. However the numerical ratings that are intended only to indicate relative levels of concern and have been used for the limited purpose of comparing CREZs but they do not fully reflect the potential impact to cultural sites. This would greatly change the levels of concern and the purpose of comparing CREZs.

These gross values do not indicate the potential environmental concerns over cultural resources. Yes the focus is limited because the phase 1b was unable to identify a methodology for statewide data on Native American cultural sites. Truth is the EWG didn't use any statewide data on Native American cultural sites. The recommendation made by the RETI's Environmental Work Group (EWG) on unresolved issues and recommendations 1.2.6 of the phase 1b, was to collect statewide data on Native American sites and create a methodology for consideration of potential impacts on these sites by CREZ development. This was to be considered in the phase 2, but it has not.

This plan has NOT been developed using a transparent and objective methodology for evaluating conceptual transmission connections that combines renewable energy access and environmental considerations.

The Environmental concerns likely to be associated with construction of proposed facilities have not been identified.

The exclusion of potential transmission facilities on lands where development is prohibited by law or policy, and environmentally sensitive lands categorized in the RETI phase 1 work referred to these as Category 1 (Black) and Category 2 (Yellow) lands respectively do not include Native American **Cultural sites**.

3.2.1 Environmental, Cultural and Land Use Exclusions

Black & Veatch conformed to the recommendations of the Environmental Working Group on the impact of environmental, cultural and land use concerns on project identification. The Environmental Working Group's report discusses these considerations in depth. It defines Category 1 areas (cited in this report as "blackout areas"), Category 2 areas (cited in this report as "yellow areas"), and the proper treatment of Forest Service land, Native American lands, agricultural lands, and other considerations. (RETI Phase 1B – Economic Analysis of CREZ 3.0 Methodology and Assumptions)

This identification of Native American lands refers to federally recognized Tribes land bases. This does not address non-federal cultural properties and sites of sacredness.

This current methodology for excluding Native American cultural sites & non-federal cultural properties from inclusion of potential impacts grossly skews the cost-effectiveness of projects in the RETI conceptual transmission plan.

The overall impact to not addressing the Native American cultural sites and Native American Concerns will directly impact the benefit to cost analysis, the relative usefulness of lines and groups of lines will reduce the ratings, as well as transmission cost. The Phase's development can and will be delayed.

In order to achieve service dates the RETI plan depends heavily on avoiding permitting and litigation delays.

“Doing so is a major goal of RETI involvement in early-stage project conceptualization.” With out consultation the RETI plan opens the service dates to permitting and litigation delays. (RETI 2A)

The central task is to “identifying transmission facilities capable of delivering sufficient renewable energy to meet state goals, in ways that minimize economic cost and environmental impact.” The plan is designed to “integrate the perspectives and concerns of a wide variety of California stakeholders into a consensus recommendation for such transmission development.” However with out the Native American cultural sites included this impacts the environmental element greatly. Native American cultural sites are extremely important to California Native Americans and with out their input you exclude this portion of stakeholders. If this plan were to truly integrate the perspectives and concerns of a wide variety of California stakeholder it would sit down with Native Americans and consult.

“RETI’s Environmental Work Group (EWG) applied its collective knowledge of sensitive lands(*but none of the Statewide data on Native American cultural sites was used to make this determination as to what lands are sensitive to permitting issues*) and permitting issues to identify potential electrical connections that would likely face legal, mitigation, or public opposition challenges. It worked with the CPWG to find ways to re-route or remove affected electrical connections from consideration. Because of this screening, the Phase 2 preliminary conceptual plan may draw wider stakeholder support, and later, may result in projects able to be approved more quickly.

Further consultation with Native Americans to help Identify , prioritize, help create management practices and long term planning and monitoring will result in projects able to be approved more quickly.

The current make up of the RETI group has raised my curiosity as to where the authority lies in its recommendations. The use of Federal money would automatically require the use of several laws and policies to be enacted. I am no lawyer and do not know what exactly the structure of this RETI group would fall under but I would have to assume that the inclusion of several agencies would associate the requirements of policy conditions. I would believe that indirect jurisdiction over this undertaking would apply to any federal agency involved and thus this would then fall under all the regulatory context of cultural resource management.

In my basic understanding the responsibility of BLM falls under this projects regulations. As a listed permitting agency I believe that certain polices would need to be adhered to. My first question would be the lack of information available to help identify Native American cultural resources. At the very least the BLM should have access to some filing system that is readily available. As part of its own manual requires that it should Non-federal Cultural Resources on file:

“BLM Manual Rel. 8-72
Supersedes Rel. 8-38, 8-51 12/03/04

.08 Responsibility for Non-Federal Cultural Resources.

A. The BLM assures that its actions and authorizations are considered in terms of their effects on cultural resources located on non-Federal land. The extent of BLM's responsibility for identifying and protecting non-Federal cultural resources is limited by the degree to which BLM decisions determine or control the location of activities on non-Federal lands which could have effects on cultural resources. (See BLM Manual Section 8140.O6D.)

B. The BLM conducts, or causes to be conducted, the inventory and evaluation of cultural resources on non-Federal lands within the area potentially impacted by proposed land uses, whether initiated by BLM or in response to a land use application.

C. The BLM mitigates, or causes to be mitigated, adverse effects to non-Federal cultural properties that would result from land uses carried out by or authorized by BLM.

D. When mitigation involves data recovery, the artifacts, samples, and collections recovered from non-Federal land remain the property of the non-Federal landowner unless donated to the Federal Government. The United States must receive complete and true copies of the investigator's original field notes, maps, records of analyses, photographs, other data, and reports when mitigation work is conducted on non-Federal land on behalf of the Federal Government. Reports resulting from work on non-Federal land should be made available to the land owner.

E. Identification and/or mitigation of adverse effects may be required as a condition of a lease, permit, or license issued by BLM, whether Federal or non-Federal lands are involved.

Other requirements

8110 - IDENTIFYING AND EVALUATING CULTURAL RESOURCES – (Public)

.44 Consultation with Outside Parties

A. Consultation with SHPO. In accordance with the national Programmatic Agreement and the State's BLM-SHPO protocol, the Field Office manager should invite the SHPO to participate in developing or revising regional, local and project plans, with regard to cultural property evaluations, allocations to use categories (or revisions to such allocations), identification of objectives, and development of management actions. If evaluations and allocations are jointly agreed to, a major portion of future Section 106 consultation requirements will have been satisfied in advance of specific land use proposals. Evaluations and allocations should be consistent with research and preservation priorities identified in the SHPO's State Historic Preservation Plan and should consider assessments of significance in any historic contexts that have been developed.

B. Consultation with Tribes. Consultation with American Indian tribes and Alaska Native tribes during the inventory and evaluation information-gathering steps is essential for planning purposes and for subsequent compliance with FLPMA, AIRFA, NHPA, ARPA, NAGPRA, and Executive Order 13007. Involving tribal governments closely at this level of resource identification will greatly facilitate coordination and consultation at later stages of planning and project development. (See Manual Section 8100.08C1, Manual Section 8120 and Manual Handbook H-8120-1.)

I also can see that one would take these regulations to imply they are to be used in specific projects. This part of the responsibility of non-federal Cultural resources A,

“The extent of BLM's responsibility for identifying and protecting non-Federal cultural resources is limited by the degree to which BLM decisions determine or control the location of activities on non-Federal lands which could have effects on cultural resources. (See BLM Manual Section 8140.O6D.)”

The inclusion of BLM officials as part of the stakeholder steering committee members provides them with the ability and responsibility for identifying and protecting non-Federal cultural resources, their decisions and influence on this committee can determine or control the location of activities on non-federal lands which could have effects on cultural resources. Recall the intent of the RETI plan is to help expedite development and approval in ways to minimize environmental impacts. Thus it is in this the responsibility of the BLM and other federal agencies to minimize those impacts by Identifying and evaluating Cultural resources and consulting with Tribes and Native Americans during the inventory and evaluation information-gathering steps is essential for planning purposes and for subsequent compliance with FLPMA, AIRFA, NHPA, ARPA, NAGPRA, and Executive Order 13007.. (See BLM Manual Section 8110A & B)

36 CFR 800 implements Section 106 of NHPA. It defines the steps necessary to identify historic properties (those cultural resources listed in or eligible for listing in the NRHP), including consultation with federally-recognized Native American tribes to identify resources of concern to them; to determine whether or not they may be adversely affected by a proposed undertaking; and the process for eliminating, reducing, or mitigating the adverse effects. Resolution of adverse effects may require development of agreement documents between consulting and interested parties to an undertaking.

The National Environmental Policy Act of 1969 (NEPA), as amended (P.L. 91-190, 42 U.S.C. 4321-4347 et seq.) was enacted "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment." Section 101 (42 U.S.C. 4331 (b)) directs the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity, and variety of individual choice."

The BLM also recognizes the importance cultural resources through FLPMA (sometimes referred to as BLM's organic act) (PL 94-579, 90 Stat, 2743). FLPMA recognizes the following:

- Areas of Critical Environment Concern may be identified to protect and prevent irreparable damage to important historic, cultural or scenic values (43 U.S. C. 170).

The American Indian Religious Freedom Act (AIRFA) of 1978 (Public Law 95-341, 42 U.S.C. 2996 and 1996a) establishes the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions. The BLM has a responsibility to Native Americans to ensure compliance with this act.

The Programmatic Agreement Among the Bureau of Land Management, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers

Regarding the Manner in Which BLM Will Meet its Responsibilities Under the National Historic Preservation Act (BLM's national PA) defines how the BLM will carry out its legal mandates under Sections 106, 110, and 111 (a) of NHPA through the agreed upon mechanisms in the national PA

Section 106 of NHPA , as amended, and 36 CFR 800 must be complied with. The RETI plan must conduct a cultural resource analysis on the potential CREZ's identified which may lead to an on-the-ground inventory to see if any cultural resources are present that may be eligible for inclusion in the NRHP. This analysis is at the foundation of reducing the cost involved with On-the-ground evaluation and the permitting and project develop ability issues needed to help identify and mitigate a resource in order to lesson its impact. This invaluable input from the Native American communities will assist in the more accurate basis for estimating the development issues in those areas.

Native American Tribes and individuals must be consulted, and information must be requested that would assist in making sound judgments in management decisions as to the potential for development in CREZ locations.

The current momentum that is before this RETI plan is poised to allow local planning authorities to address Native American cultural resources issues with the weight of this RETI plan established leaves very little options for the mitigation measures Native Americans have access to help preserve what little resources are left. The pressures of a State wide plan on a small planning department supersede any real concern for mitigation measures or avoidance. They basically can't compete with a statewide plan.

As part of a stewardship responsibility the RETI plan and SSC members should include consultation with Native American people regarding cultural resources. This consultation should involve Native American people in the management of their ancestral resources. The current status quo is for agencies and organizations to ask Native American people to identify their cultural resources located on County lands and no suggestion for culturally appropriate management practices.

The current status quo for consultation involves sending out a notice requesting a meeting for scoping where comments are received. Yet consultation is a term used to describe a process by which Native American Peoples with traditional ties are identified and brought into discussions about cultural resources on the local agencies lands.

What is needed is the fundamental decision on the part of the RETI plan and SSC members to share some decision-making power with Native Americans. Identify, prioritize, Management Practice, Long-term Planning and Monitoring.

Identify -I ask that the Native American people are asked to share in the decision to identify resources that are in need of protection.

Prioritize -I ask that the Native American people are asked to share in the decision to prioritize which cultural resources will be protected first.

Management Practice- I ask that the Native American people are asked to share in the decision to select from among a variety of management practices that most appropriately protect the cultural resources in the context of other resource uses.

Long-term Planning & Monitoring-I ask that the Native American people are asked to share in the long-range planning and monitoring of theses cultural resources and lands that hold them.

To increase the quality of success the decision-making power must be shared. Participation without shared power is called Manipulation. When the decision-making power is even to the point that negotiation takes place, it is called a Partnership.

Partnership is a term used to describe the desired outcome of consultation relationships between Native American people and agencies and organizations. It requires shared power, mutual respect, and mechanisms for sustaining a long-term relationship. The establishment of Mutual trust, common knowledge base, a cultural resource management plan and a monitoring plan are the basis of this partnership.

I do have more specific comments on the information presented in the Phase2A document but until this first matter is addressed I will withhold those comments.

I thank you for allowing me to comment.

Best wishes, Frank Arredondo
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