

7. Response to Comments

Introduction

Public review of the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) occurred from August 12, 2019 through September 13, 2019. Eleven comment letters were received; these are listed in Table 7-1, Comments Received on the Draft IS/MND. The individual letters and CPUC's response to comments in the letters are provided in the following pages. Each letter has been assigned a unique alphanumeric label (A1 ...D1). Individual comments are indicated by a vertical line in the margin of the letter, indicating the extent of each comment and providing an identifying number for the comment (A1-1...D1-16). Responses to comments are provided following each comment letter. Where appropriate, the Draft IS/MND text has been edited for clarity. Changes in the Draft IS/MND text are shown in tracked changes format (underline and ~~strikeout~~).

The revised Draft IS/MND text, including this Response to Comments chapter, constitute the Final IS/MND.

Table 7-1. Comments Received on the Draft IS/MND

Comment Number	Date	From
A - Public Agencies		
A1	7/10/19	California Department of Transportation, District 8
A2	9/6/19	U.S. Bureau of Reclamation, Lower Colorado Regional Office
A3	9/6/19	California Department of Water Resources
A4	9/10/19	California State Lands Commission
A5	9/4/19	Nevada Department of Water Resources
A6	9/4/19	Nevada Division of State Lands
A7	9/13/19	California Public Utilities Commission, Public Advocates Office
B - Groups & Organizations & Companies		
B1	9/12/19	Natural Resources Defense Council
B2	9/13/19	Wild Tree Foundation
C - Tribal Governments		
C1	9/13/19	Colorado River Indian Tribes
D - The Applicant		
D1	9/13/19	Southern California Edison

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Comment Set A1 – California Department of Transportation, District 8**DEPARTMENT OF TRANSPORTATION**

DISTRICT 8
 PLANNING (MS 725)
 464 WEST 4th STREET, 6th FLOOR
 SAN BERNARDINO, CA 92401-1400
 PHONE (909) 383-4557
 FAX (909) 383-5936
 TTY 711
 www.dot.ca.gov/dist8



*Serious drought.
 Help save water!*

July 10, 2019

**File: 08-SBd-18-PM 79.824
 08-SBd-40-PM 37.137
 08-SBd-95-PM 71.57
 08-SBd-247-PM 52.202**

Billie Blanchard
 California Public Utilities Commission
 505 Van Ness Avenue
 San Francisco, CA 94102

Subject: Eldorado-Lugo-Mohave Series Capacitator Project – Notice of Application for a Permit to Construct dated May 2, 2018

Dear Ms. Blanchard:

The California Department of Transportation (Caltrans) has reviewed the Notice of Application for a Permit to Construct for Eldorado-Lugo-Mohave Series Capacitator Project (project). The project is located at various locations within San Bernardino County. The proposed project consists of the relocation, replacement, or modification of new and existing transmission, sub-transmission, and distribution facilities.

As the owner and operator of the State Highway System (SHS), it is our responsibility to coordinate and consult with local jurisdictions when proposed development may impact our facilities. As the responsible agency under the California Environmental Quality Act, it is also our responsibility to make recommendations to offset associated impacts with the proposed project. Although the project is under the jurisdiction of the California Public Utilities Commission, due to the project's potential impact to the State facilities, it is also subject to the policies and regulations that govern the SHS.

We have reviewed the Notice of Application for a Permit to Construct. We have no comments at this time.

A1-1

Please continue to keep us informed of the project and other future updates, which could potentially impact the SHS and interfacing transportation facilities. If you have any questions regarding this letter, please contact Ricky Rivers at (909) 806-3298 or myself at (909) 383-3923.

Comment Set A1 – California Department of Transportation, District 8 (cont.)

Ms. Blanchard
July 10, 2019
Page 2

Sincerely,

ROSA F. CLARK
Office Chief
Local Development - Intergovernmental Review (LD-IGR)

DRAFT

Responses to Comment Set A1 – California Department of Transportation, District 8

A1-1 **The commenter points out that the ELM Project will be subject to policies and regulations governing the State Highway System.**

This comment is noted and has been provided to SCE.

Comment Set A2 – Bureau of Reclamation, Lower Colorado Regional Office



United States Department of the Interior

BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

IN REPLY REFER TO:
LC-2620
2.1.4.17

SEP 06 2019

VIA ELECTRONIC MAIL

Ms. Billie Blanchard
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 92311
elm@aspeneg.com

Subject: Southern California Edison's (SCE) Eldorado-Lugo-Mohave Series Capacitor Project IS/MND (Application A.18-05-007) – Notice of Intent to Adopt, and Notice of Availability – IS-MND

Thank you for your memorandum dated August 2019 (Due Date September 13, 2019)

The Bureau of Reclamation (Reclamation) has received California Public Utilities Commission's Notice of Intent to Adopt and Notice of Availability for the Eldorado-Lugo-Mohave (ELM)/ Initial Study (IS)/Mitigated Negative Declaration (MND). In accordance with the National Environmental Policy Act, Reclamation is participating as a cooperating agency on the Environmental Assessment being prepared by the Bureau of Land Management (BLM) for the ELM project. Reclamation is participating because existing ELM transmission lines cross Reclamation land in Nevada. We have reviewed the ELM IS/MND and offer the following comments.

Section 1.5, Paragraph 2, Page 1-4

This paragraph states "...Therefore, the mitigation measures adopted as a condition of project approval and agreed to by the Applicant shall be implemented throughout the project except where federal agencies or agencies outside California with jurisdiction over lands or resources through which the project passes (collectively, "Other Agencies") impose equivalent or more effective measures, in which case such equivalent or more effective measures will be implemented." This statement appears to conflict with information given in Section 3.2.2, Paragraph 4 which states: "...The CPUC would also require that for actions on federal lands within California, SCE must implement the mitigation measures in this IS or equivalent or more effective measures, recognizing that the federal approval bodies may impose the same mitigation measures as identified in this document, or may instead formulate their own mitigation requirements." The information in Section 1.5 refers to federal agencies or agencies outside of California, while the information in Section 3.2.2 only refers to federal lands within California. Please clarify whether the equivalent or more effective measures requirement applies to federal lands outside of California.

A2-1

Comment Set A2 – Bureau of Reclamation, Lower Colorado Regional Office (cont.)

2

Section 4.3, Property Description, Paragraph 1, Page 4-9

We recommend that you add information about the Right of Use that SCE has requested from Reclamation. The transmission line on Reclamation land was originally authorized by the BLM; that authorization has expired. As part of the proposed action, Reclamation will directly authorize SCE to operate, maintain, and eventually decommission the components of the transmission line on Reclamation land. This includes removing existing overhead ground wire and installing overhead optical ground wire on approximately 0.60 linear miles of existing transmission line. Information about the width of the right-of-way on Reclamation land and other details can be obtained from SCE.

A2-2

Section 4.6 Right-of Way Requirements, Paragraph 1, Page 4.27

We recommend that information about the Use Authorization that SCE has requested from Reclamation be included in this section. See our comment on Section 4.3 above.

A2-3

Section 5.11 Land Use and Planning, Federal Land Use, Bureau of Reclamation, Page 5-259

This paragraph incorrectly states that local offices may implement Reclamation Manual Directives and Standards at their discretion. All requirements in the Reclamation Manual are mandatory for Reclamation. We recommend this paragraph be revised as follows: "Reclamation manages lands in accordance with applicable laws, regulations, orders, policies, and directives and standards. The Reclamation Manual, Directives and Standards, LND 08-01 - Land Use Authorizations, provides procedures for issuing use authorization documents for the use of Reclamation land, facilities, and waterbodies."

A2-4

Thank you for the opportunity to review the ELM IS/MND. Please maintain Reclamation on your mailing list for the project. Future correspondence should be sent to: Bureau of Reclamation, Attn: Ms. Mary J. Reece, Chief, Resource Management Office, LC-2000, P.O. Box 61470, Boulder City, NV 89006.

A2-5

If you have questions, please contact Ms. Faye Streier, National Environmental Policy Act Coordinator, at 702-293-8132 or fstreier@usbr.gov.

Sincerely,



Mary J. Reece, Chief
Resource Management Office

Responses to Comment Set A2 – Bureau of Reclamation, Lower Colorado Regional Office

A2-1 **The Bureau of Reclamation raises a potential conflict between statements in the Draft IS/MND in Section 1.5 (paragraph 2, page 1-4) and in Section 3.2.2 (paragraph 4) regarding the implementation of project mitigation measures on federal lands within California and lands outside of California and requests clarification.**

As described in Section 3.2.2, CEQA does not apply to the parts of the Proposed Project in Nevada because they are subject to environmental review under NEPA (which is being prepared by the Bureau of Land Management) and because the Public Utilities Commission of Nevada already completed project review under Nevada's Utility Environmental Protection Act (and found the project exempt therefrom).

Accordingly, if the Proposed Project is approved by the CPUC, the CPUC would impose as conditions of project approval and would monitor implementation of the mitigation measures in the IS/MND pertaining to actions on non-federal lands within California. The CPUC would also require that for actions on federal lands within California, SCE must implement the mitigation measures in this IS/MND or equivalent or more effective measures, recognizing that the federal approval bodies may impose the same mitigation measures as identified in the IS/MND, or may instead formulate their own mitigation measures as part of the NEPA review. The CPUC will ensure the implementation of mitigation measures over federal land within California by securing appropriate verification that the mitigation measures imposed by the CPUC are implemented or that the mitigation measures imposed by the federal agencies are (i) equivalent or more effective and (ii) implemented. In sum, Section 3.2.2 provides an accurate description of the CPUC's role as CEQA lead agency and its scope of CEQA review. To ensure clarity and to avoid any confusion, the second paragraph in Section 1.5 has been deleted.

A2-2 **The Bureau of Reclamation recommends the inclusion of information regarding the project right of way on Reclamation land.**

Draft IS/MND page 4-9 has been modified as follows:

Property Description. *The majority of the Proposed Project would be constructed within existing SCE Rights-of-Way (ROWs), existing public ROWs where SCE has existing franchise agreements, or ROWs on federal lands that SCE is in the process of renewing. SCE's previous ROW Grant for lands currently and formerly under BLM administration has expired. The utility would need to renew the ROW Grant for lands still under BLM jurisdiction, ~~and~~ obtain a Special Use Permit from NPS on lands formerly under BLM jurisdiction but now administered by the NPS as the Mojave National Preserve, and obtain a Use Authorization from Reclamation that will authorize SCE to operate, maintain, and eventually decommission the components of SCE's facilities located on Reclamation-administered lands.*

Text has been added at Draft IS/MND page 4-10:

...ROW would be required for a distribution and telecommunication link between the Newberry Springs and Ludlow capacitor facilities. On the Mojave National Preserve, an NPS Special Use Permit would be needed for the ROW and a separate Special Use Permit would be required for construction. For the Special Use Permit for the ROW the widths would be the same as on BLM-administered land: 160 feet on the Lugo-Mohave Transmission Line and 180 feet on the Eldorado-Lugo Transmission Line.¹ In addition, SCE would require an additional 20-foot ROW width adjacent

¹ In the Mojave National Preserve, the only work on the Eldorado-Lugo 500 kV Transmission Line under the Proposed Project would be the raising of one tower adjacent to the Union Pacific Railroad line that demarks a portion of the western boundary of the Preserve. However, the Special Use Permit would be for the entire Eldorado-Lugo transmission line, as the original BLM ROW Grant has expired.

to the 160-foot Lugo-Mohave Transmission Line ROW within the Mojave National Preserve at the Kelbaker and Lanfair repeater sites to accommodate distribution lines between the nearby roads and the repeater sites. No additional ROW on Reclamation land would be required for capacitor or repeater facilities. Applications for the ROW Grant, ~~and~~ Special Use Permits, and Use Authorization have been submitted by SCE to the BLM, ~~and~~ the NPS, and Reclamation, respectively.

A2-3 **The commenter recommends inclusion of Use Authorization information.**

Right of way information regarding Bureau of Reclamation lands has been added at Draft IS/MND page 4-28. It reads:

A portion of the project would also be on Bureau of Reclamation lands where the previously authorized BLM ROW grant has expired and a new Use Authorization is required for the ROW. The ROW on 0.6-acres of Reclamation land would be unchanged from its current width of 160 feet.

A2-4 **This commenter notes that implementation of Bureau of Reclamation Manual Directives and Standards are mandatory.**

The text at Draft IS/MND page 5-259 has been revised to reflect this:

The Bureau of Reclamation Manual Directives and Standards provide policies for BOR-managed lands; ~~however, local offices may implement these standards at their discretion.~~ Land Use Authorizations Directives and Standards provides procedures for issuing use authorization documents for use of BOR lands.

A2-5 **The CPUC's project mailing list includes Mary Reece, Chief, Resource Management Office.**

The Chief, Resource Management Office is on the project mailing list.

Comment Set A3 – California Department of Water Resources

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



September 6, 2019

VIA EMAIL

Billie Blanchard
Energy Division
California Public Utilities Commission
300 Capitol Mall, Room 4-21
Sacramento, California 95814

RE; SCH# 2019089033 SCE Eldorado-Lugo-Mohave Project (ELM Project)
Mitigated Negative Declaration

Dear Ms. Blanchard:

The California Department of Water Resources' Division of Operations and Maintenance has reviewed the proposed Southern California Edison Eldorado-Lugo-Mohave Series Capacitor Project and has the following comments.

The proposed project activities include modifying existing series capacitors and related facilities within the Lugo Substation and surrounding area. The proposed installation of optical ground wire and other improvements near the Lugo Substation are within the State Water Project (SWP) East Branch Aqueduct's right-of-way near Milepost 399.56 to the south of the city of Hesperia. The proposed project's use of any SWP right-of-way for any purpose requires an encroachment permit issued by DWR. Information regarding SWP encroachment permits can be found at: <https://water.ca.gov/Work-With-Us/Real-Estate/Encroachment-Permits>

A3-1

Please provide DWR with a copy of any subsequent project environmental or other documentation when it becomes available for public review by sending the document to:

A3-2

Leroy Ellinghouse, Chief
State Water Project Right-of-Way Management Section
Division of Operations and Maintenance
California Department of Water Resources
1416 Ninth Street, Room 641-1
Sacramento, California 95814

Comment Set A3 – California Department of Water Resources (cont.)

If you have any questions, please contact Jonathan Canuela at (916) 653-5095 or Leroy Ellinghouse at (916) 653-7168.

Sincerely,

A handwritten signature in blue ink that reads "Nancy Finch". The signature is written in a cursive style.

Nancy Finch, Senior Attorney
Office of the Chief Counsel
Department of Water Resources
1416 Ninth Street, Room 1118
Sacramento, California 95814
Phone (916) 653-6840
Fax (916) 653-0952
Nancy.Finch@water.ca.gov

Responses to Comment Set A3 – California Department of Water Resources

A3-1 **The commenter notes that any use of State Water Project right-of-way would require an encroachment permit.**

This comment has been conveyed to SCE.

A3-2 **The commenter requests that any subsequent project documentation issued for public review be provided to Leroy Ellinghouse, Chief, State Water Project Right-of-Way Management Section.**

Mr. Ellinghouse has been added to the CPUC's project mailing list.

Comment Set A4 – California State Lands Commission

STATE OF CALIFORNIA

GAVIN NEWSOM, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890

September 10, 2019

File Ref: SCH #2019089033

Billie Blanchard, Project Manager
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920

VIA REGULAR & ELECTRONIC MAIL: elm@aspeneg.com

Subject: Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Southern California Edison (SCE) Eldorado-Lugo-Mohave Series Capacitor Project, San Bernardino County

Dear Ms. Blanchard:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the SCE Eldorado-Lugo-Mohave Series Capacitor Project (Project), which is being prepared by the California Public Utilities Commission (CPUC). The CPUC, as the regulatory agency, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq). The Commission may act as a responsible agency because of its duty as the trustee of school lands to monitor projects that could directly or indirectly impact these lands.

Commission Jurisdiction

In 1853, the United States Congress granted to California nearly 5.5 million acres of land for the specific purpose of supporting public schools. In 1984, the State Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund (SLBF) and appointed the Commission as its trustee (Pub. Resources Code, § 8700 et seq.). The Act directed the Commission to develop school lands into a permanent and productive resource base for revenue generating purposes. The Commission manages approximately 462,830 acres of school lands still held in fee ownership by the State and the reserved mineral interests on an additional 790,000 acres where the surfaces estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code, § 6217.5).

Comment Set A4 – California State Lands Commission (cont.)

Billie Blanchard

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September 10, 2019

The proposed Project involves a transmission line that crosses multiple school land parcels under the jurisdiction of the Commission. SCE has two right-of-way leases with the Commission at various locations along this transmission line (PRC 6346.2 and PRC 4024.2). These locations include portions of Section 36, Township 6 North, Range 1 East; Section 16, Township 6 North, Range 3 East; Section 36, Township 10 North, Range 13 East; Section 36, Township 10 North, Range 14 East; Section 36, Township 10 North, Range 15 East; and Section 36, Township 12 North, Range 20 East, SBM. Depending upon the nature and extent of the proposed improvements at these specific locations, SCE may be required to apply to the Commission for a lease amendment to one or both leases. SCE should consult with Commission staff to clarify these issues and determine whether it is necessary to obtain any lease amendments before commencing activities on these parcels (see Public Land Management Specialist contact information at end of letter).

Project Description

SCE proposes several improvements to its existing high-voltage transmission system to meet the agency's objectives and needs as follows:

- Meet the target in-service date of June 2021 to support the requirements as outlined and required by the California Renewables Portfolio Standard (RPS) including 33% by 2020 and the increased requirement of 60% by 2030 and ensure compliance with CPUC General Order 95 and the National Electrical Safety Code.
- Continue to provide safe and reliable electrical service.
- Maintain system reliability within the Los Angeles Basin as well as the entire California Independent System Operator grid, which is defined as the Electrical Needs Area (ENA).
- Increase power flow through the existing Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines for the purpose of increasing the amount of power delivered from California, Nevada, and Arizona to the ENA through the SCE system in an effort to meet requirements associated with the California RPS.
- Reduce the SCE's current flow into the LADWP transmission system for the purpose of mitigating power overloads under abnormal system conditions.

From the Project Description and Project area map, Commission staff understands that the Project would include the following components within the Commission's jurisdiction:

- Project Component 4. Replaces approximately 235 miles of existing overhead ground wire with new optical ground wire between Eldorado, Mohave, and Lugo substations.
- Project Component 5. Other upgrades including underground telecommunications facilities, modifying existing series capacitors, and installing or replacing equipment at existing substations.

Comment Set A4 – California State Lands Commission (cont.)

Billie Blanchard

Page 3

September 10, 2019

Environmental Review

Commission staff requests that the CPUC consider the following comments on the Project's IS/MND.

General Comments

1. In regard to mitigation, the IS/MND text should be consistent with the Mitigation Monitoring Program (MMP) presented in Section 6. Throughout the IS/MND, various Applicant-Proposed Measures (APMs) are presented, even though the majority of those APMs are noted as having been "superseded" by Mitigation Measures (MMs). Although it is fine to acknowledge the Proponent's contribution to the resulting MMs, presenting the superseded APMs in the document is confusing to the reader. If the APMs have been "superseded," by definition they have been replaced or removed. CPUC appears to have added the MMs to improve upon the APMs and this amended text is reflected in the MMP.

A4-1

Commission staff suggests that a statement directing the reader to the MMP for the complete text of each MM precede the discussion of MMs in each *Project Impacts and Mitigation Measures* section, or preferably only the complete MMs (as presented in the MMP) be included in each *Project Impacts and Mitigation Measures* section, to better assure the public's clear understanding of the Project.

Cultural Resources

2. MM CR-4: Inadvertent Discovery of Cultural or Tribal Cultural Resources. The IS/MND should also mention that the title to all archaeological sites and historic or cultural resources on lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the CPUC consult with Staff Attorney Jamie Garrett, whose contact information is provided below, should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the IS/MND's MMP, "The final disposition of archaeological, historical, and paleontological resources recovered on state land under the jurisdiction of the California State Lands Commission must be approved by the Commission."
3. MM CR-7: Inadvertent Discovery of Human Remains on State Owned Lands or Private Property. MM CR-7 states that "SCE shall immediately contact the Medical Examiner at the County Coroner's office, BLM, CPUC as well as representatives of consulting tribes." If human remains are discovered on state-owned land, the Commission must also be notified. Therefore, Commission staff requests that the following statement be added to MM CR-7, "Should human remains be discovered on state land, SCE shall also notify the California State Lands Commission within 24 hours of the discovery."

A4-2

A4-3

Comment Set A4 – California State Lands Commission (cont.)

Billie Blanchard

Page 4

September 10, 2019

Thank you for the opportunity to comment on the IS/MND for the Project. As a trustee and potential responsible agency, the Commission may need to rely on the adopted IS/MND for the issuance of any amended lease as specified above and, therefore, we request that you consider our comments prior to adoption of the IS/MND.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, MMP, Notice of Determination, and approving resolution when they become available. Please refer questions concerning the environmental review to Christine Day, Environmental Scientist, at (916) 562-0027 or christine.day@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Jim Porter, Public Land Management Specialist, at (916) 574-1865 or jim.porter@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Day, Commission
J. Porter, Commission
P. Huber, Commission
J. Garrett, Commission

Responses to Comment Set A4 – California State Lands Commission

A4-1 **The commenter questions the inclusion in the IS/MND of Applicant Proposed Measures (APMs) proposed by SCE as part of the project when the APMs were superseded by Mitigation Measures in the IS/MND.**

The text of all proposed APMs is included because they were part of the original project proposal. For clarity, where APMs are superseded by Mitigation Measures, the reason(s) for their being superseded are noted. Often the reason for supersession is that the APM did not fully address an identified impact or was insufficiently clear. In many cases, the gist of an APM was included in a Mitigation Measure, which was written to provide more clarity and/or address impacts not fully addressed in the original APM. Rather than have both an APM and a Mitigation Measure address particular impacts, which would be confusing and possibly lead to conflicting interpretations, it was determined that an APM would be superseded in its entirety by a Mitigation Measure.

The commenter suggests that the Project Impacts and Mitigation Measures section of each analysis should include a reference to the Mitigation Monitoring Program (provided in Chapter 6) rather than include the complete text of the Mitigation Measures in each respective resource discussion.

Chapter 5 of the IS/MND analyzes impacts to 20 different categories of resources. The analysis in the IS/MND is organized by resource and each section includes the text of all Mitigation Measures applicable to that resource's impacts. Chapter 6 provides a compilation of the Mitigation Measures across all 20 resource topics. Having the full text of mitigation measures appear in their respective resource discussions allows the reader to understand the connection between impacts and the proposed mitigation without having to resort to looking at a different chapter for the Mitigation Measure text. Chapter 6, Mitigation Monitoring Plan, is designed to facilitate eventual environmental monitoring of the project, should it be approved, by having all applicable measures listed in one place in the document. No changes are needed as a result of this comment.

A4-2 **The commenter notes that title to all cultural resources on lands of California is vested in the state and under the jurisdiction of California State Land Commission and requests a revision of the text to reflect their ownership.**

Mitigation Measure CR-4 at Draft IS/MND page 5-146 and in Chapter 6 has been modified as follows to include CSLC:

...If previously undiscovered resources are identified during project activities all activities within 100 feet (30 meters) of the resource shall halt. The onsite construction supervisor and SCE shall be notified. SCE will notify the CPUC and BLM of the discovery. The CSLC will also be notified if the discovery is on state land. The monitoring team shall flag-off the area. SCE and its cultural resource specialist will coordinate with the CPUC, BLM, NPS, CSLC, and tribal representatives as appropriate, on avoidance measures.

... If the resource is determined not to be significant, work may recommence in the area. If the resource is determined significant work shall remain halted within 100 feet (30 meters) of the area of the find, SCE shall consult with the BLM, CPUC, CSLC and representatives of the consulting tribes as appropriate regarding methods to ensure that no adverse effect and no substantial adverse change would occur to the significance of the resource. ... Work in the area may commence upon completion of treatment, as approved by the BLM, and CPUC, and CSLC when appropriate.

A4-3 **The commenter notes that if human remains are found on state land, the California State Land Commission must be notified.**

Draft IS/MND pages 5-148 and 5-149 and Chapter 6 have been modified as follows:

...In the event that human remains or suspected human remains are identified, SCE shall comply with California law (Health and Safety Code Section 7050.5; PRC Sections 5097.94, 5097.98, and 5097.99). The area shall be flagged off and all project activities within 200 feet (60 meters) of the find shall immediately cease. The CPUC-approved Cultural Resources Specialist and SCE shall be immediately notified. SCE shall immediately contact the Medical Examiner at the County Coroner's office, BLM, CPUC as well as representatives of consulting tribes. The CSLC will be notified if the remains are identified on state land.

Comment Set A5 – Nevada Department of Water Resources

AGENCY COMMENTS:

Nevada State Clearinghouse

Department of Conservation and Natural Resources

901 South Stewart Street, Suite 5003

Carson City, NV 89701

775-684-2723

<http://clearinghouse.nv.gov>

www.lands.nv.gov

DATE: September 4, 2019

Division of Water Resources

Nevada SAI # E2020-043

Project: NOI SCE Eldorado Lugo Mohave Series Capacitor - Clark County

_____ No comment on this project Proposal supported as written

AGENCY COMMENTS:

General:

All waters of the State belong to the public and may be appropriated for beneficial use pursuant to the provisions of Nevada Revised Statutes (NRS) Chapters 533 and 534 and not otherwise.

No use of any water required in support of this project, from any source, is allowed without the benefit of a permit or waiver issued by the Nevada Division of Water Resources.

Water for Construction Projects

Ensure that any water used on a project for any use shall be provided by an established utility or under permit or temporary change application or waiver issued by the State Engineer's Office with a manner of use acceptable for suggested projects water needs.

Wells and Boreholes

All water sources used for exploration drilling, dust control, road construction, or for any other purpose must be permitted by the State Engineer.

A5-1

Responses to Comment Set A5 – Nevada Department of Water Resources

A5-1 **The Nevada State Clearinghouse provided comments from the Division of Water Resources that note that water used on a project is to be provided by an established utility or under a permit or waiver.**

This comment is noted and has been provided to SCE.

Comment Set A6 – Nevada Division of State Lands

RE: Nevada State Clearinghouse Notice E2020-43 (E2020-43 NOI SCE Eldorado Lugo Mohave Series Capacitor - Clark County)

Deann M. McKay

Wed 9/4/2019 2:35 PM

To: NevadaClearinghouse <NevadaClearinghouse@lands.nv.gov>;

Good Afternoon Andre,

Should any of the proposed utilities in the attached Capacitor project IS/MND (Application A.18-05-007) cross over land owned by the State of Nevada, an application along with supporting documentation will need to be submitted to the Nevada Division of State Lands.

The application can be found here:

http://lands.nv.gov/uploads/documents/APPLICATION_FORM_StateLands2019Fillable.pdf

Thank you for the opportunity to review and comment.

Deann McKay

Deann McKay
Supervisory Land Agent
 901 S. Stewart Street, Suite 5003
 Carson City, NV 89701-5246

p: 775.684.2729

f: 775.684.2721

dmckay@lands.nv.gov

🕒 Mon-Fri 7:30am-4:30pm



From: NevadaClearinghouse@lands.nv.gov <NevadaClearinghouse@lands.nv.gov>

Sent: Friday, August 30, 2019 4:51 PM

To: Alan Jenne <ajenne@ndow.org>; clytle@lincolnnv.com; Brad Hardenbrook <bhrdnbrk@ndow.org>; James Morefield <jdmore@heritage.nv.gov>; Mark Freese <markfreese@ndow.org>; Tod.oppennborn@nellis.af.mil; zip.upham@navy.mil; Shimi.Mathew@nellis.af.mil; craig.mortimore@wildnevada.org; Jennifer Crandell <jcrandell@crc.nv.gov>; 99abw.ccy@nellis.af.mil; whenderson@nvleague.org; ddavis@unr.edu; munteanj@unr.edu; jprice@unr.edu; Rebecca Palmer <rlpalmer@shpo.nv.gov>; srupert@govmail.state.nv.us; dmouat@dri.edu; Alisanne Maffei <awmaffei@admin.nv.gov>; mison@dot.state.nv.us; Warren Turkett <wturkett@crc.nv.gov>; Michael Visher <mvisher@minerals.nv.gov>; Jim R. Balderson <JBALDERSON@ndep.nv.gov>; Lindsey Lesmeister <llesmeister@ndow.org>; Richard M. Perry <rmperry@minerals.nv.gov>; jered.mcdonald@lcb.state.nv.us; Moira Kolada <mkolada@ndow.org>; rwarnold@hotmail.com; bob@intermountainrange.com; JEnglish@washoecounty.us; Valerie King <vking@ndep.nv.gov>; robert.turner.3@us.af.mil; Robert.rule@navy.mil; Alysa.Keller@lcb.state.nv.us; Cayenne Engel <cengel@forestry.nv.gov>; larry.m.cruz.civ@mail.mil; charles.r.king104.civ@mail.mil; Matt Maples <mmaples@ndow.org>; Tracy Kipke

Comment Set A6 – Nevada Division of State Lands (cont.)

<tkipke@ndow.org>; Jennifer Newmark <jnewmark@ndow.org>; Kristin Szabo <kszabo@heritage.nv.gov>; Paul.Ryan@nv.usda.gov; Shirley DeCrona <sdecrona@parks.nv.gov>; LStory@ag.nv.gov; Anna Higgins <ahiggins@forestry.nv.gov>; Gary Reese <greese@forestry.nv.gov>; Ian Kono <ikono@parks.nv.gov>; RBonner@dot.state.nv.us; mlanham@landercountynv.org; Meghan Brown <m.brown@agri.nv.gov>; lgroffman@dot.state.nv.us; tmueller@dot.state.nv.us; kverre@dot.state.nv.us; mcosta@dot.state.nv.us; Kacey KC <kaceykc@forestry.nv.gov>; Birgit Widegren <bwidegren@ndep.nv.gov>; Kim Rigdon <krigdon@ndep.nv.gov>; KHaukohl@dot.state.nv.us; Greg Lovato <glovato@ndep.nv.gov>; Peggy Roefer <proefer@crc.nv.gov>; andrea.randall@snwa.com; cerquiaga@trcp.org; eric Miskow <emiskow@heritage.nv.gov>; esmboc@gmail.com; Janice Keillor <jkeillor@parks.nv.gov>; Seth W. Johnson <swjohnson@puc.nv.gov>; Kelly McGowan <kmcgowan@sagebrushco.nv.gov>; brian.r.hunsaker.mil@mail.mil; Garrett Wake <gwake@minerals.nv.gov>; Jasmine Kleiber <jkleiber@ndow.org>; tim@rubaldandassociates.com; mmiller@fallonnevada.gov; Caleb McAdoo <cmcadoo@ndow.org>; genevieve_skora@fws.gov; aevans@nvnaco.org; Bart Chambers <bchambers@dps.state.nv.us>; Christina Wilson <cswilson@dps.state.nv.us>; Ellery Stahler <estahler@lands.nv.gov>; Greg.e.mckay@gmail.com; tara_vogel@fws.gov; Clifford Banuelos <cbanuelos@ndep.nv.gov>; Mark Enders <menders@ndow.org>; Jenni Jeffers <jjeffers@ndow.org>; Kenny Pirkle <kpirkle@ndow.org>; lee_carranza@fws.gov; chad_mellison@fws.gov; Jason Salisbury <jsalisbury@ndow.org>; ann.bedlion@navy.mil; donna.withers@navy.mil; Kris Urquhart <kurquhart@ndow.org>; susan_e_cooper@fws.gov; Dan Huser <dhuser@sagebrushco.nv.gov>; Bettina Scherer <bscherer@dcnr.nv.gov>; Sandy Quilici <squllici@dcnr.nv.gov>; Samantha Thompson <SThompson@dcnr.nv.gov>; Catherine Erskine <c.erskine@dcnr.nv.gov>; John Christopherson <jchrist@forestry.nv.gov>; Ryan S. Shane <rshane@forestry.nv.gov>; Chris Thorson <cthorsen@water.nv.gov>; EQuaglieri@carson.org; tyler@nevadadc.org; kincheloe@carson.org; Deann M. McKay <dmckay@lands.nv.gov>; cgiesinger@washoecounty.us; Zach E. Ormsby <zormsby@parks.nv.gov>; Kelly Thomas <kelly.thomas@ndep.nv.gov>; Sarah Hills <shills@ndep.nv.gov>; Stephanie Simpson <s.simpson@ndep.nv.gov>; Micheline Fairbank <mfairbank@water.nv.gov>; Andre Emme <aemme@lands.nv.gov>; Samatha R. Essig <sessig@parks.nv.gov>; David Bobzien <dbobzien@energy.nv.gov>; Kelli Anderson <kanderson@dps.state.nv.us>; Meredith Gosejohan <mgosejohan@lands.nv.gov>; SERC <SERC@dps.state.nv.us>; Karen Beckley <KBeckley@health.nv.gov>; bthompson@dot.state.nv.us; Richard Ewell <rewell@tax.state.nv.us>; Cynthia Turiczek <cturiczek@puc.nv.gov>; Bob J. Halstead <bhalstead@nuc.state.nv.us>; hdrake@tax.state.nv.us; Lowell Price <lprice@minerals.nv.gov>; mstewart@lcb.state.nv.us; sscholley@lcb.state.nv.us; Adam Roney <aroney@puc.nv.gov>

Subject: Nevada State Clearinghouse Notice E2020-43 (E2020-43 NOI SCE Eldorado Lugo Mohave Series Capacitor - Clark County)

NEVADA STATE CLEARINGHOUSE

Department of Conservation and Natural Resources, Division of State Lands
901 S. Stewart St., Ste. 5003, Carson City, Nevada 89701-5246
(775) 684-2723 Fax (775) 684-2721

TRANSMISSION DATE: 08/30/2019

U.S. Bureau of Land Management

Nevada State Clearinghouse Notice E2020-43

Project: E2020-43 NOI SCE Eldorado Lugo Mohave Series Capacitor - Clark County

Follow the link below to find information concerning the above-mentioned project for your review and comment.

[E2020-43](http://clearinghouse.nv.gov/public/Notice/2020/E2020-43.pdf) - <http://clearinghouse.nv.gov/public/Notice/2020/E2020-43.pdf>

- Please evaluate this project's effects on your agency's plans and programs and any other issues that

Comment Set A6 – Nevada Division of State Lands (cont.)

you are aware of that might be pertinent to applicable laws and regulations.

- Please reply directly from this e-mail and attach your comments.
- **Please submit your comments no later than Thursday September 12th, 2019.**

[Clearinghouse project archive](#)

Questions? Andre Emme, Program Manager, (775) 684-2733 or nevadaclearinghouse@state.nv.us

___ No comment on this project ___ Proposal supported as written

AGENCY COMMENTS:

Signature:

Date:

Requested By:

Distribution:

- 99ABW Nellis
- Department of Conservation & Natural Resources
- Intermountain Range
Adam Roney - Public Utilities Commission
Alan Jenne - Department of Wildlife, Elko
Alisanne Maffei - Department of Administration
Alysa Keller - Legislative Counsel Bureau
Amanda Evans - NACO
Andre Emme - Nevada Division of State Lands
Andrea Randall - Southern Nevada Water Authority
Ann Bedlion - NAS Fallon
Anna Higgins - Nevada Division of Forestry
Bart Chambers - State Fire Marshall Office
Bettina Scherer - Conservation Districts
Bill Thompson - Department of Transportation, Aviation
Birgit Henson - NDEP
Bob Turner - Nellis AFB
Caleb McAdoo - NDOW

Comment Set A6 – Nevada Division of State Lands (cont.)

Carl Erquiaga - Theodore Roosevelt Conservation Partnership
Cathy Erskine - Dept of Conservation and Natural Resources
Cayenne Engel - Nevada Division of Forestry
Chad Giesinger - Washoe County
Chad Mellison - U.S. Fish and Wildlife Service
Chelsea Kincheloe - Carson City Parks, Recreation and Open Spaces Department
Chris Thorson - Division of Water Resources
Christina Wilson - Fire Marshal Office
Christina Wilson - State Fire Marshall Office
Chuck King - Hawthorne Army Depot
Clifford Banuelos - Inter-Tribal Council of Nevada, Inc.
Cory Lytle - Lincoln County
Craig Mortimore - Wild Nevada
Cynthia Turiczek - Public Utilities Commission
D. Bradford Hardenbrook - Department of Wildlife, Las Vegas
Dan Huser - Sagebrush Ecosystem Technical Team
David Bobzien - Nevada State Energy Office
David David - UNR Bureau of Mines
David Mouat - Desert Research Institute
Deann McKay - State Land Office
Donna Withers - NAS Fallon
Ed Ryan - Smith and Mason Valleys Conservation District
Eddy Quaglieri P.E. - Carson City Public Works Department
Ellery Stahler - Nevada Division of State Lands
Eric Miskow - Nevada Natural Heritage Program
Garrett Wake - Nevada Division of Minerals
Gary Reese - Nevada Division of Forestry
Genevieve A. Skora - US Fish and Wildlife Service
Greg Lovato - NDEP
Greg McKay - NV OHV Commission
Heather Drake - Nevada Department of Taxation, Local Government, Centrally Assessed Property
Ian Kono - Nevada Division of Water Resources
J Crandell - Colorado River Commission of Nevada
James D. Morefield - Natural Heritage Program
Janice Keillor - Nevada Division of State Parks
Jasmine Kleiber - NDOW
Jason Salisbury - Nevada Department of Wildlife
Jenni Jeffers - Nevada Department of Wildlife
Jennifer Newmark - NDOW - Wildlife Diversity
Jered McDonald - Legislative Counsel Bureau
Jim Balderson - NDEP
Jim English - Washoe County
John Christopherson - Nevada Division of Forestry
John Muntean - UNR Bureau of Mines
Jon Price - UNR Bureau of Mines
Kacey KC - Nevada Division of Forestry
Karen Beckley - State Health Division
Kelli Anderson - Division of Emergency Management
Kelly Eagan - Esmeralda County
Kelly McGowan - Sagebrush Ecosystem Technical Team
Kelly Thomas - NDEP
Kenny Pirkle - Nevada Department of Wildlife
Kevin Verre - NDOT
Kim Borgzinner - NDEP

Comment Set A6 – Nevada Division of State Lands (cont.)

Kris Urquhart - Nevada Department of Wildlife
Kristin Szabo - Nevada Natural Heritage Program
Kurt Haukohl - NDOT
Larry Cruz - Hawthorne Army Depot
Lee Ann Carranza - U.S. Fish and Wildlife Service
Lee Bonner - NDOT
Lindsey Lesmeister - NDOW
Lori M. Story - Attorney General
Louis Groffman - Nevada Department of Transportation
Lowell Price - Commission on Minerals
Major Brian Hunsaker - Nevada National Guard
Mark Costa - NDOT
Mark Enders - NDOW
Mark Freese - Department of Wildlife
Matt Maples - NDOW
Meghan Brown - Dept of Agriculture
Meredith Gosejohan - Tahoe Resource Team - Division of State Lands
Michael J. Stewart - Legislative Counsel Bureau
Michael Visher - Division of Minerals
Micheline Fairbank - Nevada Division of Water Water Resources
Mike Miller - City of Fallon Public Works
Mitch Ison - NDOT
Miteshell Lanham - Lander County
Maira Kolada - NDOW
Peggy Roefer - Colorado River Commission
Rebecca Palmer - State Historic Preservation Office
Rich Perry - Nevada Division of Minerals
Richard Arnold - Nevada Indian Commission
Robert Halstead - Nevada Agency for Nuclear Project
Robert Rule - NAS Fallon
Ryan Shane - Nevada Division of Forestry
Samantha R. Essig -
Samantha Thompson - Dept of Conservation and Natural Resources
Sandy Quilici - Department of Conservation & Natural Resources
Sarah Hills - NDEP
Seth Johnson - Public Utilities Commission
Sherry Rupert - Indian Commission
Shimi Mathew - Nellis AFB
Shirley DeCrona - Nevada Division of State Parks
Stephanie Simpson - NDEP
Susan Cooper - US Fish and Wildlife Service
Susan Scholley - Legislative Counsel Bureau
Tara Vogel - US Fish and Wildlife Service
Terry Rubald - Nevada Department of Taxation, Local Government, Centrally Assessed Property
Tim Mueller - Department of Transportation
Tim Rubald -
Tod Oppenborn - Nellis Air Force Base
Tracy Kipke - NDOW
Tyler Klimas - Washington Office
Valerie King - NDEP
Warren Turkett - Colorado River Commission of Nevada
Wes Henderson - Nevada League of Cities
Zach Ormsby -
Zip Upham - NAS Fallon

Responses to Comment Set A6 – Nevada Division of State Lands

A6-1 **The Nevada State Clearinghouse provided a list of agencies to which notice of the project was distributed.**

No response to this comment is required.

Comment Set A7 – CPUC Public Advocates Office



Public Advocates Office
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, California 94102
Tel: 415-703-2381
Fax: 415-703-2057
<http://publicadvocates.cpuc.ca.gov>

9/13/2019

Billie Blanchard
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920
elm@aspeneg.com

Subject: **Comments of the Public Advocates Office on the Initial Study/Mitigated Negative Declaration for Southern California Edison Company's Eldorado-Lugo-Mohave Series Capacitor Project – Application (A.) 18-05-007**

INTRODUCTION

The Public Advocates Office hereby submits these comments on the Initial Study/Mitigated Negative Declaration (MND) for Southern California Edison Company's (SCE's) Eldorado-Lugo-Mohave Series Capacitor Project (ELM). Based on the California Public Utilities Commission's (Commission) Energy Division's Initial Study, the Commission intends to adopt an MND under the California Environmental Quality Act (CEQA). The Public Advocates Office has reviewed the MND and recommends the following modifications to the MND:

- A specific in-service date should not be a project objective; and
- "Planned generation resources" should be more thoroughly defined to identify the resources for which the proponents are seeking to establish full capacity deliverability status (FCDS).¹

¹ Full capacity deliverability status provides resources the opportunity to generate more revenue through other revenue streams such as resource adequacy credits.

Comment Set A7 – CPUC Public Advocates Office (cont.)

DISCUSSION

The Public Advocates Office recommends the following modifications to the MND:

A. A SPECIFIC IN-SERVICE DATE SHOULD NOT BE A PROJECT OBJECTIVE

Section 1.1 and Section 4.2.2 of the MND, both titled “Project Objectives,” state that it is an objective to “meet the target in-service date of June 2021 in an effort to support the requirements as outlined and required by the California Renewables Portfolio Standard (RPS). . . .”² However, this appears to be a self-imposed deadline. The project proponent (SCE) claims the purpose of its requested online date is to help meet the 33% renewable target, but California's three large Investor Owned Utilities (IOUs) collectively already exceed this target because they serve 36% of their 2017 retail electricity sales with renewable power.³ Furthermore, Decision 19-06-023⁴ provides the latest requirements for RPS procurement and in the case of SCE, its 2021 target is 35.75% of retail load,⁵ which it has already surpassed with 36.5% of its retail sales coming from RPS eligible resources in 2018.⁶ Moreover, SCE states that it forecasts a net long position through the end of Compliance Period 6 (2028-2030) and beyond, and that SCE currently does not have a need for additional RPS-eligible energy.⁷ This highlights that this project is not needed to meet SCE’s 2021 RPS target.

It is a matter for the Commission to decide the need for, and relative contribution of, this project to SCE’s RPS requirement. Therefore, the MND should not tie the hands of the Commission by imposing an in-service date. If the Commission should decide that the project is necessary, it will prescribe the necessary in-service date.

Another reason why a time objective is inappropriate is that the Initial Study, upon which the MND is based, has no aspect of time for the project that negatively affects the environment. Nor

A7-1

² MND, pp. 1-1 and 4-7.

³ See <https://www.cpuc.ca.gov/rps/>.

⁴ Decision in Rulemaking 18-07-003: To Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program.

⁵ D.19-06-023, pg. 7.

⁶ Table IV-1: Percentage of SCE’s Retail Sales from RPS-Eligible Resources, Southern California Edison Company’s 2019 Draft Renewables Portfolio Standard Procurement Plan (SCE 2019 Draft RPS Plan), p. 9.

⁷ SCE 2019 Draft RPS Plan, p. 14.

Comment Set A7 – CPUC Public Advocates Office (cont.)

was the review of environmental effects predicated on the timing of the project.⁸ Therefore, for all the above reasons, the language “meet the target in-service date of June 2021 in an effort to...” should be removed from the MND.

A7-1
cont.

B. “PLANNED GENERATION RESOURCES” SHOULD BE MORE THOROUGHLY DEFINED TO IDENTIFY THE RESOURCES THAT ARE SEEKING FULL CAPACITY DELIVERABILITY STATUS

A7-2

Section 4.2.2 of the MND, "Project Objectives" states that it is an objective to "integrate planned generation resources in order for those facilities to become fully deliverable."⁹ However, it is unclear what is meant by the use of the word “planned.” “Planned” could mean projects with existing agreements, executed interconnection agreements, projects at an earlier stage of the California Independent System Operator’s (CAISO’s) interconnection process, or even projects that are in development. Table 2-1 of SCE’s Proponent’s Environmental Assessment (PEA) includes projects at various stages of development, from parked¹⁰ to undergoing study to executing interconnection agreements.¹¹ Clearly stating at which point in the CAISO’s interconnection process a project enters into the justification for the Eldorado-Lugo-Mohave Series Capacitor project will allow the Commission’s permitting process to progress with more specific, quantifiable information and preemptively resolve any potential confusion. Therefore, the scope of projects that ELM aims to help in achieving FCDS should be narrowed by more thoroughly defining “planned generation resources” in the MND.

⁸ “Mitigated negative declaration” means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment...” 14 CCR § 15369.5.

⁹ MND, p. 4-8.

¹⁰ As used by SCE in its PEA, this term means that a project is stalled or on hold within the interconnection queue.

¹¹ Table 2-1: Interconnection Requests that Require Completion of the Proposed Project, Proponent’s Environmental Assessment.

Comment Set A7 – CPUC Public Advocates Office (cont.)

CONCLUSION

For the above reasons, the Public Advocates Office recommends that the MND be modified to (1) not include specific in-service dates in the project objectives, and (2) establish a more specific definition for “planned generation resources”.

Please contact Fidel Leon Diaz at Fidel.Leon.Diaz@cpuc.ca.gov or (415) 703-2043 with any questions regarding these comments.

/s/ Chloe Lukins

Chloe Lukins
Program Manager

Responses to Comment Set A7 – CPUC Public Advocates Office

A7-1 The Draft IS/MND shows the Project Objectives set forth by SCE (in IS/MND Section 1.1 and Section 4.2.2), which presently include a target in-service date of June 2021. The Public Advocates Office recommends that a specific in-service date should not be a part of the Project Objectives.

In general, the project objectives are important to the CEQA analysis for allowing proper development and consideration of project alternatives, if necessary to avoid or substantially lessen significant impacts to the environment. For the Proposed Project, the Draft IS/MND demonstrates that all project-related environmental impacts would be less than significant or reduced to a less than significant level with the incorporation of feasible mitigation measures (Section 1.2). As such, no EIR or consideration of project alternatives is required. The Draft IS/MND simply provides as information the objectives that SCE hopes to satisfy by undertaking the Proposed Project. There would be no need to redefine or reinterpret SCE's objectives to suit decision-making by the CPUC. The inclusion or exclusion of an in-service date objective in the IS/MND does not affect the environmental analysis or conclusions regarding environmental impacts.

The commenter also claims that the IS/MND “has no aspect of time” and is not “predicated on the timing of the project.”

In these claims, the comment implicitly recognizes that SCE's targeted in-service date is not yet a certainty. For example, in 2018, SCE originally filed the application for this project with the expectation of commencing operation in June 2020 (page C-1 of A.18-05-007, filed May 2, 2018). Delays are not uncommon for transmission projects. The commenter is generally correct that the timing of the project would not alter its environmental impacts as analyzed in the IS/MND. However, select topics could be somewhat affected if SCE's proposed construction schedule (Section 4.7.9) were substantially delayed. For instance, the analysis shows that all construction-phase activities would occur within a planned duration of construction to span 2020 and 2021, and impacts to air quality are analyzed for emissions that would be emitted by the equipment fleets that exist at that time (in Section 5.3.5 and Appendix B, Air Quality/Greenhouse Gas Emissions Data Tables). Dramatic changes in the project schedule could alter the time and nature of the emissions and the fleets causing the emissions.

The impact analysis for Energy in Section 5.6.6 (Draft IS/MND page 5-156) notes that the project objectives center on delivering renewable energy to California's end-users of electricity, and that the Proposed Project would be consistent with California's plans and prior studies to accommodate greater access to renewable resources (Draft IS/MND page 5-157).

The CPUC will address the question of whether the Proposed Project serves a present or future convenience and necessity through a review of the testimony in the general proceeding (A.18-05-007) for this project, which may include consideration of the RPS program requirements facing SCE and other load serving entities.

A7-2 The comment concerns clarifying terminology in SCE's Project Objectives (in Section 1.1 and Section 4.2.2). The commenter claims that use of the word “planned” is unclear in SCE's Project Objective to “integrate planned generation resources.” The commenter notes that some generation projects will be further along in the process of development than others. The commenter requests “more thoroughly defining ‘planned generation resources’ in the MND” to help clarify the point at which a project may enter into the justification for the Proposed Project.

Because the word “planned” has no special definition within the State CEQA Guidelines or the associated Public Resources Code, the environmental analysis follows a plain English meaning by treating “planned generation” as being designed or “decided on and arranged in advance.” The analysis recognizes that generation facilities, including “future generation facilities” not yet built, but planned, may use the Proposed Project to transmit electricity (Draft IS/MND page 3-4, Section 3.2.3). The meaning

of what is “planned” needs no further refining or narrowing for the environmental analysis because it broadly captures any projects that might eventually use the Proposed Project facilities.

The impact analysis for Energy in Section 5.6.6 (Draft IS/MND page 5-157) points to prior CAISO approvals for the Proposed Project made in the 2012-2013 and 2013-2014 cycles of the CAISO Transmission Plan. The CAISO approvals were for the Proposed Project to provide deliverability of renewable resources, including certain specific generation facilities that sought to interconnect and also renewable resource portfolios of generic generating capacity in broad geographic zones. The portfolios were formally transmitted to CAISO by CPUC and California Energy Commission (CEC) as a representation of the most likely path of future renewable development. The future generation facilities are speculative (Draft IS/MND page 3-4, Section 3.2.3) because they could include specific proposed generation projects seeking to interconnect or other resources fitting the location and size characteristics of the portfolios developed by the CPUC and CEC for the annual CAISO Transmission Plan. The Draft IS/MND also notes that such facilities will themselves be subject to full CEQA and NEPA review processes (Draft IS/MND page 3-4, Section 3.2.3).

Issues surrounding the question of whether the Proposed Project serves a present or future convenience and necessity will be addressed by the CPUC within the testimony of the general proceeding (A.18-05-007) for this project.

Comment Set B1 – Natural Resources Defense Council

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison
Company Eldorado-Lugo-Mohave Series
Capacitor Project

Application A.18-05-007
(Submitted May 2, 2018)

**COMMENTS OF THE NATURAL RESOURCES COUNCIL ON THE
INITIAL STUDY/ MITIGATED NEGATIVE DECLARATION FOR THE
EL DORADO-LUGO-MOHAVE SERIES CAPACITOR PROJECT**

September 13, 2019

Carl Zichella
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
415-875-6100
czichella@nrdc.org

Comment Set B1 – Natural Resources Defense Council (cont.)

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison
Company Eldorado-Lugo-Mohave
Series Capacitor Project

Application A.18-05-007

Submitted May 2, 2018

**COMMENTS OF THE NATURAL RESOURCES COUNCIL ON THE
INITIAL STUDY/ MITIGATED NEGATIVE DECLARATION (ISMND) FOR
THE EL DORADO-LUGO-MOHAVE SERIES CAPACITOR PROJECT**

The Natural Resources Defense Council respectfully submits the following comments in support of the adoption of the IS/ MND for the E Dorado-Lugo-Mohave Series Conductor Project (ELM).

I. DESCRIPTION OF NRDC

NRDC is a non-profit membership organization with more than 95,000 California members who have an interest in receiving affordable energy services while reducing the environmental impact of California’s energy consumption. We have participated in numerous California Public Utilities Commission proceedings over the last 40 years with a particular focus on representing our California members’ interest in the utility industry’s delivery of cost-effective energy efficiency programs, renewable energy resources, and other sustainable energy alternatives.

II. STATEMENT OF INTEREST

NRDC has long advocated for the more efficient use of the electrical delivery system to rapidly and reliably integrate the renewable energy resources needed to meet California’s critical renewable energy and climate goals. We have strongly supported efforts to upgrade and modernize existing transmission resources to avoid having to build unnecessary rights of way (ROW) and to size new transmission resources to meet present and future needs. The ELM project will accomplish these goals by increasing the capacity of the existing transmission line,

Comment Set B1 – Natural Resources Defense Council (cont.)

increasing the ability to import renewable generation from neighboring resource areas, and integrating new transmission communications technology without substantially changing the existing footprint of the transmission line. The ELM project as described in the IS/MND will defer the need to construct and permit a new transmission line and ROW across environmentally sensitive California lands. It will increase reliability in both the Southern California Edison and LADWP service territories by improving power flows and reducing congestion between their systems and in the California ISO (CAISO system). NRDC strongly supports the ELM project as described in the IS/MND.

Specifically, the project would:

- Construct two 500 kV mid-line series capacitors near Interstate 40, approximately 18 miles southeast of Newberry Springs.
- Construct three new fiber optic repeater facilities within the Lugo-Mohave Transmission ROW.
- Address 16 potential overhead clearance discrepancies at 14 locations.
- Replace approximately 235 miles of existing overhead ground wire (OHGW) with new optical ground wire (OPGW) between Eldorado, Mohave, and Lugo substations.
- Include other upgrades including underground telecommunications facilities, modifying existing series capacitors, installing or replacing equipment at existing substations.
- Install cathodic protection on nearby pipelines as needed.

II. ADEQUACY OF THE IS/MND

NRDC believes the mitigation measures as proposed by the applicant and augmented by the CPUC staff are sufficient to warrant an MND for the project. We commend both the applicant and the CPUC reviewing staff for comprehensively assessing and proposing mitigations to avoid and compensate for environmental damage these upgrades might cause.

NRDC concurs with the IS/ MND finding that: “Implementation of the mitigation measures, listed below (in the IS/ MND) by resource topic, would avoid or reduce to less than significant levels all potentially significant impacts identified in the Initial Study.”¹

¹ The full text of mitigation measures also is provided in the resource analysis sections of

B1-1

Comment Set B1 – Natural Resources Defense Council (cont.)

NRDC notes that Edison has agreed to incorporate all mitigation measures proposed by the CPUC staff into their project plan.

**B1-1
cont.**

IV. CONCLUSION

NRDC's urges that the IS/MND for the ELM project be accepted as adequate for meeting the purposes of CEQA for the reasons stated above, NRDC respectfully requests the Commission so approve it.

September 13, 2019

Respectfully submitted,



Carl Zichella, Senior Policy Advocate
Natural Resources Defense Council
111 Sutter St., 21st Floor
San Francisco, CA 94104
(415) 875-6100
czichella@nrdc.org

Section 5, under Environmental Impacts and Mitigation Measures, as well as in Section 6. Mitigation Monitoring Plan.) In some instances, a mitigation measure for one resource is also applicable to a different resource and is cross referenced in the text.

Responses to Comment Set B1 – Natural Resources Defense Council

B1-1 The Natural Resources Defense Council (NRDC) strongly supports the ELM project and expresses its belief that the mitigation measures are sufficient to warrant an MND. NRDC also concurs with the IS/MND findings that impacts would be avoided or reduced to a less than significant level.

Comment noted. No response is required.

Comment Set B2 – Wild Tree Foundation



September 13, 2019

Billie Blanchard
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104

RE: A.18-05-007 Eldorado-Lugo-Mohave Series Capacitor Project, California Public Utilities Commission A.18-06-007 Draft Mitigated Negative Declaration

SENT VIA ELECTRONIC MAIL TO ELM@ASPENEG.COM

Dear Billie Blanchard:

These comments are submitted on behalf of the Wild Tree Foundation regarding the Draft Mitigated Negative Declaration (“DMND”) for the Eldorado-Lugo-Mohave Series Capacitor Project, California Public Utilities Commission (“Commission”) A.18-06-007 (“Project”).

Wild Tree Foundation (“Wild Tree”) is a 501(c)(3) non-profit organization dedicated to protection of our environment, climate, and wildlife. Wild Tree advocates that our future is dependent upon a transition away from fossil fueled and utility-scale electricity generation reliant upon lengthy transmission from for-profit, investor owned utilities to a system based upon local, distributed, publicly and cooperatively owned renewable resources. Wild Tree intervenes in Commission proceedings to further the interests of our environment, climate, wildlife, and ratepayers that are concerned about their protection. In furtherance of these interests, Wild Tree advocates for transparency, public participation, and compliance with the Rule of Law in government decision-making and against corruption by government agencies and officials and regulated entities.

Wild Tree is concerned about the significant impacts to sensitive and protected wildlife and habitat, sensitive and protected plant species and communities, desert pavement, and air

April Rose Maurath Sommer, Executive & Legal Director
April@WildTree.org ☎ (925) 310-6070 📍 1547 Palos Verdes Mall #196, Walnut Creek, CA 94597
www.WildTree.org

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quality of the Project. In particular, this project would result in the take of federally and state endangered desert tortoises (*Gopherus agassizii*) as construction would occur where tortoises live and mate and would disturb large areas of desert tortoise designated critical habitat including parts of the Mojave National Preserve. Wild Tree is especially concerned about the harm this project will cause to the designated critical, in particular the Western Mojave population where the tortoises face extreme pressures and population losses. The Project will adversely modify and destroy federally designated critical habitat for the desert tortoise, a species listed as threatened under federal Endangered Species Act (“ESA”), and is thus adverse to the ESA.

This is a project which is not needed and should not be approved. The DMND provides no alternatives analysis. Such an analysis would show that a non-project alternatives is the preferable alternative because the project objectives are flawed and do not support a need for the Project. Nonetheless, at the very least, the project must comply with the clear directive of California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq. that an Environmental Impact Review (“EIR”) be prepared for this Project because it will have potential significant impacts which are not mitigated by the DMND’s woefully inadequate proposed “mitigation” measures that do not actually serve to alter the project in any way or to mitigate significant impacts. The DMND also fails to address cumulative impacts and growth-inducing impact.

The DMND fails to account for significant impact as a result of cumulative impacts and the growth inducing aspect of the Project. An EIR is needed to provide the required analysis of these significant impacts.

A. The Project Objectives Do Not Support a Need

The DMND claims that the Project would meet an objective of “Meet the target in-service date of June 2021 in an effort to support the requirements as outlined and required by the California Renewables Portfolio Standard (RPS)¹ including 33% by 2020 and the increased requirement of 60% by 2030.” (DMND at p 1-1.) The claim that this project is needed to meet RPS 2020 requirements ignores the fact that SCE has already exceeded its 2020 RPS requirement and that the Commission has determined in the current Long Term Procurement Proceeding that SCE requires no procurement through 2030 and that no out of state resources need be procured through

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2030. The project objective that relies upon “the entire California Independent System Operator (CAISO) grid, which is defined as the Electrical Needs Area (ENA)” is outrageous. There is no precedent for defining the ENA as the entire state and for good reason; almost any project based upon a statewide ENA could argue a need based upon some far flung local reliability need. The claimed need to address any flow into LADWP has already been addressed by LADWP upgrades and SCE has no grounds under which it can justify un-realized “flow overloads under abnormal system conditions” especially where those abnormal system conditions can be addressed by load shedding. The project objective to “continue to provide safe and reliable electrical service” is so general as to be meaningless. There is no evidence put forth in the DMDN that safety and reliability will in any way be enhanced by this Project or that a no project alternative would not also be safe and reliable.

B. There are Significant Impacts Identified in the DMND and An EIR Is Thus Required

1. An EIR Is Required Where There Is Substantial Evidence In The Whole Record Supporting A Fair Argument That A Project May Have A Significant Effect On The Environment

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This Project requires the preparation of an Environmental Impact Review (“EIR”) because there are significant impacts; a mitigated negative declaration is insufficient under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq. “The foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*The Pocket Protectors v. City of Sacramento* (2004) 21 Cal. Rptr. 3d 791, 926 quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) The California Courts have long adhered to the proposition that, “‘It is, of course, too late to argue for a grudging, miserly reading of CEQA.’” (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274.)” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.)

The California Courts “have repeatedly recognized that the EIR is the ‘heart of CEQA.’” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d at p. 392; see also

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Guidelines, § 15003, subd. (a)¹.) The purpose of an EIR is to inform the public and decision-makers of the environmental consequences of their decisions *before* they are made. “Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d at p. 392; *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at p. 564.)

“With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project ‘may have a significant effect on the environment.’” (*The Pocket Protectors v. City of Sacramento, supra*, 21 Cal. Rptr. 3d at 926-28 citing Pub. Resources Code, §§ 21100, 21151, 21080, 21082.2; Guidelines, §§ 15002, subd. (f)(1), (2), 15063; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) “CEQA requires a governmental agency [to] prepare an environmental impact report (EIR) whenever it considers approval of a proposed project that ‘*may* have a *significant* effect on the environment.’ (§ 21100, italics added.) (*Quail Botanical Gardens v. City of Encinitas* (1994) 35 Cal. Rptr. 2d 470, 1601.) “‘May’ means a reasonable possibility. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905 citing (Pub. Resources Code, §§ 21082.2, subd. (a), 21100, 21151, subd. (a).)

A negative declaration may be used if there is no substantial evidence a project may have a significant effect on the environment or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant. (Pub. Resources Code, §§ 21080, subd. (c), 21064.) “However, the Supreme Court has recognized that CEQA requires the preparation of an EIR ‘whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.’” (*No Oil, Inc. v. City of Los Angeles, supra* 13 Cal.3d at p. 75; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.) “Thus, if substantial evidence in the record supports a ‘fair argument’ significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified.” (*Quail Botanical Gardens v. City of Encinita, supra*, 35 Cal. Rptr. 2d at p. 1601-2; See also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 49 Cal. Rptr. 2d 494, 616-17.)

¹ All references to Guidelines are to the state CEQA Guidelines, which implement the provisions of CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.) The Guidelines state: “These Guidelines are binding on all public agencies in California.” (Guidelines, § 15000.)

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Where there is substantial evidence in the whole record supporting a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR, “even though it may also be presented with other substantial evidence that the project will not have a significant effect.” (Pub. Resources Code, § 21151, subd. (a); Guidelines, § 15064, subd. (f)(1), (2); *No Oil, supra*, 13 Cal.3d at p. 75; *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1109; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112.) “Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines, § 15384, subd. (a).) Substantial evidence “shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (Guidelines, § 15384, subd. (b).)

The fair argument standard is a “low threshold” test for requiring the preparation of an EIR. (*No Oil, Inc. v. City of Los Angeles, supra*, 13 Cal.3d at p. 84; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland, supra*, 12 Cal.App.4th at p. 905; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881.) “It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, *with a preference for resolving doubts in favor of environmental review.*” (*The Pocket Protectors v. City of Sacramento, supra*, 21 Cal. Rptr. 3d at p. 928 citing *Architectural Heritage Assn. v. County of Monterey, supra*, 122 Cal.App.4th at p. 1110; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 42 Cal.App.4th at pp. 617-618; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, supra* 29 Cal.App.4th at pp. 1602-1603.)

Under the fair argument standard, “deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” (*Sierra Club v. County of Sonoma* (1992) 6 Cal App 4th 1307, 1318; Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. (*Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402.)

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2. An EIR is Required Where There is a Potential Impact on Endangered, Rare, or Threatened Species

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The California Supreme Court has made it clear that a “potential substantial impact on endangered, rare or threatened species is per se significant.” (*Cit. for Resp. Growth v. City* (2007) 40 Cal. 4th 412, 449 *citing* CEQA Guidelines, § 15065, subd. (a)(1).) Pursuant to Guidelines section 15380 and the California Department of Fish and Wildlife, Special Animals List, Species of Special Concern are considered rare and must be considered during CEQA review (California Department of Fish and Wildlife, Natural Diversity Database Special Animals List (August 2019), available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406&inline> .) The Department explains:

SSCs should be considered during the environmental review process. The California Environmental Quality Act (CEQA; California Public Resources Code §§ 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from "projects" in the State. Section 15380 of the CEQA Guidelines clearly indicates that species of special concern should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein.

Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an Environmental Impact Report to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

(California Department of Fish and Wildlife, *Species of Special Concern*, <https://www.wildlife.ca.gov/Conservation/SSC#394871319-how-are-sscs-addressed-under-the-california-environmental-quality-act>, accessed September 13, 2019.)

Species that are listed as BLM Sensitive Species also meet the Guidelines Section 15380 definition of rare as either “although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in the Federal Endangered Species Act.” (Guidelines section 15380, subd. (b)(2), *see also* subd. (d) (“A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the

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species can be shown to meet the criteria in subdivision (b).”) Species are designated as BLM Sensitive Species using the following criteria, which precisely correlate with the section 15380 definition of rare:

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1. There is information that a species has recently undergone, is undergoing, or is predicted to undergo a downward trend such that the viability of the species or a distinct population segment of the species is at risk across all or a significant portion of the species range, or

2. The species depends on ecological refugia or specialized or unique habitats on BLM-administered lands, and there is evidence that such areas are threatened with alteration such that the continued viability of the species in that area would be at risk.

(United States Bureau of Land Management, Manual 6840, the Special Status Species Management Manual for the Bureau of Land Management, Rel.6-125 (2008). subd. (2)(a).)

3. **The Project May have a significant effect on the environment and thus requires an EIR**

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By the DMND’s own words, there are significant impacts from this Project. As the DMND states:

The Proposed Project has the potential to temporarily and permanently affect sensitive natural communities, special-status plant and wildlife species, wildlife population and movement patterns, and jurisdictional waters. The project would temporarily disturb approximately 375 acres that would be restored and permanently occupy approximately 7 acres spread over 5 locations (2 series capacitor sites; 3 repeater sites). Cumulative impacts to biological resources could occur as a result of increased ground-disturbing activities by multiple cumulative scenario projects. These cumulative activities could increase the disruption of normal animal breeding, foraging, and migration behavior, the removal of suitable habitat for multiple special-status plant and wildlife species, and the degradation of jurisdictional water features.

(DMND at p. 5-412)

The proposed mitigations in regards to biological resources do not fully mitigate these impacts and are not proposed as project revisions. “A Mitigated Negative Declaration (MND) is a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment but the effects now pose no significant effect on the environment because the project was revised. The revisions to the project plans must mitigate the harmful effects to the environment and there must be no substantial evidence supporting that the revised project will have a negative effect on the environment.” (Public Resources Code, §21064.5.)

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There have been no revisions to the project plans in the DMND. The proposed biological resources mitigation measures were all effectively proposed by the applicant. The measures in regards to wildlife are especially ill-conceived as these consist of vague instructions to conduct surveys and avoidance. Conducting surveys is not mitigation – this is work that should be done to inform the EIS. Surveying does not serve in any way to protect special status species, it serves to provide information upon which actual mitigation or project denial should be based. The proposed mitigation measures regarding avoidance are so lacking in detail for most species that the feasibility, enforceability, and effectiveness cannot be ensured. For example, as discussed further below the entire mitigation proposed for the Mojave fringe-toed lizard is survey and monitoring and the mitigation proposed for desert tortoise is not enforceable by the Commission.

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a. **The Desert Tortoise (*Gopherus Agassizi*), A State And Federally Protected Endangered Species Will Suffer Significant Impacts**

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Desert Tortoise Ecology

The desert tortoise, until recently thought to be a single species, is a large, herbivorous reptile occurring in the deserts of California, Arizona, Nevada, Utah, and Sonora and Sinaloa, Mexico. Recent research has identified three distinct species - the Agassiz's desert tortoise (*Gopherus agassizi*) that lives in California, southern Nevada and southwestern Utah, Morafka's desert tortoise (*G. morafkai*) that lives in Arizona and Sonora, Mexico and most recently, Evgood's desert tortoise (*G. evgoodei*) that resides in Sinaloa, Mexico. Agassiz's desert tortoise is the listed population and the affected species by the Project. Ideal habitat for Agassiz's desert tortoise includes areas of creosote bush scrub with high perennial plant diversity, high ephemeral plant production, annual precipitation levels of two to eight inches, and soils that support burrows. The species is most active in spring and early summer when annual plants are available for forage. Although desert tortoises are also active during the warm fall months and sporadically after summer rain storms, they spend most of the remainder of the year in burrows, protected from predators and excessive heat and cold.

Desert tortoises are long-lived and do not reach sexual maturity until they are 15 to 20 years old. Once they reach sexual maturity, females produce only one to three clutches of eggs per year and only in years when adequate food and water are available. Most clutches contain

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three to seven eggs. Although young desert tortoise survival rate estimates vary, research indicates that, at most, approximately twenty percent survive their first three years of life and only two percent of desert tortoises survive to sexual maturity.

While desert tortoises will eat a variety of plants, climatic factors associated with desert environments often limit food availability. Non-native plants that have invaded their habitat do not provide adequate nutrition to tortoises which rely on protein-rich plants like wildflowers. Because of their diminutive size and high energy requirements, young tortoises are particularly reliant on small, protein-rich native plants. Relative to young desert tortoises, adults require less protein and may access larger plants, thereby increasing the range of acceptable forage species available to adults.

Due to a precipitous decline in desert tortoise populations throughout the species' range, FWS published an emergency rule listing the desert tortoise as endangered in 1989. (54 Fed. Reg. 32326.) The desert tortoise was also listed in 1989 under the California Endangered Species Act. The Mojave Desert distinct population segment (“DPS”) of the desert tortoise, including all Agassiz’s desert tortoises in California as well as southern Nevada and southwestern Utah, was listed as “threatened” in 1990. (55 Fed. Reg. 12178.) Critical habitat was designated in 1994. (59 Fed. Reg. 5820.)

A study published in 2007 shows significant divergence between various populations within the listed DPS of the desert tortoise. (*See* Murphy, Robert W., Berry, Kristin H., Edwards, Taylor, and McLuckie, Ann M., “A Genetic Assessment of the Recovery Units for the Mojave Population of the Desert Tortoise, *Gopherus agassizii*,” *Chelonian Conservation and Biology* 2007, 6(2): 229-251.) Although scientists and FWS have in the past recognized some level of distinctness between desert tortoise populations based on habitat use, behavior, and other factors, this new information provides specific evidence of genetic divergence between these populations.

Most importantly, Murphy *et al.* found that tortoise populations in the West Mojave Desert are significantly distinct from other populations, including those in closest proximity, such as the Eastern Mojave, the Northeastern Mojave, and Eastern Colorado populations. They also found that the West Mojave population could be further distinguished into three subgroups. Given the extent of this genetic distinctness within the West Mojave population, genetic distinctness must be kept intact in order to maintain local adaptations to environmental

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conditions.

U.S Fish and Wildlife Service published a Recovery Plan in 1994 for the Mojave population of the desert tortoise, and revised that Recovery Plan in 2011. (See U.S. Fish and Wildlife Service 2011. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassazii*). Pgs 246. Available at http://www.fws.gov/Nevada/desert_tortoise/documents/recovery_plan/RRP_Mojave_Desert_TortoiseMay2011.pdf.) Both the original and updated Recovery Plan recognize a distinct West Mojave Recovery Unit. One goal of the Revised Recovery Plan includes “Maintain self-sustaining populations of desert tortoises within each recovery unit into the future.” The unabated ongoing declines in the West Mojave recovery unit clearly are not meeting the Recovery plan goal, despite recovery actions being identified for over twenty years.

The research paper that initially established two different tortoise species - Agassiz’s desert tortoise and Morafka’s desert tortoise - effectively collapsed the range of the Agassiz’s desert tortoise to only 30% of its original range, with 70% inhabited by the more widespread Morafka’s desert tortoise. That same paper suggests that with the now limited range and drastic declines in the population, the Agassiz’s desert tortoise might be endangered instead of threatened. (See Robert W. Murphy, Kristin H. Berry, Taylor Edwards, Alan E. Leviton, Amy Lathrop, and J. Daren Riedle 2011. The dazed and confused identity of Agassiz’s land tortoise, *Gopherus agassizii* (Testudines, Testudinidae) with the description of a new species, and its consequences for conservation. ZooKeys 113: 39–71 available at <http://zookeys.pensoft.net/articles.php?id=2586>.)

Extreme Pressures on the Western Mojave Desert Tortoises

Unfortunately, the species’ plight has only worsened since listing. Studies show that tortoise populations in the Mojave Desert are facing a near total collapse. One study plot showed an 84% decline between 1992 and 1999. In another study, surveys including 1,200 transects over a large area of the Western Mojave Desert, including the area where the translocations are proposed, failed to detect desert tortoises in areas where desert tortoises were previously considered to be common. The most recent data from the U.S. Fish and Wildlife Service’s Desert Tortoise Recovery Office monitoring documents over a 50% decline in the western Mojave

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Desert population between 2004 and 2014 – one of the worst declines in the species range. Within the western Mojave Desert population, the Ord-Rodman Tortoise Conservation Area Unit, the decline over the last 10 years alone has been estimated to be 57%. (See U.S. Fish and Wildlife Service, 2015. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2013 and 2014 Annual Reporting. Pgs 46 available at http://www.fws.gov/Nevada/desert_tortoise/documents/reports/2013/201314_rangewide_mojave_desert_tortoise_monitoring.pdf.)

The desert tortoises in the western Mojave Desert are already facing extreme pressures. The California Department of Fish and Wildlife explains that “the desert tortoise is severely threatened by population losses due” and “the loss of habitat, mortality from increased traffic, reduced quality of habitat altered by human presence and activity, and fragmentation of populations pose a significant and increasing problem for the viability of tortoise populations within the Western Mojave Plan Area.” California Department of Fish and Wildlife, California Rare & Endangered Reptiles Species Accounts, available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84014&inline>.)

This population has been especially hit hard by a fatal upper respiratory tract disease where long-term study plots have found population declines of up to 90 percent. (*Ibid.*) Additional threats to this already strained population include illegal shooting and collecting, lack of genetic diversity, roads, raven predation, and invasive plants. “Many tortoises fall victim to road kills One survey found 115 tortoise carcasses along 18 miles of highway in the west Mojave Desert.” (*Ibid.*) This figure represented a conservative estimate of tortoise mortality per mile per year and could not be applied to all roads and highways due to variation in traffic volume, speed, and sizes of tortoise populations near roads. An increase in the number of roads exposes a larger portion of the desert tortoise population to routine traffic and illegal OHV activity.

The numbers of common raven, which prey on juvenile tortoises, have increased with expanding human development and the proliferation of roads in the region. According to the USGS, the common raven has increased in numbers by 1,500 percent in the western Mojave Desert over the last several decades. (*Ibid.*) Another threat related to human development in the desert is the proliferation of non-native grasses, such as red brome, cheatgrass, and Mediterranean grass. Grazing, OHV use, and other types of ground disturbance facilitate the spread of these grasses, which are adapted to disturbance and outcompete the native grasses and

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forbs that constitute food plants of the desert tortoise. Non-native plants often do not provide the levels of protein and nutrients needed by the desert tortoise, thereby adversely affecting tortoise health and reproduction. The decrease in the availability of nutritionally-important and preferred foods for the tortoise has likely decreased its ability to combat diseases and, very possibly, its immune responses to disease pathogens. The increase in grass cover between desert shrubs has been linked to increased fire frequency and fire intensity in the desert. Fires cause direct mortality when tortoises are burned or inhale lethal amounts of smoke, which can occur both in and out of burrows. Fire changes the composition of vegetation by facilitating the establishment of non-native grasses and removing forage plants. Fires also fragment tortoise habitat by creating patches of unsuitable habitat. (*Ibid.*)

Desert tortoises are suffering habitat loss and degradation and increased predation as a result of activities such as urbanization, agricultural development, grazing, off-road vehicle use, military training, recreational use, energy development and mining, and are at risk from diseases and collisions with vehicles. The special pressures on the western Mojave desert tortoise population must be taken into account in the CEQA review of a project that will pose danger to the tortoises from vehicles kills, increased illegal OHV activity, invasive plants, raven predation, and direct take by the destruction of burrows and moving of individual tortoises.

Significant Impacts

The Project will have significant impacts on the desert tortoise, not mitigated by proposals in the DMND. “Approximately 67 acres of the project footprint area are located in designated critical habitat for desert tortoises.” (MND at p. 5-71.) This includes a large segment of the Mojave National Preserve and the Colorado Desert, Western Mojave, and Eastern Mojave Recovery Units. The DMND states:

The ELM Project would temporarily impact approximately 45.8 acres and permanently impact 0.2 acres of suitable critical habitat for desert tortoise. Other proposed projects within 5 miles would impact large quantities of desert tortoise habitat (i.e., greater than 400 acres). In addition, the LVRAS Project could impact 95.1 acres of occupied desert tortoise habitat, including 44.7 acres of critical habitat. However, the impacts would be spread across 84 miles of the alignment. Cumulatively, these projects could contribute to habitat fragmentation and degradation, removal of food and shelter resources, changing normal behavior patterns, and attracting predator species such as ravens (*Corvus corax*) and coyotes (*Canis latrans*). However, all of these projects would be subject to permitting

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and mitigation requirements under the Federal Endangered Species Act and California Endangered Species Act, which are intended to minimize and mitigate for impacts to species, both at the project level and in a regional context. The ELM Project would implement mitigation measures, including pre-activity surveys, monitoring, under vehicle checks, and excavation of desert tortoise burrows, and would restore disturbed land and/or compensate for permanent impacts as required by the USFWS. Other projects would be required to implement similar measures. These measures would reduce the ELM Project's contribution to cumulative impacts. Therefore, cumulative impacts to desert tortoise and its critical habitat are expected to not be cumulatively considerable after the required avoidance, minimization, and compensatory mitigation measures are implemented.

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The fact that the Project will destroy designated critical habitat for an endangered species and will require a take permit are evidence of a potential substantial impact which must be reviewed via an EIR, not evidence that there will be no cumulative impacts! The mitigation measures will not serve to mitigate harms especially as it permits excavation of burrows, moving of tortoises, and other activities that are take as defined by the ESA. The heart of the ESA is its prohibition of "take" of endangered species. Generally, a "person," which under the ESA includes individuals, private entities, and government agencies, may not take any listed species. 16 U.S.C. § 1538(a)(1). Unless specifically exempted, the take prohibition applies to threatened species. 50 C.F.R. § 17.31. "Take" is broadly defined as harming, harassing, trapping, capturing, wounding, or killing a listed species either directly or by habitat degradation. 16 U.S.C. § 1532(19). The prohibition also applies to the acts of third parties whose acts bring about the taking. 16 U.S.C. § 1538(g). Additionally, the adverse modification and destruction of critical habitat, as is proposed here, is prohibited by the Endangered Species Act. (See 16 U.S.C. § 1536(a)(2).)

As explained above, the western Mojave desert tortoise population segments are already facing extreme pressure from massive population losses and disease, predation, vehicle strikes and habitat fragmentation. This population is significantly distinct from other populations, including those in closest proximity, such as the Eastern Mojave, the Northeastern Mojave, and Eastern Colorado populations. Given the extent of this genetic distinctness within the West Mojave population, genetic distinctness must be kept intact in order to maintain local adaptations to environmental conditions. This is all the more important given the extreme pressures this population is already suffering. The proposed mitigation in the DMND that conservation land be purchased is not sufficient to address the significant impact to this population and is also

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something that the Commission can legally enforce since this is within the purview of the United States Fish and Wildlife Service. An EIR is needed to address the significant impact for the desert tortoise, in particular the western Mojave population.

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b. This Project Will Significantly Impact Many Other Special Status Species

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The DMND identifies several rare species which will be significantly impacted including “135 special-status plants potentially present in the BRSA.” (DMND at p. 5-66.) The DMND provides insufficient factual basis on which it can base a finding that an EIR is not necessary because it has not conducted any study in regards to most of these species. It also provides no special mitigation or protection measures for these species. For plants, seasonal surveys were not performed, thus likely missing a majority of the highly seasonal special status desert plants.

The DMND states that desert bighorn sheep and desert tortoises were observed within or immediately adjacent to the BRSA during site visits for the Proposed Project and that the following “special-status species present or with a high potential to occur within or near the Project ROW or footprint include the following”

- ┆ Banded Gila monster (BLM Sensitive Species, CA Species of Special Concern, NV Protected Species)
- ┆ Desert rosy boa (NV Protected Species)
- ┆ Mojave fringe-toed lizard ([Not expected in NV] BLM Sensitive Species, CA Species of Special Concern)
- ┆ Golden eagle (Fully Protected, CA Fish and Game Code; federal Bald and Golden Eagle Protection Act)
 - ┆ Swainson’s hawk – migratory flyover (CA Threatened)
 - ┆ Gray vireo (BLM Sensitive Species, CA Species of Special Concern)
- ┆ Western burrowing owl (CA Species of Special Concern)
- ┆ American badger ([Low potential in NV] CA Species of Special Concern)
- ┆ Desert bighorn sheep (BLM Sensitive Species, Fully Protected, CA Fish and Game Code)
- ┆ Pallid bat ([Not expected in NV] BLM Sensitive Species, CA Species of Special Concern)
 - ┆ Western mastiff bat (BLM Sensitive Species, CA Species of Special Concern)

Comment Set B2 – Wild Tree Foundation (cont.)

The DMND identified special-status species with a moderate potential to occur within or adjacent to the Project ROW or footprint to include:

- Bald eagle (CA Endangered, Fully Protected; federal Bald and Golden Eagle Protection Act)
- Peregrine falcon (Fully Protected, CA Fish and Game Code)
- Bendire’s thrasher ([Low potential in NV] BLM Sensitive Species, DRECP, CA Species of Special Concern)
- Pallid San Diego pocket mouse ([Not expected in NV] CA Species of Special Concern)

As explained above, all of these species meet the definition of endangered, rare or threatened species. The Project will have potential substantial impact on these species and EIR must, therefore, be prepared. The DMND provides no specific mitigation or protection measures for all of these species other than generally “conducting surveys and avoidance.” Conducting surveys is not a mitigation measure and is work that should have been done as part of the initial study. The DMND is deficient in that it is not based on an initial study that actually studied the environmental conditions of the Project and cannot, therefore, “Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment. (Guidelines section 15063.)

Stating that special status species must be avoided is woefully inadequate and does not serve to mitigate the substantial impacts that these species will suffer from the Project. For example, the Mojave Fringe-toed lizard is addressed only as follows: “Pre-activity Surveys: No more than seven days prior to the onset of ground-disturbing activities, an agency-approved biologist – with experience monitoring and handling desert tortoise – will conduct a pre-activity survey in all work areas within potential desert tortoise, banded Gila monster, desert rosy boa, or Mojave fringe-toed lizard habitat, plus an approximately 300-foot buffer. If potentially suitable burrows, sand fields, or rock piles are found, they shall be checked for occupancy. . . . Monitoring: The approved tortoise biologist shall be available on site to monitor any work areas for desert tortoise, banded Gila monster, desert rosy boa, and Mojave fringe-toed lizard as needed.” (DMND at p. 1-24.) The rest of MM BR-9 addresses only desert tortoises.

This is despite the fact that “It has been documented in the CNDDDB within 0.25 miles of the BRSA in California. Suitable habitat for Mojave fringe-toed lizard is located within the Project area in California, including large dune or sandfield systems at the Kelso Dunes. Additionally, suitable habitat is found in smaller, scattered areas of windblown sand and adjacent

Comment Set B2 – Wild Tree Foundation (cont.)

B2-6
cont.

shrublands where sand accumulates. Mojave fringe-toed lizard may occur in or near any suitable windblown sand habitat within its geographic range along the ELM route.” (DMND at p. 5-69)

The DMND fail to address the fact that the sand habitat that the lizard depends upon will be significantly harmed by the Project, instead claiming that impacts to this habitat will be only temporary: “Note that most “temporary” habitat impacts would be long-term or permanent due to slow recovery of desert vegetation. One important exception to this generality is temporary impacts to active sandfield or dune habitat supporting Mojave fringetoed lizard, where returning windblown sand will naturally restore pre-disturbance conditions. The BLM, steward of this BLM special status species, explains why this analysis is wrong, “The loose wind-blown sand habitat, upon which the MFTL is dependent, is a fragile ecosystem requiring the protection against both direct and indirect disturbances (Weaver, 1981; Beatley, 1994; Barrows, 1996). Potential direct disturbances include habitat loss or damage from urban development, off-highway vehicles (OHV), and agriculture. Potential indirect disturbances are associated with the disruption of the dune ecosystem source sand, wind transport, and sand transport corridors.” (BLM, Mojave Fringe Toed Lizard species report, available at :

The DMND also includes no specific measures to protect the desert bighorn sheep. As a fully protected species under California Fish and Game Code, desert bighorn sheep “may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected mammal, and no permit or license previously issued shall have any force or effect for that purpose.” (Cal. Fish and Game Code, § 4700.) Fish and Game Code section 86 defines “take” as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” This definition governs construction of the Fish and Game Code generally unless particular provisions or context require otherwise. (*Id.*, § 2.) The DMND describes take of desert bighorn sheep, “Direct impacts could include mortality from vehicle strikes” yet provides no specific measures to protect the sheep.

Comment Set B2 – Wild Tree Foundation (cont.)

C. The DMND Fails to Account for Cumulative Impacts

B2-7

A conclusion that the cumulative impact is “less than significant” must be supported by substantial evidence (Guidelines § 15130(a)(2)), not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous” (Cal. Pub. Res. Code § 21080, subd. (e)(2).) Merely stating that compliance with statutes will reduce significant impacts to the “less than” level is mere speculation. Here, the DMND makes such a statement: “One or more of the cumulative scenario projects within 5 miles of the Proposed Project, or other projects in the region (e.g., residential development or renewable energy projects) may affect these species, and may lead to a cumulatively significant impact. However, due to the limited extent of any potential ELM Project impacts to special-status wildlife, these impacts would not contribute considerably to regional cumulative impacts.” (DMND at p. 5-412)

The DMND thus concludes that the Project's contribution to cumulative impacts to biological resources would not be considerable and would be less than significant since the Project would implement mitigation measures. However, the mitigation measures are proposed to reduce or avoid Project impacts, and are not designed to alleviate *cumulative* impacts as they are required to under Section 15130(a)(3) of CEQA. A proposed project's incremental effects may be cumulatively considerable even when its individual effects are limited. (Guidelines §§ 15064(h)91, 15065(a)(3), 15355(b).) The critical question is whether any additional amount of effect is significant in the context of the existing cumulative effect. (*Communities for a Better Environment v. California Resources Agency*, 103 Cal.App.4th 98, 119 (2002).) The DMND does not answer this question and its cumulative impacts analysis is, therefore, inadequate and does not show that there will be no significant impacts.

D. The DMND Fails to Account for Growth Inducing Impacts

B2-8

The DMND provides no discussion regarding growth-inducing impact of a project. (Guidelines §§ 21100(b)(5); 21156.) This project, by design, will be growth inducing to the detriment of the lands and wildlife throughout the Southwest as its stated purpose is to increase “the amount of power delivered from Californian's Ivanpah Valley, Nevada, and Arizona.” The growth inducing impacts will result in significant impacts to the environment especially biological resources and must be examined in an EIR.

Comment Set B2 – Wild Tree Foundation (cont.)

Wild Tree looks forward to working to assure that the Project and environmental review conforms to the requirements of state and federal law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form and absent the preparation of an EIR.

Sincerely,

A handwritten signature in cursive script that reads "April Rose Maurath Sommer".

April Rose Maurath Sommer
Executive & Legal Director
Wild Tree Foundation

Responses to Comment Set B2 – Wild Tree Foundation

B2-1 The commenter disputes SCE’s proposal for a specific in-service date as part of the Project Objectives (in Section 1.1 and Section 4.2.2) and states that “SCE requires no procurement through 2030.” The commenter also takes issue with other project objectives

The Draft IS/MND accurately identifies the Project Objectives set forth by SCE, which presently include a target in-service date of June 2021.

Regarding the “Electrical Needs Area (ENA)” that is set forth by SCE in the project objectives, the term “ENA” has no special definition in the regulations or statutes governing California’s utilities. Objectives regarding “safe and reliable” service and “mitigating power flow overloads” into the LADWP system relate to how project components may upgrade California’s high-voltage transmission system and are appropriate.

The commenter also asserts that the objectives do not support a need for the project.

Environmental impacts are not directly driven by project objectives. The environmental impacts described in the Draft IS/MND stem from the physical construction activities and facilities that would be installed and operated as a result of the Proposed Project. Accordingly, the analysis takes no position on whether the project is needed or whether it may provide benefits to the electrical system. The Draft IS/MND simply identifies the objectives that SCE hopes to satisfy with the Proposed Project. There would be no need to redefine or reinterpret SCE’s objectives within the context of CEQA review to suit decision-making by the CPUC.

In general, the project objectives are important to the CEQA analysis for allowing proper development and consideration of project alternatives, if necessary to avoid or substantially lessen significant impacts to the environment. For the Proposed Project, the Draft IS/MND demonstrates that all project-related environmental impacts would be less than significant or reduced to a less than significant level with the incorporation of feasible mitigation measures (Section 1.2). As such, no EIR or consideration of project alternatives is required. The Draft IS/MND simply provides the objectives that SCE hopes to satisfy with the Proposed Project. There would be no need to redefine or reinterpret SCE’s objectives to suit decision-making by the CPUC. The inclusion or exclusion of an in-service objective in the IS/MND does not affect the environmental analysis or conclusions regarding environmental impacts.

The CPUC will address the question of whether the Proposed Project serves a present or future convenience and necessity through a review of the testimony in the general proceeding (A.18-05-007) for this project, which may include consideration of the RPS program requirements facing SCE and other load serving entities.

B2-2 The commenter claims that the Proposed Project requires preparation of an Environmental Impact Report (EIR) for CEQA compliance and provides summaries of and quotes from various published CEQA decisions regarding CEQA’s EIR requirement and the “fair argument” standard of review applicable to MNDs.

The commenter does not provide any argument or substantial evidence in the comment demonstrating that the IS/MND is inadequate or that the project’s potential impacts will not be reduced to levels of insignificance through implementation of the identified mitigation measures.

The Draft IS/MND accurately identifies and analyzes the potential environmental effects resulting from implementation of the Proposed Project and evaluates the level of significance of these effects. Additionally, the Draft IS/MND finds no cumulative environmental impact beyond the geographic areas in which the Proposed Project activities would occur (Section 5.21, Draft IS/MND pages 5-408 to 5-409).

As stated in the Environmental Determination (Section 2.2), although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by SCE that will reduce impacts to a less than significant level. Accordingly, the CPUC does not agree that an EIR is needed; the IS/MND clearly analyzes the project's environmental impacts and identifies mitigation measures that will effectively reduce all potentially significant impacts to a less than significant level. The applicant accepted and agreed to all of the IS/MND's mitigation measures before the proposed IS/MND was released for public review. Pursuant to the CEQA statute and Guidelines, an IS/MND, not an EIR, is the proper document in such situations. (See Pub. Res. Code §§ 21064.5, 21080(c)(2); 14 Cal. Code Regs. §§ 15064(f)(2), 15070(b).)

This commenter provides no substantial evidence to warrant reevaluation or reconsideration of the conclusions shown in the Draft IS/MND. No revision is necessary to the determination that adoption of an IS/MND would satisfy the requirements of CEQA.

B2-3 The commenter asserts that an EIR is required based on claims concerning the project's potential impacts to CDFW-designated Species of Special Concern and BLM-designated Sensitive Species.

As demonstrated in the responses to comments B2-2 and C1-1, a Mitigated Negative Declaration is appropriate here.

Section 15380 of the CEQA guidelines does not require treating non-listed special-status species as "rare, threatened, or endangered." Instead, Section 15380 (b) defines endangered and rare; Section 15380 (c) specifies that species listed under the California and federal Endangered Species Acts (CESA and ESA, respectively) are to be presumed endangered, rare, or threatened; and Section 15380 (d) requires that other special-status species "shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b)." By contrast, most species identified as Species of Special Concern by the California Department of Fish and Wildlife (CDFW) "Special Animals" list or identified by the Bureau of Land Management (BLM) as Sensitive Species have not been shown to meet these criteria (some species, identified as candidates for state or federal listing, have been shown to meet the criteria, but no candidate species occur in the Project vicinity and none are expected to be affected by the Project). Nonetheless, the IS/MND broadly addresses all CDFW Species of Special Concern and BLM Sensitive Species potentially occurring within the Project area under impact a. of Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures). The IS/MND properly identifies potential impacts to all CESA and ESA listed rare, threatened, or endangered species as required by the CEQA guidelines and further identifies potential impacts to all Species of Special Concern, Sensitive Species, and multiple other special-status species. Please refer to the bullet list under the subheading Special-status Plants and Animals in Section 5.4.1 (Biological Resources, Environmental Setting).

The CDFW's recommendations quoted by the commenter are consistent with the explanation above, stating that Species of Special Concern "... should be included in an analysis ... if they can be shown to meet the criteria of sensitivity outlined therein [i.e., Section 15380, described above]." The IS/MND is consistent with CDFW's recommendations.

The commenter quotes additionally from CDFW recommendations regarding the types of biological considerations for evaluating potential impacts to non-listed species. Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) of the IS/MND properly takes these considerations into account in its evaluation of potential impacts to all species meeting the CEQA criteria as "rare, threatened or endangered" as well as all CDFW Species of Special Concern and BLM Sensitive Species and other special-status species identified in Section 5.4.1. All potential impacts are analyzed in terms of potential significance, according to criteria identified in Section 5.4.4 (Biological Resources, CEQA Significance Criteria).

The commenter states that the BLM's criteria for evaluating Sensitive Species "precisely correlate" with CEQA Guidelines Section 15380 (2) definition of "rare." Similarities between the two criteria are less than precise but the similarities are acknowledged. All BLM Sensitive Species potentially occurring on the Project site are properly addressed in the IS/MND.

B2-4 The commenter quotes from the IS/MND that "[t]he Proposed Project has the potential..." to significantly affect various biological resources.

Potential impacts are described in detail in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) of the IS/MND.

Contrary to the commenter's assertion, CEQA does not require the IS/MND to "fully mitigate" impacts, but rather, CEQA requires that mitigation measures avoid or reduce potential impacts to levels of insignificance. For each potential impact, the IS/MND identifies mitigation measures to reduce the impact to less than significant, based on criteria identified in Section 5.4.4 (Biological Resources, CEQA Significance Criteria). Further and again, contrary to the commenter's claim, SCE has reviewed the mitigation measures put forth in the IS/MND and agreed to all of them, and the CPUC will impose all of the mitigation measures and ensure they are implemented if the project is approved.

The commenter states that "[t]he proposed biological resources mitigation measures were all effectively proposed by the applicant."

The comment is incorrect. In fact, the Applicant's proposed measures (APMs) identified in Section 5.4.3 (Applicant Proposed Measures) were found to be inadequate to reduce most potential impacts below significance and therefore most of the APMs were superseded by the additional mitigation measures identified in the IS/MND. The analysis in IS/MND Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) discusses in detail the necessity to supplement or replace the APMs and identifies new mitigation measures BR-1 through BR-13, most of which differ widely from the APMs. The complete suite of mitigation measures constitute the "project changes" that will avoid or reduce impacts to a less than significant level. They constitute changes to the project in that SCE has agreed to implement the measures. The Project, if approved, would mitigate all potential biological resources impacts to less than significant.

The commenter claims that surveys should be done to inform the environmental analysis.

Extensive surveys have been done for that express purpose of informing the environmental analysis. The Proponent's Environmental Assessment (PEA) and its appendices (online at: <https://www.cpuc.ca.gov/environment/info/aspen/elm/toc-pea.htm>) provide extensive field survey data for special-status plants and animals, which are cited and summarized in Section 5.4.1 (Biological Resources, Environmental Setting). However, wildlife are expected to move from place to place within their habitat and plants could germinate where they had not been recorded previously. The surveys that were completed to inform the environmental analysis cannot ensure that special-status species would not move onto a work site prior to the start of construction. Accordingly, the IS/MND's suite of biological mitigation measures appropriately includes additional pre-construction surveys.

Regarding the efficacy of the biological resource mitigation measures, the commenter states that "surveys are not mitigation."

The comment seems to misunderstand the purpose of pre-construction field surveys in mitigating potentially significant impacts. As noted above, pre-construction surveys are essential components for avoidance and minimization of special-status species impacts even for projects like this one that have already prepared extensive field surveys for special-status plants and animals.

CEQA Guidelines Section 15370 (a) identifies avoidance and Section 15370 (b) identifies minimization among the types of mitigation authorized by CEQA. In order to avoid a plant or animal at a work site, the applicant must first know if it is present and, if so, where. Therefore, to ensure avoidance or minimization of potential impacts to special-status species, the applicant's biological surveyors and monitors must survey each work site again prior to ground disturbance. Where special-status species are present, the applicant must implement avoidance as appropriate to the species and situation. These pre-construction surveys and avoidance are specified in Mitigation Measures BR-6 (Minimize and mitigate impacts to special-status plants), BR-9 (Conduct surveys and avoidance for special-status reptiles), BR-10 (Prepare and implement a Nesting Bird Management Plan), BR-11 (Conduct surveys and avoidance for burrowing owl), BR-12 (Conduct surveys and avoidance for bats), BR-13 (Conduct surveys and avoidance for American badger, ringtail, and desert kit fox). These pre-construction surveys and avoidance provisions are key to the IS/MND's conclusions that potential Project impacts to these species would be mitigated to less than significant.

B2-5 The commenter summarizes several aspects of desert tortoise natural history, conservation status, species delimitation, and regional populations as recognized by the USFWS Recovery Plan and other publications cited in the comment.

The analysis of potential desert tortoise impacts and recommended mitigation in IS/MND Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) is consistent with the commenter's summary. The commenter indicates that the desert tortoise may warrant listing as endangered rather than threatened. Neither CDFW nor USFWS has advanced a proposal to revise the desert tortoise's listing status under CESA or ESA; however, its status as a "rare, threatened, or endangered" species for CEQA consideration and the analysis in the IS/MND would not be affected if such a change were made. The comment further summarizes desert tortoise population status and threats in the west Mojave Desert. These considerations all were taken into account in the IS/MND's analysis of potential impacts to desert tortoise. The comment mentions population declines "...in the area where the translocations are proposed..." This phrase is not related to the proposed Project; the IS/MND does not propose desert tortoise translocation, except to move a tortoise from harm's way if needed and, in that instance, only by a biologist authorized by USFWS to handle a tortoise (please see Mitigation Measure BR-9, Conduct surveys and avoidance for special-status reptiles). There is no proposed off-site translocation area.

The commenter quotes from the IS/MND's cumulative impacts analysis and states that impacts to desert tortoise designated critical habitat are potentially substantial and recommends preparation of an EIR.

The commenter does not provide any substantial evidence that the Project as mitigated will not reduce potential desert tortoise impacts to a level of insignificance. Please refer to Response to Comment B2-2 regarding the appropriate CEQA document and to Response to Comment B2-7 regarding cumulative impacts.

The commenter notes that avoidance actions to protect desert tortoise including excavating desert tortoise burrows and physically moving desert tortoises (see Mitigation Measure BR-9, Conduct surveys and avoidance for special-status reptiles) would meet the ESA definition of "take." First, it is important to note that these actions may be necessary to protect tortoises that could be found within a Project work site and such actions are routinely implemented for many projects under specific direction and authorization from USFWS and CDFW. Second, the commenter states, incorrectly, that take of listed threatened or endangered species is prohibited by the ESA. Section 7 and Section 10 of the ESA expressly provide for incidental take of listed species under authorization from the USFWS through consultation conducted according to those two sections of the Act. Similarly, Section 2081 of CESA also provides for incidental take authorization through consultation with CDFW. Take authori-

zation, if any, would be granted to SCE by the CDFW and USFWS respectively under CESA and ESA. The CPUC's IS/MND does not authorize take of a listed species. No unauthorized take of desert tortoise (including burrow excavation or handling the animals) is proposed by the applicant and Mitigation Measure BR-9 (Conduct surveys and avoidance for special-status reptiles) specifies further that "[n]o desert tortoise may be handled except under explicit authorization from USFWS and CDFW." Nothing in the IS/MND conflicts with CESA or ESA take regulations.

The applicant anticipates obtaining ESA incidental take authorization under two existing Biological Opinions: the USFWS has authorized desert tortoise take under its programmatic Biological Opinion for Activities in the California Desert Conservation Area and Biological Opinion issued for critical habitat in Southern Nevada (see Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under the subheadings Special-status Wildlife: Reptiles).

In addition to incidental take, the USFWS addresses potential adverse modification of designated critical habitat through ESA Section 7 consultation. The USFWS evaluates potential adverse modification "based on critical habitat as a whole, not just on the areas where the action takes place or has direct impacts" (Federal Register 81:7221, first paragraph of column 3 continuing through columns 1 and 2 of the following page). Based on this approach, impacts to critical habitat in one area may be offset by improvement or protection of critical habitat in another area.

The analysis of impacts and the mitigation measures identified in the IS/MND are consistent with the USFWS approach to evaluating adverse modification. The protection of critical habitat off-site at a 5:1 ratio is specified in Mitigation Measure BR-8 (Compensate for desert tortoise habitat loss). The analysis and mitigation in the IS/MND is consistent with ESA Section 7 (although take authorization and the adverse modification determination can only be made by the USFWS) and supports the CEQA conclusion that potential impacts would be less than significant with mitigation.

The comment claims that the CPUC cannot enforce habitat compensation and that "...this is within the purview of the [USFWS]." In fact, habitat compensation is routinely imposed by CEQA lead agencies, including the CPUC, to offset impacts to desert tortoise and other listed species habitat on project sites, including private and federal lands. In this case, the compensation specified in Mitigation Measure BR-8 applies for all desert tortoise habitat impacts on both federal and private lands. SCE, as a regulated utility, must comply with all conditions of approval imposed by the CPUC, including habitat compensation measures like this one. The Tehachapi Renewable Energy Project, Devers to Palo Verde II Project, and West of Devers Upgrade Project are recent examples of CPUC projects where the applicant, CPUC, USFWS, and CDFW successfully coordinated to preserve compensatory habitat to offset biological resources impacts.

Regarding genetic characteristics of the West Mojave desert tortoise population, the proposed Project would not alter the population's genetic composition. It would neither remove desert tortoises from the West Mojave population, nor introduce tortoises from other populations into the West Mojave population. It also would not affect the tortoises' ability to freely move from place to place within the West Mojave (or any other population) for breeding or other life history requirements.

The commenter states that preservation of habitat (see Mitigation Measure BR-8, Compensate for desert tortoise habitat loss) "is not sufficient to address the significant impact to this population...."

Habitat compensation (Mitigation Measure BR-8, Compensate for desert tortoise habitat loss) is one component of a suite of mitigation measures that, in combination, mitigate the potential impacts to desert tortoise to less than significant. The commenter has provided no substantial evidence to the contrary. Please refer to the analysis presented in IS/MND 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under special-status wildlife. Mitigation Measures BR-1 through BR-5 and BR-7 through BR-9 all serve to mitigate overall potential Project impacts to desert tortoise.

B2-6 The commenter indicates that other species could also be affected by the Project and claims that no study has been conducted on most of these species.

The analysis in Section 5.4.6 (Biological Resources, Impacts and Mitigation Measures) is based on extensive field studies presented in the PEA and its appendices (see Response to Comment B2-2). These data are sufficient to support the conclusions presented in the IS/MND.

The commenter claims that “seasonal surveys were not performed” for plants and the IS/MND provides “no special mitigation or protection measures for these species.”

Both statements are incorrect. Seasonal special-status plant surveys were performed and reported in the Special-Status Plant Survey Reports and maps in the Revised Biological Resources Technical Report (BRTR) (PEA Volume 6, Appendix G, cited). These data are cited and summarized in Section 5.4.1 (Biological Resources, Environmental Setting) under the subheading Special-status Plants. Please also refer to BRTR Attachment 5.4 A (Special-Status Plants that Could Occur in the Project Vicinity) and Appendix D (Biological Resources) of the IS/MND. All special-status species identified in the comment are addressed to the appropriate extent in the IS/MND. Where appropriate, mitigation measures are identified to reduce potential impacts to each species to less than significant. Specific measures to protect special-status plants and wildlife are listed below for each species cited in the comment. Regarding the commenter’s concerns with “conducting surveys and avoidance,” please refer to the discussion of pre-construction surveys in the Response to Comment B2-4 (contrary to the comment, surveys were conducted, the results were incorporated into this analysis, and pre-construction surveys are essential to avoidance and minimization, which are “mitigation” as defined in CEQA Guidelines Sections 15370 (a) and (b)).

- Special-status Plants: Please see Section 5.4.6 (Biological Resources, Project Impacts and Mitigation) under the subheading Special-status Plants. Mitigation Measures BR-1 through BR-6 would minimize Proposed Project impacts and would ensure that remaining potential impacts to special-status plants would be less than significant. The full text of each measure may be found in Section 5.4.6 under the subheading Mitigation Measures.
 - Mitigation Measure BR-1: Conduct biological monitoring and reporting
 - Mitigation Measure BR-2: Prepare and implement a Worker Environmental Awareness Program (WEAP)
 - Mitigation Measure BR-3: Minimize native vegetation and habitat loss
 - Mitigation Measure BR-4: Restore or revegetate temporary disturbance areas
 - Mitigation Measure BR-5: Prepare and implement an Integrated Weed Management Plan
 - Mitigation Measure BR-6: Minimize and mitigate impacts to special-status plants
- All wildlife, including all special-status wildlife. Regarding mitigation of potential impacts to all special-status wildlife species identified in the comment, please refer to the analysis and conclusion in Section 5.4.1 (Biological Resources, Environmental Setting) under the subheading Special-status Wildlife. Potential impacts to these species would be avoided, minimized, and mitigated in part by Mitigation Measures BR-1 through BR-5 (above) and BR-7 (Ensure wildlife impact avoidance and minimization), and BR-8 (Compensate for desert tortoise habitat loss [note that habitat compensation will benefit all species present in the compensation lands]). Additional measures for certain species or groups of species are also identified in the IS/MND and in the list below for each species named in the comment. The full text of each measure may be found in Section 5.4.6 under the subheading Mitigation Measures.
- Banded Gila monster and desert rosy boa. Mitigation Measure BR-9 is specifically applicable to reptiles. It specifies pre-construction surveys, monitoring, and avoidance measures for these species.

- Mojave fringe-toed lizard. As noted in the comment, and described in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under the subheadings Special-status Wildlife, Reptiles, Mojave fringe-toed lizard has been observed near the Project site and may occur within suitable habitat found on the Project site. **(The comment states that its habitat will be “significantly harmed by the Project,” disagreeing with the IS/MND’s conclusion that these impacts will be temporary. The comment goes on to summarize the IS/MND’s discussion regarding temporary impacts to many desert habitat types, due to the long time period for successful restoration or recovery of native vegetation.)** However, as stated in the analysis, the characterization of temporary impacts to windblown sand habit is appropriate. The Mojave fringe-toed lizard is found in active and inactive windblown sand fields. Following temporary project activities, windblown sand will continue to move across the work areas and the temporary disturbance sites will return to their pre-project condition. The sites will recover within weeks or months of the conclusion of project activities and no restoration or revegetation would be needed. **(The comment quotes from other sources, identifying urban development, off-highway vehicles, and agriculture as direct threats to habitat and disruption of dune system sand source, wind transport, and sand transport corridors as potential indirect threats.)** None of these potential direct or indirect threats is applicable to the proposed Project. The only permanent impact to potential habitat is land use conversion at the series capacitor sites, which would be insubstantial in the context of more than 1.7 million acres of windblown sand within the California Desert Conservation Area (BLM 2015, Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment and Final Environmental Impact Statement, Table III.7-7). The IS/MND correctly concludes that potential impacts to Mojave fringe-toed lizard would be less than significant with mitigation and the commenter does not provide any substantial evidence to the contrary.
- Golden eagle. Golden eagle is addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Birds. In addition to the minimization, avoidance, and compensation measures applicable to all wildlife (identified above), Mitigation Measure BR-10 (Prepare and implement a Nesting Bird Management Plan) specifies buffer distances (one mile for line-of sight, and 0.5 mile for non-line-of-sight) to prevent potential disturbance of nesting golden eagles. The IS/MND correctly concludes that potential impacts to golden eagle would be less than significant with mitigation.
- Swainson’s hawk, peregrine falcon, and bald eagle. These wide-ranging birds may occasionally fly over the Project area, but they are not expected to nest in the vicinity and would only be foraging in the Project area during brief overflights. The following text has been added to IS/MND Section 5.4.1 (Biological Resources, Environmental Setting):

Wide-ranging Raptors. In addition to golden eagle, several special-status wide-ranging or migratory raptors could occasionally fly over the Project area. These could include Swainson’s hawk, peregrine falcon, and bald eagle. The site is outside the nesting range and/or provides no suitable nesting habitat for these species. They are not expected to nest in the Project vicinity and would be foraging in the vicinity only during brief seasonal overflights.

And additional text has been added in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) as follows:

Wide-ranging Raptors. While Swainson’s hawk, peregrine falcon, and bald eagle could briefly fly over the Project area during migration or seasonal dispersal, no impacts to these species are expected and no mitigation is necessary.

These brief additions do not disclose a new or more severe impact and do not require recirculation of the IS/MND. Please refer to the Biological Resources Technical Report (PEA Appendix G, Table 11). The project is not expected to adversely impact these three bird species. Nonetheless, mitigation

measures protecting all wildlife and Mitigation Measure BR-10 (Prepare and implement a Nesting Bird Management Plan) provide suitable minimization, avoidance, compensation, and protection in the unlikely event that any of them may nest near the Project site.

- Gray vireo and Bendire’s thrasher. Both species are addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Birds. In addition to the minimization, avoidance, and compensation measures applicable to all wildlife (identified above), Mitigation Measure BR-10 (Prepare and implement a Nesting Bird Management Plan) requires species pre-construction surveys and avoidance of active nests (i.e., buffer areas) for these and all birds potentially nesting in the Project area. The IS/MND correctly concludes that potential impacts to gray vireo and Bendire’s thrasher would be less than significant with mitigation.
- Western burrowing owl. The burrowing owl is addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Birds. In addition to the minimization, avoidance, and compensation measures applicable to all wildlife (identified above), Mitigation Measure BR-11 (Conduct surveys and avoidance for burrowing owl) specifies detailed pre-construction surveys and avoidance measures including passive relocation and construction of replacement burrows if needed. The IS/MND correctly concludes that potential impacts to burrowing owl would be less than significant with mitigation.
- American badger. This species is addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Mammals. In addition to the minimization, avoidance, and compensation measures applicable to all wildlife (identified above), Mitigation Measure BR-13 (Conduct surveys and avoidance for American badger, ringtail, and desert kit fox) will ensure adequate protection of all three species, should they occur at a Project work site, through pre-construction surveys and avoidance. The IS/MND correctly concludes that potential impacts to burrowing owl would be less than significant with mitigation.
- Desert bighorn sheep. **(The commenter notes that no specific measure is identified to protect desert bighorn sheep, identifies its “fully protected” conservation status in California, and quotes from the California Fish and Game Code to define the word “take.” The comment quotes from the IS/MND regarding vehicle strike as a potential direct impact to desert bighorn sheep).** This species is addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Mammals. The minimization, avoidance, and compensation measures applicable to all wildlife (identified above) also apply to and would benefit desert bighorn sheep. Nothing in the proposed Project description would result in “take” of desert bighorn sheep and nothing in the IS/MND would authorize “take.” While vehicle strike is possible, it is unlikely and the Mitigation Measure BR-7 (Ensure wildlife impact avoidance and minimization) specifically identifies a 15 mph speed limit for project activities that would minimize any potential for inadvertent vehicle strike of this species or others (including desert tortoise, which are much slower and less conspicuous to vehicle operators than bighorn sheep). No additional mitigation is necessary and the IS/MND correctly concludes that potential impacts to desert bighorn sheep would be less than significant with mitigation.
- Pallid bat and western mastiff bat. Both species are addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Mammals. In addition to the minimization, avoidance, and compensation measures applicable to all wildlife (identified above), Mitigation Measure BR-12 would protect special-status bats by ensuring identification and avoidance of active special-status bat roosts. The IS/MND correctly concludes that potential impacts to these and other special-status bats would be less than significant with mitigation.
- Pallid San Diego pocket mouse. This species is addressed in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) under Special-status Wildlife: Mammals. Potential Project impacts, if any, would be limited to small construction areas in the southwestern Mojave Desert

portion of the route. Within the southern Mojave Desert portion of its range, there is extensive acreage of suitable habitat in Los Angeles and San Bernardino Counties, well outside the project area (e.g., a broad area between Victorville and Barstow, extending 20 to 30 miles east and west). The potential impacts within its range are minimal. The IS/MND correctly concludes that this potential impact would be less than significant, and no mitigation is required.

The commenter states that “[t]he DMND is deficient in that it is not based on an initial study....” The commenter apparently misunderstands the document itself. The IS/MND is the Initial Study and *does* provide documentation of the factual basis for its findings in accordance with CEQA Guidelines Section 15063, cited by the commenter.

The commenter states that avoiding special-status species is inadequate to mitigate the Project’s impacts. The IS/MND does not conclude that avoidance alone will mitigate the potential impacts. While avoidance will minimize or prevent potential incidental take of special-status species, the various potential direct and indirect habitat impacts are addressed through other measures. Instead, please refer to the extensive suite of mitigation measures identified in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) which are summarized above.

B2-7

The commenter says the IS/MND fails to account for cumulative impacts, and merely states that compliance with statutes will reduce significant [cumulative] impacts. The comment quotes from Section 5.21 (Mandatory Findings of Significance, Draft MND page 5-412) under the analysis of cumulative impacts to biological resources.

Contrary to the comment, the IS/MND does not merely state that compliance with statutes will reduce significant impacts to less than significant. Instead, the IS/MND evaluates first whether there may be a cumulatively significant impact to biological resources and, second, if so, whether the Project would have a considerable contribution to the cumulative impact. The IS/MND properly recognizes that the projects identified in the cumulative scenario may, together, constitute a significant cumulative impact to biological resources in the Project vicinity. However, as stated in the IS/MND, the impacts of the proposed Project itself including incorporation of the Mitigation Measures identified in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures) would not have a considerable contribution to the overall cumulative impact.

The commenter indicates that the mitigation measures are “proposed to reduce or avoid Project impacts and are not designed to alleviate *cumulative* impacts...” [italics in original].

In fact, the measures are designed to reduce (or “alleviate”) both the Project’s individual impacts and its contribution to cumulative impacts. In the context of the cumulative impacts analysis, the mitigation measures identified in the IS/MND would mitigate the Project’s potential contribution to cumulative impacts and ensure that its contribution to any potentially significant cumulative impacts are not cumulatively considerable.

The comment cites Section 15130(a)(3) of the CEQA Guidelines which relates to an EIR but can be applied to an IS/MND.

Section 15130 reads in full:

An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

The mitigation measures identified in Section 5.4.6 (Biological Resources, Project Impacts and Mitigation Measures), particularly Mitigation Measure BR-8 (Compensate for desert tortoise habitat loss) are specifically designed to offset the Project's impacts and its contribution to cumulative impacts which, in this case, are equivalent to its "fair share" of cumulative impacts. The IS/MND correctly concludes that the Project's contribution to cumulative biological resources impacts are less than considerable.

B2-8 This commenter asserts that the Draft IS/MND fails to address growth-inducing impacts, and the comment letter (at page 2) raises this concern within the context of potential cumulative impacts. The comment claims that increasing the amount of power flow on the transmission lines would result in significant impacts to the environment.

The comment does not specify how power flows might relate to impacts that are not already disclosed in the Draft IS/MND.

The consideration of growth-inducing impacts appears in: Section 5.3, Air Quality; Section 5.14, Population and Housing; Section 5.15, Public Services; Section 5.16, Recreation; and Section 5.17, Transportation.

The requirement to consider growth-inducing impacts in CEQA applies to an EIR instead of the Initial Study and MND process. CEQA Guidelines Section 15126(d) and Section 15126.2(e) require an EIR to discuss the ways in which a proposed project may foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. An EIR is not required for this project, as noted in the Draft IS/MND (page 1-2, Section 1.2).

Nonetheless, the IS/MND considers and discounts the project's potential growth inducing impacts as it is designed to assist growth that is already forecasted and planned and thus does not induce growth but rather, responds to it. As well, the IS/MND's analysis recognizes that generation facilities, including "future generation facilities" not yet built, but planned, may use the Proposed Project to transmit electricity (Draft IS/MND page 3-4, Section 3.2.3). The impact analysis for Energy in Section 5.6.6 (Draft IS/MND page 5-157) points to prior CAISO approvals for the Proposed Project as a way of providing deliverability of renewable resources including certain specific generation facilities and also renewable resource portfolios of generic generating capacity in broad geographic zones, developed by the CPUC and CEC. As such, the Proposed Project is in response to analyses by the CAISO, including CAISO's identification of proposed generation projects and CAISO's study of the likely path of future renewable generation across the geographic zones.

To clarify how growth-inducing impacts are considered in the Draft IS/MND, the following information is added to the Introduction in Section 3.2.3.

The Proposed Project is intended to supply power to serve the demand for energy in California and enable deliverability for generation projects that have plans or commitments pending to interconnect to California's loads through SCE's system. By increasing transmission line capacity, the project would allow increased power flow through the existing 500 kV lines and increase SCE's ability to provide transmission service to existing and future electric power generation facilities seeking to deliver power to California's load. The development and operation of future generation facilities would not result in substantial population growth, but is likely to result in the conversion of substantial land areas to a new type of land use. The Proposed Project would be growth inducing in that it could improve the viability of development of electric power generation projects covering potentially significant amounts of land. While transmission capacity is necessary for development of these projects, it alone is not growth-inducing. The projects would require approvals from the officials having jurisdiction over the land on which they would be built. The approval process would include environmental review, implementation of conditions of approval and mitigation measures,

and consideration of public policy objectives such as increasing the supply of renewable energy in lieu of using fossil fuels.

The Draft IS/MND finds that the environmental effects of future generation facilities would not be direct or indirect effects of the Proposed Project because such facilities are speculative and are not the result of, or made more likely by, the Proposed Project (Draft IS/MND page 3-4, Section 3.2.3). No additional analysis is necessary.

Comment Set C1 – Colorado River Indian Tribes



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE ROAD
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

Via Email Only

September 13, 2019

Billie Blanchard
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920
elm@aspeneg.com

RE: Comments of the Colorado River Indian Tribes on the Draft Initial Study/Mitigated Negative Declaration for Southern California Edison's Eldorado-Lugo-Mohave Series Capacitor Project

To Whom It May Concern:

On behalf of the Colorado River Indian Tribes (CRIT or the Tribes), I write to respond to the California Public Utilities Commission's Draft Initial Study/Mitigated Negative Declaration (DIS/MND) for Southern California Edison's Eldorado-Lugo-Mohave Series Capacitor Project (Project). The Tribes oppose the issuance of a mitigated negative declaration given the various potentially significant impacts the Project will have within a landscape that the CPUC itself has acknowledged as a tribal cultural resource. Vague promises of future mitigation to be developed at a later date do not absolve the CPUC of its responsibility to fully examine potential impacts. CRIT therefore urges the CPUC to prepare a full EIR for the Project, before taking any steps to move the Project toward a final decision.

Numerous inadequacies and omissions in the DIS/MND render it insufficient as an environmental review document. In the absence of an enforceable and proven mitigation plan, particularly for impacts on tribal cultural resources, there is ample evidence in the record to support a fair argument that the Project will have significant environmental effects.

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,440 members belonging to the Mohave, Chemehuevi, Hopi, and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the

Comment Set C1 – Colorado River Indian Tribes (cont.)

Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the 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 Tribes' Mohave and Chemehuevi members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribes' current members and future generations. For this reason, we have a strong interest in ensuring that potential cultural resource and other environmental impacts associated with the proposed Eldorado-Lugo-Mohave Project are adequately considered and mitigated.

Despite the proposed mitigation measures, the Tribes remain troubled by the Project's potential to remove, damage, or destroy cultural resources and artifacts. These resources are sacred and finite, and together make up the cultural footprint of the Tribes' ancestors. 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 therefore cannot support any project that will likely result in the disturbance or destruction of cultural resources and artifacts. However, if the Project does move forward, it must be with appropriate analysis of potential effects under the California Environmental Quality Act (CEQA), as described below.

A Mitigated Negative Declaration is Inappropriate Given Potentially Significant Environmental Impacts.

CEQA establishes a “low threshold” for initial preparation of an EIR, especially in the face of conflicting assertions concerning the possible effects of a proposed project. *No Oil, Inc. v. City of Los Angeles*, 12 Cal. 3d 68, 84 (1974). This is because the EIR is the “heart” of CEQA review and the principal means of informing the public about potential environmental impacts. *Id.* A lead agency may adopt a mitigated declaration only when “revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, and . . . there is *no substantial evidence*, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.” Pub. Res. Code § 21080(c)(2) (emphasis added).

The CPUC cannot assert here that the proposed mitigation measures—such as preparing a Cultural Resources Management Plan (CRMP) and conducting later surveys to identify and avoid sensitive species in the area—meet the high bar of mitigating effects “to a point where clearly no significant effect on the environment would occur.” This is, in part, because the agency has deferred several relevant surveys of the environmental setting itself—as detailed below—to future stages of the project, indicating that the CPUC has no idea what the scope of the effects will be, let alone the degree to which mitigation could reduce these effects. Therefore, the Tribes urge the CPUC to prepare a full EIR.

In particular, meaningful tribal consultation and further analysis of potentially significant impacts on tribal cultural resources and visual resources, as well as cumulative impacts more generally must be completed in an EIR.

C1-1

Comment Set C1 – Colorado River Indian Tribes (cont.)

A. Government-to-Government Consultation

C1-2

California law provides for robust consultation with tribes “traditionally and culturally affiliated with the geographic area of [a] proposed project.” Pub. Res. Code § 21080.3.1. In enacting these consultation requirements, the Legislature sought to “[r]ecognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities” and that “tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.” Assembly Bill No. 52 §§ 1(b)(1)-(4) (2014). CRIT has adopted a government-to-government consultation policy to clarify the requirements of adequate consultation. *See* Exhibit 1. In particular, adequate consultation requires an in-person meeting between a decisionmaker “prepared with sufficient details about the proposed project or action, the Tribes’ history, culture, and government, and the Tribes’ anticipated or specific concerns with respect to the proposed action.” *Id.* at 3-4. While CPUC states that it contacted 23 tribes, including CRIT, by formal letter, *see* DIS/MND at 4-6, CRIT maintains that this does not constitute sufficient consultation.

The Tribes received Project applicant SCE’s June 30 letter explaining the project. On July 20, 2017, well within the time frame in which SCE had requested a reply, CRIT requested formal government-to-government consultation. *See* Exhibit 2. Although SCE failed to follow through with a consultation meeting, CRIT clearly intended then and intends now to participate in government-to-government consultation that complies with the requirements of AB 52.

Because the CPUC limited consultation to just four tribes—the San Manuel Band of Mission Indians, the Morongo Band of Mission Indians, the Twenty-Nine Palms Band of Mission Indians, and the Fort Mojave Tribe—and ignored CRIT’s consultation request, its analysis of potential impacts on tribal cultural resources is incomplete in scope. *See id.* at 5-362. CRIT respectfully requests consultation in the same manner granted to these four tribes, including site visits and provision with copies of all relevant cultural resource reports, which were not made publicly available. In addition, CRIT is concerned that the DIS/MND suggests that only “the four consulting tribes” will receive a copy of the draft Cultural Resources Management Plan once available. *Id.* at 4-7. The DIS/MND indicates in several places that the “tribes that consulted” will review and participate in the creation of the CRMP. *See, e.g., id.* at 1-33, 1-47, 6-28 (MM-CR-4). Given the Tribes’ affiliation with the area and outstanding consultation request, CRIT must be included in this group and provided an opportunity to comment and consult on any and all relevant documents and plans. More broadly, however, CRIT urges the CPUC to request and consider input from all traditionally and culturally affiliated area tribes, especially with respect to the forthcoming CRMP.

B. Tribal Cultural Resources

C1-3

CRIT appreciates the DIS/MND’s description of consultation efforts with the four tribes above and general explanation of their concerns, but reiterates that because the consultation process did not take into account CRIT’s and other affected tribes’ input, the DIS’s discussion of tribal cultural resources is necessarily incomplete. In addition, the analysis CPUC *does* provide is incomplete because it fails to adequately analyze the potential effects of ground-disturbing

Comment Set C1 – Colorado River Indian Tribes (cont.)

activities—a concern common to many tribes in the area—and fails to demonstrate how its forthcoming Cultural Resources Management Plan will fully mitigate for the potential impacts the initial study has brought to light.

At the outset, the Tribes note that CPUC has identified the “Mojave Trails Landscape” as a tribal cultural resource (TCR) that extends from “the Colorado River in the east, Cajon Pass in the west, Granite Mountains to the north, and I-40 to the south.” DIS/MND at 5-364. The DIS/MND states that this large landscape, which is a collection of trails and associated features that have both secular and spiritual significance for local tribes, encompasses “the CEQA Areas of Direct and Indirect Impacts for the entire project.” *Id.* This language appears to recognize the entire Project site as a TCR. However, in subsequent discussions, the DIS/MND refers to restrictions or mitigation conditions for work near “a tribal cultural resource,” as if those considerations were only relevant to part of the Project site. For example, “[w]hen project work is planned within 100 feet of a known prehistoric-era cultural resource or a tribal cultural resource, or any resources that are eligible for the CRHR and/or NRHP, avoidance areas shall be established and monitors shall be present as outlined in the CRMP.” *Id.* at 6-29 (MM CR-5). The DIS/MND must make clear that the provisions about avoidance and monitoring will apply to *any and all* activity within the Project site, given that the entire site is part of a TCR. CRIT also requests further analysis showing how the CPUC has determined that, despite the fact that *the entire Project site* was recognized as a TCR, there is no fair argument that the Project could have a significant impact on tribal cultural resources.

The Tribes are particularly concerned about the large volume of ground-disturbing activities associated with the Project—over 23,000 feet of underground facilities. *Id.* at 4-20 (noting approximately 55 locations with underground structures, each 3 to 6 feet deep). Further, the DIS/MND equivocates on the method SCE will use to excavate, making it difficult to accurately evaluate the potential project impacts. The DIS/MND states that the Project would use open-cut trenching techniques “unless alternate methods are required” for sensitive resources, in which case it would use “horizontal directional drilling (HDD).” *Id.* at 4-44. It does not explain how these different techniques might affect the disturbance of cultural resources—either those underground resources yet to be discovered or the Mojave Trails Landscape that the DIS previously identified as a TCR. CRIT requests further clarification and analysis of the excavation alternatives to facilitate the development of appropriate mitigation measures. At minimum, the Tribes believe that these mitigation measures must include tribal monitoring for all ground-disturbing activities, avoidance of all newly discovered resources if feasible, including through Project modification, and in-situ or onsite reburial under the supervision of tribal monitors where avoidance of cultural resources is not possible. CRIT requests that the CPUC require SCE to contract with the Tribes to provide tribal monitors for this mitigation effort.

More broadly, while the DIS/MND makes some efforts at tribal cultural resource mitigation, such as CR-1, *id.* at 6-26 (requiring applicant to hire a specialist with experience working with “Southern California Tribal Nations” who will work with “tribal monitors and Field Crew as needed”), many of the cultural resource mitigation measures are underdeveloped. CRIT is concerned both with the deferral of preparation of a Cultural Resources Management Plan and with various aspects of the CRMP, as outlined in Table 6-1, MM-CR-3:

C1-3
cont.

Comment Set C1 – Colorado River Indian Tribes (cont.)

- CR-3 makes clear that CPUC and SCE have not yet properly surveyed historic resources at the Project site: “The CRMP shall define and map all known prehistoric and historic resources eligible to the NRHP and CRHR within 100 feet of proposed work areas. How these resources will be avoided and protected during construction will be described. Avoidance measures to be used will be described, including where and when they will be implemented.” *Id.* at 6-27. While the Tribes appreciate the commitment to map and avoid these cultural resources, surveying and development of clear avoidance measures is a prerequisite to any determination that the Project, as mitigated, will have a less-than-significant impact on tribal cultural resources.
- CR-3 requires the CRMP to address the fact that “[n]o collection of artifacts is authorized or planned for this project.” *Id.* CRIT emphatically supports the principle of avoidance, but is concerned that the DIS/MND goes on to state vaguely that “[i]f an unanticipated discovery requires evaluation via excavation and artifact collection, the retention/disposal, and permanent and temporary curation policies shall be specified. The decision-making process for identifying which artifacts are curated or reburied, where they are reburied and the individuals, including tribal participants, making these decisions shall be described.” *Id.* CRIT strongly opposes data collection and curation as mitigation measures and urges reburial in the event of accidental discovery.
- Similarly, the Tribes are concerned about CR-3’s statement regarding “[t]he commitment to curate all artifacts retained as a result of any archaeological investigations” and encourages the CPUC to adopt an explicit preference for reburial in the presence of tribal monitors. *Id.* at 6-28. The Tribes are opposed to all activities that result in disturbance or removal of cultural resources, even if intended to serve “archaeological investigations.”
- As discussed above, CRIT requests that the CPUC clarify that “consulting tribes” that will have the opportunity to review and comment on the proposed CRMP include any tribes “traditionally and culturally affiliated” with the Project site. *Id.* at 6-27.

C1-3
cont.

Finally, while CRIT appreciates the inclusion of sensitivity training for Project personnel as MM CR-2, the Tribes question whether modules “provided through participating tribes in video format” will be both effective in educating staff about appropriate work practices and respectful of the sacred significance of the tribal cultural resources associated with the Project area. *Id.* at 6-26. In addition, it is not clear whether *only* “cultural resources monitors and tribal monitors” will receive such training; CRIT urges the CPUC to clarify that this educational requirement would apply to anyone who will work at the Project site. *Id.* at 6-27.

C. Visual Resources

The Tribes object to the DIS/MND’s determination that the Project will have no significant impact on visual resources, a determination that relies heavily on the fact that there are already visible “infrastructure” facilities in or around the Project area. *See, e.g.*, DIS/MND at 5-18 (“In the context of surrounding visual elements (e.g., existing conductors, LSTs, distribution poles, and roads), most [project activities] were considered to represent minor changes in the visible landscape having a nominal and highly localized visual impact.”). Further, the agency seems to take the position that as long as mountain views are still *visible* to those in the area, even if energy infrastructure is visible in the foreground, there are no significant visual

C1-4

Comment Set C1 – Colorado River Indian Tribes (cont.)

impacts. CRIT disputes this characterization and urges the CPUC to engage in a fuller analysis of the aesthetic effects of each of the proposed Project elements, including towers, transmission lines, and other structures, on the surrounding landscape.

C1-4
cont.

Further, the DIS/MND’s analysis is inadequate in that it fails to take into account the importance of the surrounding viewshed to the Tribes. The Project will travel through Mojave National Preserve, which is located just across the California/Nevada state line from Spirit Mountain, a place of great spiritual and traditional importance to the Tribes. Spirit Mountain is the center of creation for CRIT members. *See also id.* at 5-360 (recognizing the significance of Spirit Mountain to the Mojave people). According to the Mohave origin story, the Creator Mastamho set the Mohave people at Avi Kwame (Spirit Mountain) and gave them their names. Given Spirit Mountain’s unique and highly valued role in CRIT’s cultural tradition, the Tribes request that CPUC specifically analyze effects on views of and from Spirit Mountain and the sacred landscapes in the vicinity of the Project before concluding that the impact on visual resources is less than significant.

D. Cumulative Impacts

C1-5

The DIS/MND similarly fails to take into account cumulative impacts in the Project area. For example, with respect to cultural resources, there is less than half a page of analysis summarily concluding that there are “no projects in the cumulative scenario”—that is, projects within one mile¹—that would have a cumulative effect on cultural resources. DIS/MND at 5-413. However, the DIS/MND suggests that just two capacitor sites and two fiber optic repeater sites—within a project dispersed across more than 235 miles of transmission infrastructure—were the points of reference for determining “cumulatively considerable impact.” *Id.*; *see also id.* at 1-3. In addition, the analysis recognizes the potential for ground-disturbing activities to “affect unknown buried cultural deposits or archaeological sites” at one part of the Project site and two nearby facilities, but concludes simply that the “small size of the Barstow Repeater site (0.13 acres) and the implementation of mitigation measures would result in a less than significant impact and would result in a less than cumulatively considerable impact.” *Id.* at 5-414. This is insufficient discussion to justify bypassing preparation of an EIR.

Further, the only discussion of cumulative “tribal cultural resources” impacts is just two sentences: “The cumulative effect of the ELM Project in combination with effects from projects in the cumulative scenario are similar to those discussed for Cultural Resources (see previous discussion). The cumulative impacts would be less than considerable.” *Id.* at 5-419. Again, this is insufficient. CPUC has made no effort to describe the particular cumulative impacts on tribal cultural resources, despite the fact that its DIS/MND determined that the entire Mojave Trails Landscape—presumably encompassing many of the projects listed in Table 5.21-1—is a TCR.

¹ Although the DIS/MND states that this is the radius of cultural resource impacts considered, it is far from clear which projects fell into this group; CPUC states in its “Approach to Cumulative Impact Analysis” that “Projects used in the cumulative impact analysis are listed in Table 5.21-1, Cumulative Projects within 1 Mile of the Proposed Project, and Table 5.21-2, Cumulative Projects 1 to 5 Miles from the Proposed Project.” *Id.* at 5-400. However, there is no Table 5.21-2 anywhere to be found, and Table 5.21-1 appears to show the five-mile radius instead.

Comment Set C1 – Colorado River Indian Tribes (cont.)

CPUC must adequately analyze cumulative impacts, which requires more than cursory dismissal by reference to mitigation measures. To the extent CPUC wishes to rely on mitigation measures to demonstrate that there are no “cumulatively considerable” impacts, it must first attempt to quantify the cumulative impacts and then specifically explain the effect of each relevant mitigation measure in alleviating such an impact.

C1-5
cont.

E. Growth-Inducting Impacts.

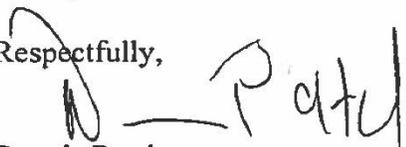
Finally, CRIT disputes CPUC’s conclusion that it need not consider “[e]nvironmental effects that may be associated with future generation facilities . . . that may use Proposed Project facilities to transmit electricity” because they are “speculative” and “not the result of, or made more likely by, the proposed project.” DIS/MND at 3-4. CEQA requires an analysis of growth-inducing impacts. Pub. Res. Code § 21100(b)(5). Clearly, an expansion of energy infrastructure on this scale could foreseeably result in a greater number of future generation facilities. CRIT remains concerned about the gradual advancement of such projects, one by one, across its ancestral territory, and maintains that CPUC may not avoid analyzing growth-inducing impacts by issuing a mitigated negative declaration for the Project.

C1-6

Conclusion

C1-7

Thank you for your consideration. To understand how these comments were taken into account in your decisionmaking, we ask for a written response prior to a final decision. As discussed above, the Tribes also request formal consultation with the CPUC on both the Project generally and the CRMP specifically. Please copy the Tribes’ Attorney General Rebecca A. Loudbear, at rloudbear@critdoj.com, Deputy Attorney General Antoinette Flora, at aflora@critdoj.com and THPO Director Bryan Etsitty, at betsitty@crit-nsn.gov, on all correspondence to the Tribes.

Respectfully,


Dennis Patch
 Chairman, Colorado River Indian Tribes

Cc: Tribal Council of the Colorado River Indian Tribes
 Bryan Etsitty, THPO Director
 Rebecca A. Loudbear, Attorney General, Colorado River Indian Tribes

Comment Set C1 – Colorado River Indian Tribes (cont.)

EXHIBIT 1

Government-to-Government Consultation Policy of the Colorado River Indian Tribes

C1-8

The federally recognized Colorado River Indian Tribes (CRIT or the Tribes) have over 4,000 active members from four distinct tribes – the Mohave, Chemehuevi, Hopi, and Navajo. The Tribes’ reservation, which encompasses nearly 300,000 acres, straddles the Colorado River in both Arizona and California. The Tribes’ ancestral homelands, however, extend far beyond the current reservation boundaries, into what is now public and private land in Arizona, California, and Nevada. As a result, the Tribes’ cultural resources, including sacred sites, trails, and artifacts, are found beyond the reservation boundaries as well. The Tribes are deeply committed to the ongoing protection of such resources located both on- and off-reservation.

Federal law recognizes that CRIT is a sovereign government distinct from the United States. As a result of this status, the United States must engage in government-to-government consultation with the Tribes when actions or decisions of the United States have the potential to impact the Tribes, its government, tribal land, or cultural resources. This consultation must occur before the momentum toward any particular outcome becomes too great. The purpose of this government-to-government consultation must be to obtain CRIT’s free, prior, and informed consent for such actions.¹ Desired outcomes include an ongoing, mutually beneficial relationship between federal agencies and the CRIT Tribal Council, deference to tribal sovereignty, and informed decision-making by both the United States and the Tribes. Federal agency staff and decision-makers must view consultation as more than listening and learning sessions with Tribal Council. Instead, there must be an ongoing, dynamic relationship between federal agencies and the Tribes that is built upon the agencies’ concerted effort to understand the Tribes’ history, culture, and government.

The Tribes have developed this policy paper to guide future government-to-government consultation with the United States and its administrative agencies.² This paper outlines CRIT’s consultation rights and the specific characteristics that comprise minimally adequate consultation under federal law. This paper also offers additional suggestions to ensure that consultation is effective and mutually respectful.³ If federal agencies do not follow this policy, CRIT does not consider the communications from the agencies to meet the consultation requirements of tribal or federal law. Acknowledgement of this policy is required before an agency schedules a government-to-government meeting with Tribal Council. CRIT is committed to seeking recourse

¹ United Nations Declaration of the Rights of Indigenous Peoples, Articles 19 and 32; *see also* 36 C.F.R. § 800.1(f) (defining “consultation” as “the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them.”); BLM Manual Handbook H-8120-1 at I-2 (consultation includes “[t]reating tribal information as a necessary factor in defining the range of acceptable public-land management options.”).

² 36 C.F.R. § 800.4(c)(2)(ii)(C); 43 C.F.R. § 10.5(d)(3); Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions (January 2017) (“Improving Tribal Consultation”), Key Principle 8.

³ Required actions are distinguished from recommended actions by use of the words “must” and “shall” versus “should.”

Comment Set C1 – Colorado River Indian Tribes (cont.)

through all available political, legal, and media channels if this request is denied or if the agency fails to comply with this policy.

Why A Formal Process is Needed

Federal agencies (including the Department of the Interior, Bureau of Land Management, and Bureau of Indian Affairs) have consistently failed to engage in adequate government-to-government consultation with CRIT and other tribes. The United States recently recognized this troubled history in suggesting needed modifications to the consultation process.⁴ In CRIT's experience, agencies have asked for substantive tribal comments on project and policy documents after those projects and policies have already been approved or implemented. Agency staff and decision-makers have attended meetings with Tribal Council without adequate information or authority to meaningfully respond to the Tribes' concerns. Agencies have repeatedly refused to provide responses to CRIT's comments, including any explanation for why CRIT's requests cannot be accommodated. These failures have resulted in direct harm to CRIT, its members, and cultural resources of great importance to the Tribes.

As one example, BLM authorized construction of the nearly 2,000-acre Genesis Solar Energy Project on land once occupied by the ancestors of CRIT's Mohave members. The project involved significant grading along the shoreline of Ford Dry Lake, resulting in the removal of over 3,000 cultural resources over the vehement objections of the Tribes. These artifacts are now stored at the San Bernardino County Museum with no access for CRIT members. In accordance with cultural, spiritual, and religious practices, CRIT has repeatedly asked BLM to permit reburial of the Genesis artifacts, as well as any other artifacts that are inadvertently disturbed within the ancestral homeland. Yet, BLM has refused to engage in government-to-government consultation on this critical topic. Letters have been left unanswered, harmful agency policies have been issued without advance notice or consultation, and BLM officials have been unprepared to discuss their position when in-person meetings have occurred. These consultation failures have resulted in severe and ongoing harm to CRIT and its members.

Basis of Consultation Right

The fundamental principle underlying CRIT's right to meaningful consultation with the United States is the Indian trust doctrine. Pursuant to this doctrine, the United States has a fiduciary duty over tribal lands and resources as Indian trust assets.⁵ As part of this duty, the United States has an obligation to consult with CRIT about federal actions that have the potential to impact these assets or other attributes of tribal sovereignty. For CRIT, tribal sovereignty includes an obligation to protect tribal and cultural resources that are located in the ancestral homelands of CRIT members.

⁴ Improving Tribal Consultation, at 1-5.

⁵ *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942); *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 788 (9th Cir. 2006); *Navajo Tribe of Indians v. United States*, 364 F.2d 320, 322 (Ct. Cl. 1966).

Comment Set C1 – Colorado River Indian Tribes (cont.)

This fundamental consultation right is engendered in federal statutes,⁶ executive orders,⁷ and agency policies.⁸ These laws help implement and explain the consultation right that stems from the Indian trust doctrine, but do not diminish it.⁹ Where appropriate, CRIT relies on these laws to support its definition of adequate consultation.

Characteristics of Adequate Consultation

Tribal Sovereignty. Government-to-government consultation must respect tribal sovereignty.¹⁰ The federal government shall not treat consultation as a “box to be checked,” but as a meaningful dialogue intended to result in consensus between the United States and the Tribes.

Addressing Tribal Concerns. The federal government shall timely seek and review CRIT’s written and oral comments and provide comprehensive responses to Tribal concerns and requests.¹¹ Responses to written comments should generally be provided before any in-person government-to-government consultation. Prior to reaching its final decision, a federal agency must explain how that decision addresses CRIT’s concerns.¹² Where an agency is unable to fully address CRIT’s concerns, the agency shall clearly explain its reasoning based on the legal, practical, or policy constraints on its decision-making.¹³ If CRIT has articulated its concerns in writing, this explanation should be in writing as well.

Involved Parties. Government-to-government consultation requires an in-person meeting between CRIT Tribal Council and the agency decision-maker with ultimate authority for a proposed project or action.¹⁴ This decision-maker must be prepared with sufficient details about the proposed project or action, the Tribes’ history, culture and government, and the Tribes’

⁶ See, e.g., National Historic Preservation Act (NHPA), 54 U.S.C. §§ 302701(e), 302706(b); 36 C.F.R. § 800.5(a); Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3002(b)-(c), 3003(b), 3004(b), 3005(a)(3); 43 C.F.R. § 10.5; Archaeological Resources Protection Act (ARPA), 43 C.F.R. §§ 7.7(b)(4), 7.16(b)(2)-(3).

⁷ Executive Orders 12875, 13007, 13175; September 23, 2004 “Memorandum on Government-to-Government Relationship with Tribal Governments”; November 9, 2009 “Memorandum for the Heads of Executive Departments and Agencies.”

⁸ Secretarial Order 3317 § (b); Department of the Interior Policy on Consultation with Indian Tribes; BLM Manual 8210: Tribal Consultation under Cultural Resource Authorities; Bureau of Indian Affairs Government-to-Government Consultation Policy (BIA Consultation Policy) at V.1-3.

⁹ 36 C.F.R. § 800.4(c)(2)(ii)(B); Executive Order 13175, § 2.

¹⁰ 36 C.F.R. § 800.4(c)(2)(ii)(B); BLM Manual 8120 at .08(A) (“The special legal status of tribal governments requires that official relations with BLM . . . shall be conducted on a government-to-government basis.”).

¹¹ Executive Order 13175, §§ 5(b)(2)(B), 5(c)(2); Improving Tribal Consultation, Key Principle 6.

¹² BLM Manual 8120, Glossary of Terms (“consultation” defined to include “documenting the manner in which the [tribal] input affected the specific management decision(s) at issue.”); BLM Manual Handbook H-8120-1 at I-1; Improving Tribal Consultation, Key Principle 6.

¹³ BLM Manual 8120 at .06(E) (“Field Office Managers and staff . . . shall document all consultation efforts.”); Improving Tribal Consultation, Key Principle 6.

¹⁴ See, e.g., 36 C.F.R. § 800.2(a); BIA Consultation Policy at VI.A(4); BLM Manual 8210 at .06(A).

Comment Set C1 – Colorado River Indian Tribes (cont.)

anticipated or specific concerns with respect to the proposed project or action.¹⁵ This decision-maker should also have formal training regarding tribal sovereignty, the Indian trust doctrine, and other aspects of federal Indian law. The agency should use its staff to communicate project information to CRIT and its staff and to prepare the agency decision-maker for the government-to-government consultation. For example, prior to meeting with CRIT Tribal Council, it is the Tribes' expectation that agency staff will have provided baseline information about the project and its potential impacts to Tribal staff, such as survey results and ethnographic reports. However, CRIT does not recognize staff-to-staff discussions or communications as fulfilling the federal government's consultation responsibility.¹⁶

In addition, communications between CRIT and project applicants or proponents (where such applicants or proponents are not federal entities) are not government-to-government consultation. Such communications, however, can help to convey information and reduce conflict. Unless requested by CRIT, federal agencies shall not interfere with such communications. Finally, meetings held with representatives from multiple tribes do not constitute consultation with CRIT unless CRIT expressly agrees that consultation format.¹⁷

Timing. Government-to-government consultation must occur as early as practicable, so that tribal concerns can be taken into account before the momentum toward a particular project or action is too great.¹⁸ Federal agencies should provide basic information about a project or action and its potential impacts to CRIT as soon as the agency begins initial planning for a project or action or a private entity approaches the agency to submit an application.¹⁹ Federal agencies should keep CRIT apprised of the decision-making timeline so that the Tribes can participate at appropriate junctures. Federal agencies shall continue to consult with Tribes until they make a decision on the proposed project or action, and if requested by the Tribes or required by law, until construction or implementation of the project or action is complete.

¹⁵ See also *Pueblo of Sandia v. United States*, 50 F.3d 856, 860, 862 (10th Cir. 1995) (Section 106 “mandates an informed consultation.”); BLM Manual 8120 at .06(C) (“Field Office Managers shall recognize that traditional tribal practices and beliefs are an important, living part of our Nation’s heritage, and shall develop the capability to address their potential disruption . . .”); BLM Manual Handbook H-8120-1 at I-2 (“BLM’s representative must be authorized to speak for the BLM and must be adequately knowledgeable about the matter at hand.”); Improving Tribal Consultation, Key Principle 5.

¹⁶ *Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Dep’t of Interior*, 755 F. Supp. 2d 1104, 1118-19 (S.D. Cal. 2010).

¹⁷ *Id.*

¹⁸ 16 U.S.C. §§ 470a(d)(6), 470f (requiring consideration of historic resource impacts “prior to the approval of . . . the undertaking”) (emphasis added); 36 C.F.R. §§ 800.1(c), 800.4(c)(2)(ii)(A); Executive Order 13175, §§ 5(b)(2)(A), 5(c)(1); Secretarial Order 3317, U.S. Dept. of the Interior, § 4(a); Dep’t of the Interior Tribal Consultation Policy at 7-8; BIA Consultation Policy at VI.A; BLM Manual 8120 at .02(B) (consultation must “[e]nsure that tribal issues and concerns are given legally adequate consideration during decision-making”) (emphasis added); BLM Handbook Manual H-8120-1 at V-5 (“. . . the BLM manager should initiate appropriate consultation with potentially affected Native Americans, as soon as possible after the general outlines of the land use plan or the proposed land use decision can be described.”).

¹⁹ Improving Tribal Consultation, Key Principle 3.

Comment Set C1 – Colorado River Indian Tribes (cont.)

Scope of Consultation. Federal agencies must be willing to engage in consultation on any potential impacts of a proposed project or action to CRIT, its members, its land, or its cultural resources.²⁰ Consultation shall not be limited to potential impacts to properties eligible for listing on the National Register of Historic Places²¹ or equivalent state registers, or protected by the Native American Graves Protection and Repatriation Act. If federal approval is needed for only a portion of a proposed project or action, the agency shall nevertheless consult on potential impacts from the whole of the project or action. Federal agencies should not expect CRIT to provide information about impacts to cultural resources in scientific terms and should weigh the Tribe's cultural, spiritual, historical, and anthropological input with the respect and deference that it is due.²²

Confidentiality. Information obtained via government-to-government consultation shall be kept confidential, except to the extent that CRIT provides information in a public forum (such as via a letter submitted during a comment period or comments made at a hearing) and to the extent such information must be revealed pursuant to federal or other applicable law.²³ If a federal agency determines that confidential information obtained from CRIT must be revealed, the agency shall inform CRIT prior to the release and make all reasonable attempts to limit its scope. Federal agencies shall acknowledge that confidential information is not limited to the location of sites eligible for listing on the National Register of Historic Places²⁴ or protected by the Native American Graves Protection and Repatriation Act, but includes any information about sensitive resources, culture, or religious beliefs, obtained through consultation.

Resources. Federal agencies must recognize that government-to-government consultation consumes scarce tribal resources. Agencies should minimize costs to CRIT by conducting government-to-government consultation meetings in Parker, Arizona²⁵; providing clear and succinct information about proposed projects or actions and their potential impacts; and ensuring that agency staff document CRIT's interests and concerns. CRIT should not be required to repeatedly provide the same information to an agency because of agency staff turnover. Agencies should explore funding sources to remunerate the Tribes for participating in consultation.

Key Requirements

To aid in implementation of this policy, agency officials shall ensure their government-to-government consultation efforts comport with this summary of key requirements:

- Initiate consultation as early as practicable.
- Timely seek and review CRIT's written and oral comments.

²⁰ Executive Order 13175, § 1(a).

²¹ 36 C.F.R. § 800.4(c)(2)(ii).

²² See, e.g., BLM Manual Handbook B-8120-1 at 11-5.

²³ See 36 C.F.R. §§ 800.4(a)(4), 800.11(c); see also BLM Manual 8120 at .06(G).

²⁴ 36 C.F.R. § 800.4(c)(2)(ii)(A); see also BLM Manual Handbook H-8120-1 at V-1.

²⁵ Improving Tribal Consultation, Key Principle 4.

Comment Set C1 – Colorado River Indian Tribes (cont.)

- Provide comprehensive responses to Tribal concerns and requests in the same format as such concerns and requests were provided to the agency.
- Explain agency decisions based on legal, practical, and policy constraints on decision-making.
- Involve agency decision-makers with ultimate authority in in-person consultation meetings.
- Sufficiently prepare for in-person consultation meetings with Tribal Council to be able to respond to and address the Tribes' concerns.
- Do not claim that communication with CRIT staff, between CRIT and project applicants, or in the presence of multiple tribes is government-to-government consultation.
- Consult on any potential impacts of a proposed project or action on CRIT, its members, its land, or its cultural resources.
- Keep information obtained via government-to-government consultation confidential.

Comment Set C1 – Colorado River Indian Tribes (cont.)



COLORADO RIVER INDIAN TRIBES
Tribal Historic Preservation Office

26600 Mohave Road
Parker, Arizona 85344

Telephone: (928)-669-5822 Fax: (928) 669-5843

July 20, 2017

Southern California Edison
2244 Walnut Grove avenue
Rosemead, CA 91770

RE: Eldorado-Lugo-Mohave Capacitor Project

Dear Ms. Audry Williams:

The Colorado River Indian Tribes' Tribal Historic Preservation Office ("CRIT THPO") has received your letter dated June 30, 2017, regarding the *Cultural Resource Inquiry for Southern California Edison Company's Eldorado-Lugo-Mohave Capacitor Project in San Bernardino County, California and Clark County, Nevada.*

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,200 members belonging to the Mohave, Chemehuevi, Hopi and Navajo Tribes. The almost 300,000 acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribe's 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. These landscapes remain imbued with substantial cultural, spiritual and religious significance for the Tribes' current members and future generations. For this reason, we have a strong interest in ensuring that potential cultural resource impacts are adequately considered and mitigated.

In particular, the Colorado River Indian Tribes are concerned about the removal of artifacts from this area and corresponding destruction of the Tribes' footprint on this landscape. As such, the Tribes request that all prehistoric cultural resources, including both known and yet-to-be-discovered sites, be avoided if feasible. If avoidance of the site is infeasible, then the Tribes request that the resources be left in-situ or reburied in a nearby area, after consultation. This language should be incorporated into enforceable mitigation measures.

In addition, we respond as follows:

- ✓ Given the potential impact of the project on important cultural resources, the Colorado River Indian Tribes request in-person government-to-government consultation. Please contact the CRIT THPO to discuss our concerns and schedule a meeting with Tribal Council.

Comment Set C1 – Colorado River Indian Tribes (cont.)

CRIT THPO

Project Name: Eldorado Lugo Mohave Project

Date: July 20, 2017

Page 2

_____ In the event any human remains or objects subject to provision of the Native American Graves Protection and Repatriation Act, or cultural resources such as sites, trails, artifacts are identified during ground disturbance, please contact the CRIT THPO within 48 hours.

_____ The Colorado River Indian Tribes request tribal monitoring of any ground disturbing activity as a condition of project approval. The Tribes request notification of any opportunities to provide tribal monitoring for the project.

_____ The Colorado River Indian Tribes do not have any specific comment on the proposed project and instead defer to the comments of other affiliated tribes.

Thank you for your consideration. Please contact the undersigned if you have any questions or concerns.

Please be advised that David Harper is no longer associated with this Department. Mr. Bryan Etsitty has been appointed as Acting-Director.

Sincerely,

**COLORADO RIVER INDIAN TRIBES
TRIBAL HISTORIC PRESERVATION OFFICE**

/s/ Bryan Etsitty, Acting-Director

26600 Mohave Road

Parker, AZ 85344

Phone: (928) 669-5822

E-mail: bryan.etsitty@crit-nsn.gov

critthpo@crit-nsn.gov

emailed 07/20/17 nf

Responses to Comment Set C1 – Colorado River Indian Tribes

C1-1 The commenter states that a Mitigated Negative Declaration (MND) is inappropriate given potentially significant impacts and urges the CPUC to prepare an Environmental Impact Report (EIR) for the proposed project and also requests consultation between the tribe and CPUC.

The CPUC does not agree that an EIR is needed; the IS/MND clearly analyzes the project's environmental impacts and identifies mitigation measures that will effectively reduce all potentially significant impacts to a less than significant level. The applicant, SCE, accepted and agreed to all of the mitigation measures before the proposed IS/MND was released for public review. Pursuant to the CEQA statute and Guidelines, an IS/MND, not an EIR, is the proper document in such situations. (See Pub. Res. Code §§ 21064.5, 21080(c)(2); 14 Cal. Code Regs. §§ 15064(f)(2), 15070(b).) The commenter cites no evidence in support of the assertion that the CPUC does not understand the scope of the project's effects or the degree to which the IS/MND's proposed mitigation measures reduce these effects. The commenter does not acknowledge the extensive cultural resource surveys that were conducted prior to preparation of the IS/MND and that Cultural Resources Management Plans (CRMP) are typically prepared after project approval but before authorization of construction, regardless of whether the environmental document prepared under CEQA is an IS/MND or EIR. Contrary to the commenter's implication, Mitigation Measure CR-3 concerning the required CRMP is not improperly deferred. Consistent with CEQA Guidelines Section 15126.4(a)(1)(B), Mitigation Measure CR-3 clearly identifies in detail what must be included in the CRMP, the CPUC and the applicant are fully committed to the mitigation and the measure adopts specific performance standards and identifies the types of potential actions needed to achieve those standards. Circumstances where cultural resource monitoring is required are clearly identified in the mitigation measures; these include establishing buffer zones around resources to protect them from impacts.

Regarding consultation, as explained in response C1-2, the tribe and CPUC have engaged in consultation.

C1-2 The commenter raises question regarding government-to-government consultation, which are summarized and addressed below.

The commenter notes that Pub. Res. Code § 21080.3.1 provides for formal consultation between a California agency and a tribe regarding tribal cultural resources and the effects of a proposed project.

CRIT requested of the applicant, SCE, formal consultation via a letter it sent to the SCE dated July 20, 2017. However, the CPUC, not the applicant SCE, is the lead agency under CEQA for this project. The CPUC was not a party to communications between SCE and CRIT and was unaware of these communications before receiving CRIT's September 13, 2019 letter commenting on the Draft IS/MND. As further discussed below, the CPUC contacted CRIT numerous times at the initiation of the IS/MND preparation and CRIT had several opportunities to timely communicate its interest in formal consultation with CPUC but did not do so.

The CPUC did extensive outreach to CRIT and other tribes regarding consultation on the ELM Project. In October 2018, when the CPUC determined that preparation of an IS/MND was appropriate under CEQA, the agency initiated the consultation procedures as described in Pub. Res. Code § 21080.3.1. Twenty-one tribes or bands were identified as potentially having an interest in the geographic area of the Proposed Project. The CPUC contacted these by email, US Mail, and telephone to determine if they were interested in government-to-government consultation.

With regard to CRIT, an email with an attached invitation letter was sent to the Chairman of CRIT on October 22, 2018 using the contact information provided by the Native American Heritage Commission. At the same time, a hardcopy of the invitation letter was mailed to the Chairman via the U.S. Postal Service. U.S. Postal Service tracking confirmed delivery of the letter on October 24, 2018. On October 30, 2018, a telephone call was placed to the Chairman's office. The call was unanswered, and

a message was left requesting a reply regarding consultation. On November 13, 2018, a second email with invitation letter attached was sent. No response was received to any of these communications. Based on CRIT's lack of a response, the CPUC concluded that the tribe was not interested in formal AB 52 consultation on this Proposed Project.

The commenter states that “[b]ecause the CPUC limited consultation to just four tribes...and ignored CRIT’s consultation request, its analysis of potential impacts on tribal cultural resources is incomplete in scope.”

The CPUC did not “limit” consultation; the agency consulted with every tribe that indicated a desire to participate in formal government-to-government consultation. CRIT did not indicate such a desire. The commenter does not indicate in what way the analysis is incomplete in scope because of CRIT’s non-participation.

In its comments on the IS/MND, CRIT requested consultation in the same manner as the four tribes who did respond to request formal consultation.

The CPUC’s tribal consultation policy implements the requirements of Pub. Res. Code § 21080.3.1, including statutory deadlines. However, the policy also states: “The CPUC will honor a tribe’s request for CEQA consultation that is made more than 30 days after the tribe’s receipt of notice, *as long as there is still time for meaningful consultation to occur.*” (emphasis added)

On September 24, 2019, an email with a letter attachment was sent to the Chairman and other contacts listed in the CRIT letter commenting on the IS/MND. Hardcopies of the letter were sent via U.S. Mail and were received on September 30, 2019. In this communication the CPUC indicated its willingness to consult but noted that “time is of the essence for meaningful consultation to occur before the IS/MND is finalized. In the formal Proceeding for the proposed ELM Project, the Administrative Law Judge was advised that the CEQA process would be completed within two months of the close of the comment period and has planned the Proceeding accordingly. IS/MND comment closure was September 13, 2019. The final IS/MND will be completed by no later than mid-November 2019. That, in turn, means that consultation must occur and conclude quickly and without delay.” On October 4, 2019, telephone calls were placed to the offices of the Chairman, the Attorney General, and the Tribal Historic Preservation Officer (THPO); messages were left requesting a return call to set up a conference call. Contact was made with the Deputy Attorney General, and a time and location were established for consultation to take place. A meeting occurred with the Attorney General, Deputy Attorney General, and THPO in Parker Arizona on November 5, 2019, during which the project and applicable mitigation measures were explained by the CPUC. The tribal representatives at the meeting indicated they would convey the information from the meeting to the Tribal Council and would contact the CPUC if they had additional questions or concerns.

Based on the consultation with CRIT, they have now been determined to be a consulting tribe for purposes of the ELM Project. The draft IS/MND has been revised as follows to acknowledge this.

At Draft IS/MND page 5-362 the text is amended:

Initially, three tribes requested to consult on the Proposed Project: the San Manuel Band of Mission Indians, the Morongo Band of Mission Indians, and the Twenty-Nine Palms Band of Mission Indians. Subsequently, the Fort Mojave Tribe requested consultation. Subsequently, in its comment letter on the MND as part of public review the Colorado River Indian Tribes (CRIT) requested consultation.

At Draft IS/MND page 5-363 the following has been added:

Subsequent to publication of the Draft MND, the CRIT requested government-to-government consultation with the CPUC. CPUC policy permits consultation even after the response period specified in

AB 52 has lapsed, if there is sufficient time for meaningful consultation. The CPUC met with CRIT representatives on November 5, 2019 in response to their request made in the MND comment letter. Based on this consultation meeting, the CPUC considers CRIT a consulting tribe on the ELM project. Therefore, there are five consulting tribes on the ELM Project: San Manuel Band of Mission Indians, Morongo Band of Mission Indians, Twenty-Nine Palms Band of Mission, Fort Mojave Tribe, and Colorado River Indian Tribes.

C1-3 **The commenter raises multiple points regarding tribal cultural resources, which are summarized and addressed sequentially below.**

The commenter asserts that the IS/MND’s discussion of tribal cultural resources is incomplete because input from CRIT and other affected tribes was not taken into account.

The CPUC disagrees. As discussed in more detail above in the Response to Comment C1-2, the CPUC conducted extensive outreach to CRIT and other tribes to determine their interest in consultation on the ELM Project. In the process of preparing the IS/MND the agency consulted with every tribe that indicated a desire for formal government-to-government consultation. As a result, the mitigation measures in the IS/MND benefited from input gathered during multiple consultation meetings and incorporate measures proposed by tribal representatives. With regard to CRIT, emails and letters were sent and phone messages left requesting a reply regarding the tribe’s interest in formal consultation. No response was received to any of these communications. Based on those efforts and CRIT’s lack of response, the CPUC reasonably concluded that the tribe was not interested in formally consulting on the ELM Project. As outlined in the CPUC’s tribal consultation policy, the agency is willing to consult with CRIT and hear its input regarding tribal cultural resources as long as there is still time for meaningful consultation to occur.

The commenter asserts that the analysis fails to adequately assess potential effects of ground disturbing activities or to demonstrate that the Cultural Resources Management Plan (CRMP) will fully mitigate the potential impacts of the project.

The CPUC disagrees as the IS/MND adequately analyzes all potentially significant impacts associated with the proposed project’s ground disturbing activities and identifies a suite of mitigation measures that will reduce all cultural and tribal cultural impacts to levels of insignificance.

As described in IS/MND Section 3 (Project Description) new construction will take place in order to build the Newberry Springs Series Capacitor (3.3 acres) and the Ludlow Series Capacitor (3.2 acres) and associated infrastructure. Other project activities would include the replacement of approximately 232 miles of existing overhead ground wire (OHGW) with an optical ground wire (OPGW), the strengthening of 60 of the existing 855 lattice steel towers to accommodate the OPGW, the installation of three fiber optic repeater facilities in existing ROW, the installation of new 12 kV wooden distribution poles, and alternations at 16 tower with conductor span ground clearance issues. At these 16 sites, 9 would involve lifting the tower and inserting a new midsection, 3 would involve minor grading to meet clearance requirements, and 4 would require conductor modifications or reframing (lowering of lines passing under the 500 kV lines). Other than the capacitor and repeater facility construction, the potential ground disturbing activities would mostly be associated with equipment and supply lay-down areas and the movement of vehicles across the landscape as part of line stringing. Most ground disturbing project activities would be short term and temporary and take place on existing access roads and previously disturbed areas.

Section 5.5.6 Cultural Resources identifies the cultural resources that could be affected by ground disturbance and makes clear that the preferred mitigation strategy is avoidance of cultural resources. The IS/MND identifies six mitigation measures (Mitigation Measures CR-1 through CR-6) to address potential impacts and to ensure that impacts do not occur or are reduced to a less than significant

level. Among these measures is the development and implementation of a Cultural Resources Management Plan (CRMP) required by Mitigation Measure CR-3. The CRMP Mitigation Measure spells out in detail the content of the plan to be developed and implemented by SCE. The CRMP is subject to review by the CPUC and consulting tribes (now including CRIT), and to approval by the CPUC. CRMPs are frequently and reliably used to spell out responsibilities and how resources will be protected.

Overall, the potential for direct impacts to cultural resources as a result of ground disturbing activities is considered relatively minor and is analogous to operations and maintenance activities that are ongoing on the existing facilities. Mitigation Measure CR-5 (Avoidance of cultural and tribal cultural resources) reflects this low potential for impacts in the requirement for Archaeological and Tribal Monitors to be present during ground disturbing activities within 100 feet of prehistoric and protohistoric resources which will allow all of these resources to be successfully avoided. In sum, the IS/MND adequately describes the potential effects of the project's ground disturbing activities and demonstrates that all potential impacts will be avoided or reduced to levels of insignificance. The commenter does not provide any substantial evidence to the contrary.

The commenter requests clarification of the potential impacts to cultural resources as a result of the alternative excavation method, horizontal directional drilling, that may be used if required.

Mitigation Measure CR-3 (Prepare and implement a Cultural Resources Management Plan) requires that the CRMP specify the particular avoidance measures that will be used and when and where they will be implemented. Therefore, the CRMP will address the use of horizontal directional drilling specifically. However, in general, when horizontal directional drilling is selected as an excavation method, only the entry and exit pits would have the potential to directly impact sensitive cultural resources. Cultural resources specialists would assist excavators to place the entry and exit pits well outside the boundaries of known cultural resources and ensure that the depth of the horizontal drilling would be sufficient to avoid the buried components of archaeological sites if appropriate.

The commenter requests that tribal monitoring be required for any and all activity within the project given that the project is encompassed by a cultural landscape/Tribal Cultural Resource, the Mojave Trails Landscape.

The commenter is correct that the CPUC considers the project to be encompassed by the Mojave Trails Landscape. Monitoring for the ELM Project, as agreed to during government-to-government consultation and included in the IS/MND's mitigation measures, is focused upon ensuring avoidance of the artifacts and features that are physical components of this landscape. However, the commenter does not indicate how the presence of tribal monitors during project activities that are not near sensitive artifacts and features would address potential impacts to the Mojave Trails Landscape.

The commenter states that CRIT strongly opposes collection and curation of cultural resources, encourages the CPUC to adopt an explicit preference for reburial in the presence of tribal monitors, and requests that the ELM Project mitigation measures be revised to require in-situ or on-site reburial if avoidance of cultural resources is not possible.

The CPUC and the IS/MND mitigation measures in no way foreclose in-situ and on-site reburial of cultural resources. This is reflected in the text of MM CR-3 (Prepare and implement a Cultural Resources Management Plan): "The decision-making process for identifying which artifacts are curated or reburied, where they are reburied and the individuals, including tribal participants, making these decisions shall be described." This measure envisions case-by-case decisions, including tribal participation, regarding the appropriate treatment of cultural resources that may be encountered where the CPUC has decision-making authority on state- and privately-owned land.

The commenter requests that the mitigation measures be revised to require avoidance of all newly discovered cultural resources, including through project modification.

No such revisions are needed because, as described in MM CR-4 (Inadvertent discovery of cultural or tribal cultural resources), if resources are identified during project implementation, they will be avoided when feasible.

The commenter requests that the mitigation measures be revised to require SCE to contract with Tribes to provide monitors for this mitigation effort.

Again, no such revisions are needed as these requirements are already incorporated into MM CR-3 (Prepare and implement a Cultural Resources Management Plan), which specifies that “Tribal Monitors shall be retained to monitor ground disturbing activities.”

The commenter questions whether cultural resources surveys of the project area have been completed.

As described in Section 5.5.5 (Cultural Resources – Methodology- Archaeological Inventory), one hundred percent of the direct APE was inventoried.

The commenter requests that the tribes that will have the opportunity to review and comment on the CRMP include any tribes that are traditionally or cultural affiliated with the project site.

These requirements are already incorporated into Mitigation Measure CR-3 (Prepare and implement a Cultural Resources Management Plan), which specifies that: “The CPUC will submit the CRMP to representatives of consulting tribes for a 30-day review and comment period prior to approving the CRMP.” The tribes that formally consult on the ELM Project are traditionally or cultural affiliated with the Project Area will be provided an opportunity to review and comment on the CRMP.

The commenter questions whether sensitivity training videos provided by participating tribes will be effective in educating staff about appropriate work practices and respect for tribal cultural resources.

Mitigation Measure CR-2 (Cultural resources environmental awareness training) requires that project personnel are trained about appropriate work practices, including those regarding to cultural resources and tribal cultural resources. The use of a video format allows participating tribes to choose their own words for explaining why these resources are important and for each worker to hear this explanation from a tribal member. A video format for worker training is used because there may be weekly changes in project staff and it is impractical to conduct such frequent and unpredictably timed training using in-person training staff. After the initial training of crews, monitors, and others, subsequent training may be required at irregular intervals for a single person or a small group. A pre-recorded and vetted training presentation ensures that all topics are fully covered.

The commenter requests that the sensitivity training required in MM CUL-2 be required for anyone who works at the site.

These requirements are already incorporated into Mitigation Measure CR-2 (Cultural resources environmental awareness training) which specifies that: “Training shall be required for all personnel before they begin work on a project site and repeated as needed for all new personnel before they begin work on the Project.”

C1-4

The commenter addresses visual impacts and objects to the determination that the project will have no significant impact on visual resources. The commenter disputes this characterization and requests a “fuller analysis” of the visual effects of the project on the surrounding landscape, asserting that the IS/MND analysis fails to consider the importance of the surrounding viewshed to the Tribes. The commenter’s concern is focused on potential effects on Avi Kwame (Spirit Mountain), and the commenter requests that effects on views of and from Spirit Mountain be analyzed.

The commenter does not provide evidence of a significant aesthetic impact or that the project's mitigation measures will not reduce all potential aesthetic impacts to levels of insignificance.

Based on this comment, the CPUC reviewed the location of Spirit Mountain relative to project components and their visibility. At its nearest, the existing Eldorado-Mohave 500 kV Transmission Line is approximately 6 miles west of Spirit Mountain. The existing overhead ground wire (OHGW) on this transmission line would be replaced with optical ground wire (OPGW), which is slightly greater in diameter than the existing OHGW but otherwise indistinguishable. At 6 miles, there would be no discernable visible change. One lattice steel tower on the Eldorado-Mohave 500 kV Transmission Line would be raised to address ground clearance issues. This tower would be raised 18.5 feet or less; it is nearly 8 miles from Spirit Mountain. At this distance, the change in height would be indistinguishable from existing conditions. Mohave Substation is over 11 miles southeast of Spirit Mountain and near Laughlin, NV, which has numerous mid-rise and high-rise buildings along the Colorado River. The substation is visible from some locations on the east side of the mountain. Changes at Mohave Substation include replacement of some existing equipment and installation of new equipment within the existing fence. At 11 miles and given the existing built condition of the substation and the nearby built urban conditions, changes within the substation would be indistinguishable as seen from Spirit Mountain.

In the Mojave National Preserve, two fiber optic repeater facilities are proposed in the Lugo-Mohave 500 kV Transmission Line ROW. These are low profile facilities within the ROW and would be adjacent to existing lattice steel towers. Neither site is visible from Spirit Mountain. The Lanfair repeater site is approximately 29 miles southwest of Spirit Mountain near Lanfair Road. The Kelbaker repeater site is approximately 56 miles southwest of Spirit Mountain near Kelbaker Road. Each site would house a small one-story prefabricated structure and a propane tank. The fenced area for each site would be approximately 0.1 acre. As required by Mitigation Measure AES-1 (Minimize visual contrast in project design), the building surfaces would be required to be in colors that harmonize with the surroundings. The facilities would be on the Mojave National Preserve and the colors would be approved by the National Park Service based on the NPS's color palette for facilities in this area.

For persons near the facilities, the repeater facilities would be consistent with the existing 'industrial' character at their locations, which include an existing natural gas pipeline, a 500 kV transmission line with lattice steel towers, an unpaved access road serving the pipeline and transmission line, and nearby paved public roads abutted by electric distribution lines supported on wooden poles. An existing above-ground SoCalGas gas handling facility is approximately 0.2 miles west of the Kelbaker site. The IS/MND concludes that with appropriate coloration of the low-profile repeater buildings, the visual impact would be less than significant. The same is true for the Barstow repeater site, which is 130 miles west of Spirit Mountain within the existing Lugo-Mohave transmission line ROW and adjacent to the Eldorado-Lugo transmission line in an area of scattered rural residential and agricultural buildings near Haynes Road and Barstow Road (Route 247).

The two proposed series capacitor facilities would be approximately 95 miles west of Spirit Mountain, and not visible from there. These sites are in an area with existing underground and above ground infrastructure. Their locations are approximately 0.6 miles north of I-40, within the existing Eldorado-Lugo and Lugo-Mohave transmission line ROWs which are approximately 1.3 miles apart at this location. The vicinity also includes the existing Pisgah Substation, the two 500 kV transmission lines, two 220 kV transmission lines, distribution lines, a cell tower, the BNSF railway, a storage tank, paved and unpaved roads, and several gas pipelines. A large open mining area is less than 4 miles to the southwest of the sites. Due to the location of the proposed facilities within existing ROWs with existing LSTs and conductors, and the presence of other 'industrial' facilities in the vicinity, the proposed facility is consistent with the existing visual character of the surrounding landscape.

C1-5 **The commenter points out that the IS/MND references a Table 5.21-2 (Cumulative Projects 1 to 5 Miles from the Proposed Project), which is not included in the IS/MND.**

The commenter is correct. Originally, two tables were developed, one for projects within 1 mile and one for projects 1 to 5 miles from the Proposed Project. The tables were combined into a single table (Table 5.21-1) to include all projects 0 to 5 miles from the Proposed Project. The reference to Table 5.21-2 is removed from Draft IS/MND page 5-400, which now reads:

Projects used in the cumulative impact analysis are listed in Table 5.21-1, ~~Cumulative Projects within 1 Mile of the Proposed Project, and Table 5.21-2, Cumulative Projects 1 to 5 Miles from the Proposed Project.~~ The approximate locations of all the projects are shown on Figure 5.21-1, Planned and Proposed Projects within 5 Miles of the Proposed Project.

The commenter contends that the IS/MND fails to consider cumulative impacts in the project area.

The CPUC disagrees. CEQA Guidelines section 15130 discusses cumulative impacts and states that discussion of cumulative impacts of a project need not consider the effect significant if the incremental effect is not “cumulatively considerable.” CEQA Guidelines Section 15130 notes that “When the combined cumulative impact associated with the project’s incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR.” This means that in order to address cumulative impacts, the CEQA review must first consider (a) the impacts of the project, (b) the impacts of the cumulative projects, and (c) whether the impacts of the project would combine with those of the cumulative projects to result in a significant impact. If they could not, then this should be briefly explained. If the combined impacts could result in a significant impact, then the analysis should consider the incremental effect of the Proposed Project and whether it is “cumulatively considerable”. The IS/MND complies with these requirements. It first considers what the impacts of the project are and then considers what the impacts of any cumulative projects that could combine with the Proposed Project are and demonstrates that there is no evidence of any potentially significant cumulative impacts from the combination of project and cumulative activities.

The commenter notes that the two series capacitor sites and three fiber optic repeater sites were the primary focus of the cumulative cultural impact analysis, and that these are dispersed along more than 235 miles of transmission line.

The commenter is correct that these sites where new construction would occur were the focus of the cumulative impact analysis. This is reasonable and appropriate because the other project elements (raising 9 out of over 800 existing towers and replacing existing OHGW with new OPGW) would have minor to no discernible impact that would combine with the impacts of cumulative projects and, therefore, were not discussed.

The cumulative analysis looked at what projects would be near enough to the two series capacitor sites and three fiber optic repeater sites to have the potential to combine into a cumulatively considerable impact. Because no proposed or foreseeable projects were identified within 5 miles of the two series capacitor sites or the two repeater sites on the Mojave National Preserve, these features of the Proposed Project were not identified as contributors to a potentially significant cumulative impact.

One cumulative project was identified near the Barstow repeater site - the Ord Mountain Solar Energy Storage Project. That proposed new photovoltaic project would occupy approximately 484 acres and would be adjacent to a new 75-acre substation. The EIR for that project concluded that the impacts to cultural resources and tribal cultural resources would be less than significant with mitigation incorporated. SCE’s proposed Barstow fiber optic repeater site would be nearby on 0.13 acres situated within the ROW near an existing transmission tower. These two projects would have the potential to

result in a cumulatively significant impact, so the contribution of the ELM Project's Barstow repeater was considered further. After additional review, it was justifiably concluded that the contribution of the ELM Project to the potentially significant cumulative impacts was less than cumulatively considerable because of the repeater's size and location, and the mitigation measures applicable to the ELM Project reduced its impacts.

The commenter asserts that the cumulative impacts to tribal cultural resources, particularly to the Mojave Trails Landscape, are not sufficiently described, and as such is insufficient.

Additional text has been added to Draft IS/MND page 5-419 which now reads:

Those portions of the Mojave Trails Landscape that overlap with the CEQA Areas of Direct and Indirect Impacts were analyzed for direct and indirect effects. The ELM Project was found to have no direct impacts to the Mojave Trails Landscape with mitigation because it would avoid and protect the resources that contribute to the landscape. Similarly, the ELM Project reviewed the indirect impacts of the project on the Mojave Trails Landscape and concluded that the contribution of the project would be minor because similar industrial infrastructure already exists within the viewshed of the Landscape and the resource would not be subject to impacts from the ELM Project. Because the ELM Project would not contribute to direct or indirect impacts on the Mojave Trails Landscape, it would not have impacts that could combine with the cumulative impacts to this landscape. The cumulative effect of the ELM Project in combination with effects from projects in the cumulative scenario are similar to those discussed for Cultural Resources (see previous discussion). The cumulative impacts would be less than considerable.

C1-6 The commenter asserts that the Draft IS/MND fails to address growth-inducing impacts and the environmental effects of future generation facilities.

Please see Response to Comment B2-8. The analysis recognizes that generation facilities, including "future generation facilities" not yet built but planned, may use the Proposed Project to transmit electricity (Draft IS/MND page 3-4, Section 3.2.3). The consideration of growth-inducing impacts appears in: Section 5.3, Air Quality; Section 5.14, Population and Housing; Section 5.15, Public Services; Section 5.16, Recreation; and Section 5.17, Transportation.

The impact analysis for Energy in Section 5.6.6 (Draft IS/MND page 5-157) points to prior CAISO approvals for the Proposed Project as a way of providing deliverability of renewable resources, including certain specific generation facilities and also renewable resource portfolios of generic generating capacity in broad geographic zones. The future generation facilities: (i) are speculative; (ii) are not the result of, or made more likely by, the Proposed Project; and (iii) will themselves be subject to full CEQA and NEPA review processes (Draft IS/MND page 3-4, Section 3.2.3). It would be speculative to define the resources that may eventually use the Proposed Project because they could include specific proposed generation projects seeking to interconnect or other resources fitting the location and size characteristics of the portfolios developed by the CPUC and CEC for the annual CAISO Transmission Plan. Accordingly, the Draft IS/MND reasonably and appropriately finds that the environmental effects of future generation facilities would not be direct or indirect effects of the Proposed Project because such facilities are speculative and are not the result of, or made more likely by, the Proposed Project (Draft IS/MND page 3-4, Section 3.2.3). No additional analysis is necessary.

C1-7 The commenter requests a written response to comments, formal consultation on both the project and the CRMP, and for the CPUC to copy certain individuals on all correspondence.

The CPUC includes written responses to comments as part of the Final IS/MND; it does not provide comment responses directly to commenters. See response C1-2 regarding consultation. The individuals named in the comment will be copied on correspondence and will receive notice of the publication of the Final IS/MND.

C1-8 **The commenter attached two exhibits to the comment letter, a copy of the CRIT government-to-government policy, which appears to be an internal CRIT document guiding consultation with the United States, and a copy of CRIT correspondence with SCE dated July 20, 2017.**

These attachments are acknowledged. No action or further response is necessary or required.

Comment Set D1 – Southern California Edison



September 13, 2019

Email Only

Ms. Billie Blanchard
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, Suite 640
San Francisco, CA 94104-2920

Re: Southern California Edison’s Comments to the Draft Mitigation Negative Declaration on the Eldorado-Lugo-Mohave Series Capacitor Project (A.18-05-007)

Dear Ms. Blanchard,

Thank you for the opportunity to comment on the above referenced Draft MND. The accompanying document contains the comments of Southern California Edison Co. (“SCE”) on the Draft Mitigated Negative Declaration (“MND”) for the Eldorado-Lugo-Mohave Series Capacitor Project (“Proposed Project”).

On behalf of SCE, the proponent of the Proposed Project, SCE appreciates the time and effort of the CPUC and its consultant Aspen Environmental Group in analyzing the Proposed Project and developing the Draft MND.

SCE comments may include proposed revisions to the MND which are shown with underlined text or deletions which are shown with stricken text.

SCE looks forward to the CPUC’s preparation of the Final MND and consideration of approval of the Proposed Project. Should you have any questions concerning these comments, please contact me at (626) 302-1164.

Sincerely

A handwritten signature in blue ink that reads "Thomas E. Diaz".

Thomas E. Diaz
Regulatory Affairs Senior Advisor
Southern California Edison

cc: (w/enclosure)
Fritts Golden (Aspen)
Selya Arce (SCE)
Rey Gonzales (SCE)
Tammy Jones (SCE)

P.O. Box 800
Rosemead, CA 91770

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale
1.	1.1	1-1	Maintain system reliability within the Los Angeles Basin as well as the entire California Independent System Operator (CAISO) grid, which is defined as the Electrical Needs Area (ENA).	No change is proposed to this text. Instead, SCE suggests providing a footnote to define “Los Angeles Basin”: <u>The Los Angeles Basin, in the context of transmission facilities, consists of SCE-owned 500 kV and 220 kV facilities that serve major metropolitan areas in Orange, Riverside, San Bernardino, Los Angeles, Ventura, and Santa Barbara Counties.</u>	Someone reading “Los Angeles Basin” for the first time may mistakenly assume Los Angeles County or the City of Los Angeles was being referred to. The added definition more fully defines “Los Angeles Basin.” This definition is taken from SCE’s previously filed Proponents Environmental Assessment (PEA), Chapter 1, Section 1.2 at page 1-3.
2.	1.1	1-2	N/A; added additional bullets.	SCE recommends that the following project objectives be added to this section. <ul style="list-style-type: none"> – <u>Ensure compliance with all applicable reliability planning criteria required by the North American Electric Reliability Corporation, Western Electricity Coordinating Council, and California Independent System Operator (CAISO).</u> – <u>Integrate planned generation resources in order for those facilities to become fully deliverable.</u> – <u>Meet the requirements of existing Interconnection Agreements that require the Proposed Project to achieve FCDS for generation facilities.</u> – <u>Meet Proposed Project needs while minimizing environmental impacts.</u> – <u>Design and construct the Proposed Project in conformance with SCE’s approved engineering, design, and construction standards for substation, transmission, subtransmission, and distribution system projects.</u> 	These inserted project objectives were missing from the full list of project objectives in Section 1.1 but are fully listed in Chapter 4 at page 4-7. These missing project objectives are also found in SCE’s PTC application at page 5 filed in May 2018.

D1-1

D1-2

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale	
3.	1.3	1-3	Install approximately 2 miles of overhead and 500 feet of underground telecommunications facilities as one path to connect the proposed series capacitors to SCE's existing communication system.	Install approximately 2 miles of overhead and 500 <u>700</u> feet of underground telecommunications facilities as one path to connect the proposed series capacitors to SCE's existing communication system.	Proposed SCE telecommunication design for underground facilities calls for approximately 700 feet.	D1-3
4.	1.3	1-3	Relocating, replacing, or modifying existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers approximately 18.5 feet by inserting new lattice-steel sections in tower bodies.	Relocating, replacing, or modifying existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers <u>up to</u> approximately 18.5 feet by inserting new lattice-steel sections in tower bodies.	Suggested edits were made to indicate there may be varying tower height modifications.	D1-4
5.	1.3	1-3	Install approximately 235 miles of optical ground wire (OPGW) (approximately 59 miles on the Eldorado- Mohave Transmission Line and approximately 173 miles on the Lugo-Mohave Transmission Line, including approximately 3 miles of underground telecommunications facilities in the vicinity of the Mohave Substation).	Install approximately 235 <u>232</u> miles of optical ground wire (OPGW) (approximately 59 miles on the Eldorado- Mohave Transmission Line and approximately 173 miles on the Lugo-Mohave Transmission Line, and including approximately 3 miles of underground telecommunications facilities in the vicinity of the Mohave Substation).	The 3 miles of underground telecommunication facilities are not OPGW and will be installed in an underground duct bank system.	D1-5
6.	3.1	3-1	Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers approximately 18.5 feet by inserting new lattice-steel sections in tower bodies	Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers <u>up to</u> approximately 18.5 feet by inserting new lattice-steel sections in tower bodies	Suggested edits were made to indicate there may be varying tower height modifications.	D1-6

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale
7.	4.1.8	4-2	Relocating, replacing, or modifying existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers approximately 18.5 feet by inserting new lattice-steel sections in tower bodies.	Relocating, replacing, or modifying existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers <u>up to</u> approximately 18.5 feet by inserting new lattice-steel sections in tower bodies.	Suggested edits were made to indicate there may be varying tower height modifications.
8.	4.5.1.4	4-15	Install 3 fiber optic repeater facilities in the existing Lugo-Mohave 500 kV Transmission Line ROW. Two of these facilities would be within chain-link-fenced areas measuring approximately 70 feet by 35 feet, and one facility would be within a fenced area measuring approximately 101 feet by 57 feet. Access to Kelbaker and Lanfair repeater sites would be by way of approximately 80 -foot long new access road. (Figure 4-2, Sheets 2, 5, and 7; and Figures 4-6, 4-7, and 4-8) The repeater facilities would consist of: <ul style="list-style-type: none"> – Pre-fabricated building – Communication manhole – Distribution manhole – Emergency generator – Aboveground propane fuel tank surrounded by a block wall – Underground telecommunications facilities – Access road from existing transmission line access road to repeater site (at Kelbaker and Lanfair only) 	Install 3 fiber optic repeater facilities in the existing Lugo-Mohave 500 kV Transmission Line ROW. Two of these facilities would be within chain-link-fenced areas measuring approximately 70 feet by 35 feet, and one facility would be within a fenced area measuring approximately 101 feet by 57 feet. Access to Kelbaker and Lanfair repeater sites would be by way of approximately 80 -foot long new access road. (Figure 4-2, Sheets 2, 5, and 7; and Figures 4-6, 4-7, and 4-8) The repeater facilities would consist of: <ul style="list-style-type: none"> – Pre-fabricated building – Communication manhole – Distribution manhole – Emergency generator – Aboveground propane fuel tank surrounded by a block wall – Underground telecommunications facilities – Access road from existing transmission line access road to repeater site (at Kelbaker and Lanfair only) 	There is a slight extension of access road at the Barstow repeater site as well. Suggested edits would not limit the access road description to just the Kelbaker and Lanfair repeater sites.

D1-7

D1-8

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale	
9.	4.7.7	4-47	Land disturbance includes all areas affected by construction of the Proposed Project. Approximately 378.1 acres of land would be disturbed. Total permanent land disturbance for the Proposed Project would be approximately 7.0 acres. The balance of the land disturbed by project activities (371.1 acres) includes 125.5 acres of previously disturbed land and 245.6 acres of undisturbed land that would be restored after construction. The estimated amount of land disturbance for each Proposed Project component is summarized in Table 4-15, Proposed Project Estimated Land Disturbance.	Land disturbance includes all areas affected by construction of the Proposed Project. Approximately 378.1 <u>380.4</u> acres of land would be disturbed. Total permanent land disturbance for the Proposed Project would be approximately 7.0 acres. The balance of the land disturbed by project activities (371.1 <u>373.5</u> acres) includes 125.5 <u>126.2</u> acres of previously disturbed land and 245.6 <u>247.3</u> acres of undisturbed land that would be restored after construction. The estimated amount of land disturbance for each Proposed Project component is summarized in Table 4-15, Proposed Project Estimated Land Disturbance.	Revised disturbance amounts reflect design changes to address tribal concerns expressed during recent on-site visits with Native American tribes, CPUC and BLM.	D1-9
10.	4.7.7 Table 4-15	4-49	See Table 4-15, Proposed Project Estimated Land Disturbance.	For a detailed summary of the land disturbance acreage totals revised in #9 directly above, please see Attachment 1: Table 4-15, Proposed Project Estimated Land Disturbance.	Revised disturbance amounts reflect design changes to address tribal concerns expressed during recent on-site visits with Native American tribes, CPUC and BLM.	D1-10
11.	5.3 MM AQ-1	5-59	Prepare and implement a Dust Control Plan. SCE shall avoid visible fugitive dust emissions by implementing the following dust control measures derived from MDAQMD Rule 403.2. Prior to commencing earth-moving activity, SCE shall prepare and submit to the MDAQMD, Clark County DAQ, CPUC, BLM and NPS a Dust Control Plan that describes all dust control measures that will be implemented for the project, including, but not limited to:	Prepare and implement a Dust Control Plan. SCE shall avoid <u>minimize</u> visible fugitive dust emissions by implementing the following dust control measures derived from MDAQMD Rule 403.2. Prior to commencing earth-moving activity, SCE shall prepare and submit to the MDAQMD, Clark County DAQ, CPUC, BLM and NPS a Dust Control Plan that describes all dust control measures that will be implemented for the project, including, but not limited to:	Suggested edit is consistent with purpose of mitigation measure to reduce impacts to less than significant as it would be impossible to avoid all visible emissions.	D1-11
12.	5.4.1	5-67	An additional nine special-status wildlife species were not observed in surveys but are likely to occur within or immediately adjacent to the Proposed Project footprint. Summary descriptions	An additional nine <u>eleven</u> special-status wildlife species were not observed in surveys but are likely to occur within or immediately adjacent to the Proposed Project footprint. Summary	Revised to match the number and description of species.	D1-12

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale
			of each of the following species are presented in MND Appendix D: - Banded Gila monster - Desert rosy boa - Mojave fringe-toed lizard - Loggerhead shrike - Bendire’s thrasher - Golden eagle - Western burrowing owl - Pallid bat - American badger - Desert kit fox	descriptions of each of the following species are presented in MND Appendix D: - Banded Gila monster - Desert rosy boa - Mojave fringe-toed lizard - Loggerhead shrike - Bendire’s thrasher - Golden eagle - Western burrowing owl - Pallid bat - American badger - <u>Ringtail</u> - Desert kit fox	
13.	5.7	5-159	b. Result in substantial soil erosion or the loss of topsoil?	Uncheck the Less Than Significant Impact box.	Only the Less than Significant with Mitigation box should be checked. See highlighted area in table below.
14.	5.7	5-159	e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?	Uncheck the Less Than Significant Impact box and check the No Impact box.	The No Impact box should be checked. See highlighted areas in table below.

D1-12 cont.

D1-13

D1-14

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale																																																										
			<p>5.7 Geology and Soils</p> <p>GEOLOGY AND SOILS</p> <p>Would the project:</p> <table border="1"> <thead> <tr> <th></th> <th>Potentially Significant Impact</th> <th>Less Than Significant With Mitigation Incorporated</th> <th>Less Than Significant Impact</th> <th>No Impact</th> </tr> </thead> <tbody> <tr> <td>a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td> ii) Strong seismic ground shaking?</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td> iii) Seismic-related ground failure, including liquefaction?</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td> iv) Landslides?</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>b. Result in substantial soil erosion or the loss of topsoil?</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>c. Be located on geologic units or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>d. Be located on expansive soil, as defined in the 2016 California Building Code (CBC),¹ creating substantial direct or indirect risks to life or property?</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>e. 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15.	5.7	5-188	LESS THAN SIGNIFICANT. Proposed Project operation and maintenance activities would be incorporated into the existing Operation and Maintenance schedule for the existing transmission lines, substations, and associated facilities. Operation and Maintenance of the Proposed Project would not involve the use of a septic tank or alternative wastewater disposal system, as Operation and Maintenance of the	NO IMPACT. LESS THAN SIGNIFICANT. Proposed Project operation and maintenance activities would be incorporated into the existing Operation and Maintenance schedule for the existing transmission lines, substations, and associated facilities. Operation and Maintenance of the Proposed Project would not involve the use of a septic tank or alternative wastewater disposal system, as Operation and Maintenance of the	Summary heading revised to match conclusions in this paragraph.																																																										

D1-15

Comment Set D1 – Southern California Edison (cont.)

#	MND Section	Page No.	Current MND Description	Proposed Revision	Rationale
			Proposed Project is not anticipated to generate wastewater (SCE, 2018). As a result, no impact would occur.	Proposed Project is not anticipated to generate wastewater (SCE, 2018). As a result, no impact would occur.	

**D1-15
cont.**

Comment Set D1 – Southern California Edison (cont.)

Table 4-15. Proposed Project Estimated Land Disturbance

Proposed Project Feature	Quantity	Total Approximate Area Disturbed during Construction (acres)	Approximate Area Previously Disturbed (acres)	Approximate Area to be Restored (acres)	Approximate Area Permanently Disturbed (acres)
Mid-Line Series Capacitors					
Newberry Springs Series Capacitor	1	3.8	0.0	0.6	3.2
Ludlow Series Capacitor	1	4.0	0.0	1.5	2.5
Total Estimate for Mid-Line Series Capacitors		7.7	0.0	2.1	5.6
Transmission					
Guard Structures	92	7.4	0.0	7.4	0.0
Pull and Tension Sites	198	58.3 58.1	0.0	58.4 57.9	0.2
Discrepancy Work Areas	14	3.6	3.5	0.1	0.0
OPGW/Tower Work	92	20.8	20.6	0.2	0.0
Total Estimated for Transmission		90.2 89.9	24.1	65.9 65.6	0.2
Subtransmission					
Discrepancy Work Area	1	1.7	0.0	1.7	0.0
Total Estimated for Subtransmission		1.7	0.0	1.7	0.0
Distribution					
Mid-Line Series Capacitor Work Areas (includes Joint Distribution/ Telecommunications Route between Capacitors)	4	21.2 20.8	0.0	21.2 20.8	0.0
Fiber Optic Repeater Work Areas	3	2.7	0.0	2.7	0.0
Infraction Work Area	1	0.1	0.0	0.1	0.0
Total Estimated for Distribution		23.9 23.6	0.0	23.9 23.6	0.0
Telecommunications					
Fiber Optic Repeaters	3	0.2	0.0	0.0	0.2
Telecommunications Work Areas (Mohave Substation, Mid-Line Series Capacitors, Fiber Optic Repeaters, and Pull and Tension Sites)	38	32.0	0.9	31.1	0.0
Total Estimated for Telecommunications		32.2	0.9	31.1	0.2
Substations					
Lugo Substation	1	22.9 23.0	22.9 23.0	0.0	0.0
Mohave Substation	1	21.5	21.5	0.0	0.0
Eldorado Substation	1	11.0	11.0	0.0	0.0
McCullough Substation	5	0.4	0.4	0.0	0.0
Total Estimated for Substations ¹		55.8 55.9	55.8 55.9	0.0	0.0

D1-16

Comment Set D1 – Southern California Edison (cont.)

Table 4-15. Proposed Project Estimated Land Disturbance

Staging Areas					
Staging Areas	17	98.3 <u>99.5</u>	34.4	63.9 <u>65.1</u>	0.0
Landing Zones	201	50.0 <u>51.4</u>	0.1 <u>0.7</u>	49.9 <u>50.7</u>	0.0
Parking Areas	4	15.5	9.8	5.7	0.0
Total Estimated for Staging Areas		163.8 <u>166.4</u>	44.3 <u>45.0</u>	119.4 <u>121.4</u>	0.0
Access Roads and/or Spur Roads					
Access Roads and/or Spur Roads	11	1.4	0.3	0.2	0.9
Footpaths	40	1.6	0.0	1.6	0.0
Total Area Estimated for Access Roads and/or Spur Roads and Footpaths		3.0	0.3	1.8	0.9
Total Estimated for Proposed Project		378.4 <u>380.4</u>	125.5 <u>126.2</u>	245.6 <u>247.3</u>	7.0

D1-16
cont.

Responses to Comment Set D1 – Southern California Edison

D1-1 SCE recommends inclusion of a footnote to define “Los Angeles Basin.”

The text at Draft MND page 1-1 has been modified to read:

Maintain system reliability of SCE transmission facilities within the Los Angeles Basin (metropolitan Orange, Riverside, San Bernardino, Los Angeles, Ventura, and Santa Barbara Counties) as well as the entire California Independent System Operator (CAISO) grid, which is defined as the Electrical Needs Area (ENA).

D1-2 To be consistent with the list of project objectives in Chapter 4, Project Description, beginning at Draft MND page 4-7, SCE requests the inclusion of objectives that were omitted at Draft MND page 1-2.

The text has been modified by inserting the missing objectives at the end of the list in Chapter 1:

- *Ensure compliance with all applicable reliability planning criteria required by the North American Electric Reliability Corporation, Western Electricity Coordinating Council, and California Independent System Operator (CAISO).*
- *Integrate planned generation resources in order for those facilities to become fully deliverable.*
- *Meet the requirements of existing Interconnection Agreements that require the Proposed Project to achieve FCDS for generation facilities.*
- *Meet Proposed Project needs while minimizing environmental impacts.*
- *Design and construct the Proposed Project in conformance with SCE’s approved engineering, design, and construction standards for substation, transmission, subtransmission, and distribution system projects.*

D1-3 SCE requests a change in the length of underground telecommunications facilities at Draft MND page 103. The text has been amended as follows:

- *Provide 2 communication paths between the series capacitor sites.*
 - *Install approximately 2 miles of overhead and ~~500-700~~ feet of underground telecommunications facilities as one path to connect the proposed series capacitors to SCE’s existing communication system.*

D1-4 SCE requests a text edit to identify that increased heights of towers requiring raising will not exceed an increase of approximately 18.5 feet.

The text at Draft MND page 1-3 has been modified to read:

- *Relocating, replacing, or modifying existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 of the overhead clearance discrepancies. Tower modifications would include raising 9 towers up to approximately 18.5 feet by inserting new lattice-steel sections in tower bodies.*

D1-5 SCE requests a clarification that 3 miles of transmission facilities is not optical ground wire.

The text at Draft MND page 1-4 has been modified to read:

- *Install approximately ~~235-232~~ miles of optical ground wire (OPGW) (approximately 59 miles on the Eldorado-Mohave Transmission Line and approximately 173 miles on the Lugo-Mohave Transmission Line, ~~including and~~ approximately 3 miles of underground telecommunications facilities in the vicinity of the Mohave Substation).*

D1-6 This comment repeats comment D1-3.

D1-7 **SCE requests the change to Draft MND page 1-3 noted in comment D1-3 be made as well in Chapter 4, Project Description, Draft MND page 4-2**

This change has been made.

D1-8 **SCE requests a deletion in the description of repeater sites at page 4-15, as a slight extension of the access road at the Barstow repeater will be needed.**

The text has been modified as follows:

The repeater facilities would consist of:

- *Pre-fabricated building*
- *Communication manhole*
- *Distribution manhole*
- *Emergency generator*
- *Aboveground propane fuel tank surrounded by a block wall*
- *Underground telecommunications facilities*
- *Access road from existing transmission line access road to repeater site (~~at Kelbaker and Lanfair only~~)*

D1-9 **SCE revised disturbed land acreages slightly.**

The text at Draft MND page 4-47 has been edited to show these changes. The text now reads:

Land disturbance includes all areas affected by construction of the Proposed Project. Approximately ~~378.1380.4~~ acres of land would be disturbed. Total permanent land disturbance for the Proposed Project would be approximately 7.0 acres. The balance of the land disturbed by project activities (~~371.1373.5~~ acres) includes ~~125.5126.2~~ acres of previously disturbed land and ~~245.6247.3~~ acres of undisturbed land that would be restored after construction. The estimated amount of land disturbance for each Proposed Project component is summarized in Table 4-15, Proposed Project Estimated Land Disturbance.

D1-10 **SCE references revisions to Table 4-15 provided as an attachment (Comment D1-16) to SCE's comments that shows more detail regarding the changes.**

The table has been modified in the text to indicate the changes. Owing to the size of the table, the changes are not listed here, but are included in Table 4-15, Proposed Project Estimated Land Disturbance, in Chapter 4, Draft MND page 4-49.

D1-11 **SCE recommends a slight change to Mitigation Measure AQ-1 in Section 5.3. Air Quality.**

This change has been made in Section 5.3 and in Chapter 6. Mitigation Monitoring Plan and reads as follows:

Mitigation Measures

AQ-1 Prepare and implement a Dust Control Plan. SCE shall ~~avoid-minimize~~ visible fugitive dust emissions by implementing the following dust control measures derived from MDAQMD Rule 403.2. ...

D1-12 **SCE adds a special-status wildlife species not observed in surveys but likely to occur in the area. The text now reads:**

An additional ~~nine-eleven~~ special-status wildlife species were not observed in surveys but are likely to occur within or immediately adjacent to the Proposed Project footprint. Summary descriptions of each of the following species are presented in MND Appendix D:

- *Banded Gila monster*
- *Desert rosy boa*
- *Mojave fringe-toed lizard*
- *Loggerhead shrike*
- *Bendire's thrasher*
- *Golden eagle*
- *Western burrowing owl*
- *Pallid bat*
- *American badger*
- *Ringtail*
- *Desert kit fox*

D1-13 **SCE notes that in Section 5.7, Geology and Soils, two of the summary boxes for item b are checked.**

This has been corrected in the text at Draft MND page 5-159.

D1-14 **SCE notes that in Section 5.7, Geology and Soils, the correct summary box for item e is not checked and that the Less than Significant designation for soils related to septic tanks should be No Impact.**

These have been corrected in the text at Draft MND pages 5-159 and 5-188.

D1-15 **This comment illustrates the edits in Comments D1-13 and D1-14.**

D1-16 **The comment is a copy of Table 4-15 with revisions.**

See Comment D1-10.