

Comment Set B0041
Center for Biological Diversity/Sierra Club (Portions of this comment appear on DVD only)



CENTER for BIOLOGICAL DIVERSITY

VIA Hand Delivery and Electronic Mail

April 11, 2008

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**Re: Draft Environmental Impact Report/Environmental Impact Statement for the
Sunrise Powerlink Transmission Line Project**

Introduction

These comments are submitted on behalf of the Center for Biological Diversity and the Sierra Club.¹ The joint Draft EIR/EIS (DEIR/EIS) prepared by the California Public Utilities Commission (PUC) and the Bureau of Land Management (BLM) describes how the proposed project would cause at least 50 significant impacts, far more impacts than any transmission project ever approved by the PUC. We thank the agencies for working hard to prepare a thorough DEIR/EIS. We also appreciate the efforts of Aspen Environmental Group in preparing the document, and for being available to respond to questions we have had. The level of professionalism and courtesy throughout the process has been exceptional. As will be explained in more detail in these comments, however, the agencies have produced the DEIR/EIS under exceptionally difficult circumstances that have prevented an adequate analysis of many critical issues. San Diego Gas & Electric Company (“Applicant,” “Company,” or “SDG&E”) has repeatedly failed to provide adequate information, leaving the DEIR/EIS with significant flaws in its analysis and inadequate information for the public to consider. The Center and the Sierra Club describe in these comments gaps in analysis, and discuss significant impacts that could result from the proposed project, including but not limited to: impacts to biological resources, wilderness, visual resources, air quality, water quality, global warming, and cumulative impacts. We do not support any transmission line route alternative and therefore, the mitigation recommendations in this comment letter are only intended to assist in reducing harm from the project in the event that the CPUC / BLM approves a transmission alternative.

¹ The Center for Biological Diversity and the Sierra Club’s Scoping Comments are incorporated into these comments as well.

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B0041-1

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

We request that the DEIR/EIS be re-circulated due to a) the failure to adequately consider the widespread environmental impacts of the October 2007 fires, b) the failure of SDG&E to provide the agencies preparing the DEIR/EIS as well as the public with sufficient species surveys necessary to understand the extent of impacts, c) the failure of SDG&E to use detailed and adequate species surveys to design routes and enable the agencies to design alternatives that reduce the record number of significant and unmitigable impacts of each of the alternatives, d) the failure to adequately disclose how the alternatives will impact permitting under existing and developing multi-species conservation plans in the region, f) the failure to address the full extent of increases in global warming emissions anticipated by the STP, and g) other reasons as discussed in the comments.

B0041-1 cont.

The Center has over 40,000 members throughout the United States, many of whom reside in California. The Center is a non-profit organization dedicated to the preservation, protection, and restoration of biological diversity, native species, ecosystems, and public lands. The Center's members and staff regularly use the public lands and waters that will be impacted by the project for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. The Center's members and staff have researched, studied, observed, and sought protection for the public lands along the proposed route and for many of the rare, threatened, endangered and special status species that may be impacted by the project and for the habitats on which these species' survival depends. The Center's staff and members derive scientific, recreational, conservation, and aesthetic benefits from these public lands and from these species' existence in the wild.

The Sierra Club is a non-profit advocacy organization whose mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote responsible use of the Earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Attachment 1 to these joint comments of the Center and the Sierra Club are comments prepared by volunteers from the San Diego Chapter of the Sierra Club. The comments represent just a portion of what may be unprecedented public opposition to a proposed transmission project in California. We ask that the comments receive the same scrutiny and response as the joint comments of our organizations.

The level of opposition to the Sunrise transmission project (STP) is no surprise when stepping away from the many details in the 7500 page DEIR/EIS and looking at the bigger picture. We are unaware of a single instance in the country where a wilderness designation has been removed; approval of the proposed project would be the first time ever, and in the cherished Anza-Borrego Desert State Park (Anza- Borrego). The 50 significant, unmitigable impacts of the project overwhelmingly are more destructive than any other transmission project in California. We have reviewed every transmission project identified in the PUC's public database and found the next most destructive project by number of significant impacts had 20 – and these were visual impacts from another SDG&E project. We ask that the agencies look at this bigger picture in the final EIR/EIS. Our findings are identified in the chart in Attachment 2.² It should

B0041-2

² The projects are all found at <http://www.cpuc.ca.gov/PUC/energy/electric/Environment/Current+Projects/pastproj.htm>. Significant unmitigable impacts were found in the Executive Summaries.

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

be no surprise that during the opening day of Phase II of the STP hearing, SDG&E's Chief Operating Officer conceded in testimony that environmental concerns were not the Company's priority and he was unable to name a single transmission project in the country with more significant impacts.³

B0041-2 cont.

The Center and the Sierra Club support alternatives to the STP that do not rely on long-distance transmission through the fragile and ecologically significant lands proposed for the STP and STP alternative routes.⁴ We ask the Commission to pay closer attention to elements of the Smart Energy 2020 Plan⁵ and the recent announcement by Southern California Edison for a major rooftop solar energy project supported by the Governor.⁶ A combination of these plans with elements of alternatives 1 and 2 of the DEIR/EIS, the no action alternative, and the State loading order as guidance, are far superior to the proposed project and recent additional proposals made by SDG&E. We agree with the conclusion in the DEIR that the proposed plan (as well as other Northern alternatives) is among the most environmentally destructive options for meeting energy needs for the coming decades.

B0041-3

Legal Background

This project requires environmental review under both the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the California Environmental Quality Act ("CEQA"), California Public Resources Code § 21000 *et seq.* In addition, a number of other local, state and federal laws and regulations are triggered by the proximity of the project to wilderness areas, federally protected lands, other areas of significant biological and ecological value, and by its impacts to waters of the United States, waters of the States of California, and listed species and their habitats.

B0041-4

NEPA is an action-forcing statute. Its sweeping commitment is to "prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action." Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989). It requires the federal agency to "consider every significant aspect of the environmental impact of a proposed action," Vermont Yankee Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553 (1978), and to ensure "that the agency will inform the public that it has indeed considered environmental concerns in its decision making process." Baltimore Gas and Electric Company v. NRDC, 462 U.S. 87, 97 (1983). NEPA requires that federal agencies take a "hard look" at the environmental impacts of a project. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). To satisfy NEPA, a federal agency "must explicate fully its course of inquiry, its analysis, and its reasoning." Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1287 (1st Cir. 1996).

³ See transcript, April 7, 2008. References to the transcript are to the transcript in the STP proceeding, A.06-08-010.

⁴ We also do not endorse the portion of alternative 2 that would include a transmission line through Anza-Borrego.

⁵ Attachment 3.

⁶ <http://gov.ca.gov/index.php?/press-release/9197/>

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

NEPA's implementing regulations require agencies to:

[I]nsure the professional integrity, including scientific integrity of the discussions and analysis in environmental impact statements. [Agencies] shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

40 CFR § 1502.24 (Methodology and Scientific Accuracy). Accordingly, NEPA also prohibits reliance upon conclusions or assumptions that are not supported by scientific or objective data. Further, NEPA documents must be "supported by evidence that the agency has made the necessary environmental analysis." 40 CFR § 1502.1. Consequently, federal agencies have a duty to disclose the underlying scientific data and rationale supporting the conclusions and assumptions in an EIS.

Federal agencies are required to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 CFR § 1502.15. The establishment of the baseline conditions of the affected environment is a practical requirement of the NEPA process. "The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." Council of Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act* (May 11, 1999).

NEPA requires the agencies to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. 40 C.F.R. §§ 1502.14(a) and 1508.25(c). Importantly, this evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Env'tl Defense Fund., Inc. v. U.S. Army Corps. of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); see also, *City of New York v. Dept. of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983) (NEPA's requirement for consideration of a range of alternatives is intended to prevent the EIS from becoming "a foreordained formality."); *Utahns for Better Transportation v. U.S. Dept. of Transp.*, 305 F.3d 1152 (10th Cir. 2002), modified in part on other grounds, 319 F.3d 1207 (2003). Whether an alternative is "reasonable" or not turns on whether it will accomplish the stated purpose for the project. *City of Carmel-By-The-Sea v. U. S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997).

In conducting a NEPA review, federal agencies must look at cumulative actions and effects. Cumulative actions are those that "have cumulatively significant impacts and should therefore be discussed in the same impact statement." 40 CFR § 1508.25(a)(2). Similar actions include those that have "common timing or geography." *Id.* at § 1508.25(a)(3). A project's "cumulative impact," is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a

B0041-4 cont.

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

period of time. The agency must do more than offer conclusions, it must identify and adequately analyze the cumulative impacts likely to result from past, present and future projects. See Great Basin Mine Watch v. Hankins, 456 F.3d 955 (9th Cir. 2006).

B0041-4 cont.

CEQA and NEPA have many similar requirements. However, CEQA mandates many additional specific kinds of impacts to be considered, requires specific analysis of alternatives that would avoid significant impacts to the environment, and requires agencies to minimize or mitigate those impacts that cannot be avoided. Thus, for the most part, if an EIR/EIS meets the standards of CEQA it will also meet the standards for NEPA. However, a document that meets the NEPA standards may not meet the CEQA standards.

An EIR prepared under CEQA must describe and analyze all significant environmental effects on the environment of a proposed project, evaluate alternatives that will avoid those impacts, and describe and analyze measures to minimize or mitigate impacts that cannot be avoided. Pub. Res. Code §21100; 14 Cal Code Regs § 15362. The purpose of an EIR “is to inform the public and its responsible official of the environmental consequences of their decisions before they are made.” Laurel Heights Improvement Association v. Regents of University of California (1993) 6 Cal. 4th 1112, 1123 (emphasis in original) (citations omitted). An EIR should provide decision making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be avoided or minimized, and to indicate alternatives to the project. Pub. Res. Code § 21061; 14 Cal Code Regs. § 15002. “The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA.” Santiago County Water Dist. v. County of Orange (1981) 118 Cal. App. 3d 818, 829.

California courts have emphasized that an EIR should: disclose all relevant facts; provide a balancing mechanism whereby decision makers and the public can weigh the costs and benefits of a project; provide a means for public participation; provide increased public awareness of environmental issues; provide for agency accountability; and provide substantive environmental protection. Because of the shortcomings discussed below, the DEIR/EIS for the proposed project is inadequate to meet both the procedural and substantive mandates of CEQA.

One of the fundamental objectives of CEQA is to facilitate the identification of “feasible alternatives or feasible mitigation measures which will avoid or substantially lessen” significant environmental effects. Pub. Res. Code § 21002. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Public Resources Code § 21002. Consequently, an EIR must accurately identify impacts, provide meaningful alternatives that will avoid those impacts, and provide detailed feasible measures to mitigate or minimize any remaining significant environmental impacts identified in the EIR. See 14 CCR §15126. The agency’s duty to provide a detailed analysis of environmental impacts of the proposed project and to impose enforceable mitigation measures cannot be deferred to a later stage of environmental analysis; it must be provided in the EIR. CEQA requires mitigation measures to be “fully enforceable through permit conditions,

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

agreements, or other legally-binding instruments.” CEQA Guidelines § 15126.4(a)(2). CEQA requires the adoption of binding mitigation in order to reduce a project’s environmental impacts.

B0041-4 cont.

Alternatives

NEPA requires that the EIS “rigorously explore and objectively evaluate all reasonable alternatives” to a proposed plan of action that has significant environmental effects. 40 C.F.R. § 1502.14(a) (2000). This is ‘the heart’ of an EIS.” Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 813 (9th Cir. 2005).

B0041-5

An EIR, under CEQA, is required to describe a range of reasonable alternatives to the project, which would feasibly attain most of its basic objectives but would avoid or substantially lessen its significant effects. 14 Cal Code Regs § 15126.6(a). The lead agency has a substantive duty to adopt feasible, environmentally superior alternatives. Pub. Res. Code § 21002, 14 Cal. Code Regs. §§ 15002(a)(3), 15021(a)(2). A lead agency cannot abdicate this duty unless substantial evidence supports a finding that the alternatives are infeasible. See, e.g., Citizens of Goleta Valley v. Board of Supervisors, 197 Cal. App. 3d 1167, 1181 (1988). Two of the alternatives retained for analysis as meeting project objectives, the LEAPS Transmission-Only Alternative and the LEAPS Generation and Transmission Alternative are subject to another active proceeding at the PUC, making any decision in A.06-08-010 in favor of the STP premature, as such a decision would essentially pass judgment on the feasibility of the two LEAPS alternatives.

The stated purpose of the project is to increase reliability, reduce costs, and provide access to renewable energy. The STP is not needed to fulfill the stated purposes, and alternatives taking a wholly different approach better fulfill the identified purposes. Unfortunately, the DEIR/EIS fails to fully analyze alternatives that would provide similar benefits through the use of alternative energy sources or decentralized power production such as roof-top solar photovoltaic generation, or alternatives that could lower costs and energy demand in other ways, such as through conservation measures and energy efficiency. Instead, the project proponent proposes to construct a high-voltage line that will permanently scar the landscape, increase fire danger, and significantly impact public lands set aside for preservation, protected species and their habitats, and visual resources.

B0041-6

The announcement by Southern California Edison (SCE) of its rooftop solar program, the Smart Energy 2020 plan, and the California Solar Initiative (CSI) are all examples of alternatives for supplying power to San Diego not fully explored in the DEIR/EIS. A program comparable to SCE’s is achievable in San Diego. We note that the price of the SCE program appears to be even lower than the cost estimate in Smart Energy 2020. Furthermore, the timing of the release of the DEIR/EIS did not allow it to take advantage of the announcement that the CSI now has a record number of people signing up to participate, and multiple solar industry announcements of new solar cell capacity being constructed, with forecasts for substantially reduced costs as capacity increases. Press articles documenting increased capacity and projected reduced costs are attached. Additional options for solar energy without extensive transmission lines include solar energy parks, as highlighted in an attachment to the testimony of Dr. Barry Butler, who testified

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

on behalf of the Center and Sierra Club, and also in testimony by the Utility Consumer Action Network (UCAN).

B0041-6 cont.

Energy Efficiency measures also were not fully explored, including the benefits of efficiency measures outlined in Smart Energy 2020 to reduce energy consumption by using readily available, efficient air conditioning. It appears Sempra Energy itself, in partnership with the PUC, has identified efficiency and upgrades in air conditioners specifically as a significant tool for reducing energy needs. The Wall Street Journal reported on February 11, 2008, that a Sempra program through its Southern California Gas Company subsidiary is working to slash the energy needs of the growing community of Palm Desert by 30% by 2011 and that the program has already achieved 12% of its goal.⁷

B0041-7

Even if a new transmission line were necessary, the DEIR/EIS did not provide an estimate of the externalized costs to other private parties or to the public and to public lands and resources that will be impacted by the proposed project. In order to fairly estimate the economic benefits of this project such costs must be off-set against any savings that could be reaped by SDG&E alone.

B0041-8

More importantly, substantial testimony on multiple non-transmission alternatives to the STP were introduced during phase I of the PUC STP hearing, A.06-08-010, by the PUC’s own Division of Ratepayer Advocates and UCAN. Additional options to shorten the proposed line, if it must be built, were advocated by the Ranchos Penasquitos Concerned Citizens. The various alternatives to the line appear on the whole to be environmentally superior to the STP, demonstrate greater reliability and cost effectiveness. We incorporate by reference the Phase I record in A.06-08-010, the alternatives and testimony offered.

Expansion

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The Applicant has highlighted the importance it places on possible expansion, yet has concealed from the public and the agencies its expansion plans. Surprise testimony during Phase I of the STP hearing revealed expansion plans not previously announced, delaying the release of the DEIR/EIS for five months. The Commission scolded SDG&E for failing to respond to questions concerning key issues and failing to provide important environmental data for rare plant and animal species, concluding “it cannot do this job alone.”⁸ In particular, the Company failed to disclose significant expansion plans.

Incredibly, it appears that after the release of the DEIR/EIS, the Company has revealed another expansion plan not previously considered. At page 6.26 of its direct Phase 2 testimony, the Company demands the agencies consider its expansion plans (“The Commission cannot properly decide this application or routing for this project without considering long-term system growth imperatives.”) and then apparently reveals yet another new expansion plan not previously

⁷ See Sempra Energy letter on behalf of Southern California Gas Company to the Public Utility Commission, advice letter No. 3713, February 14, 2007.

⁸ Assigned Commissioner’s Ruling Addressing Newly Disclosed Environmental Information,” July 24, 2007, page 17, and incorporated by reference in full.

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

disclosed, as required, for public comment. The Company states, "...an additional high capacity transmission line *beyond Sunrise* could be required to physically deliver these resources...Significantly, the additional line could be co-located in an existing corridor provided a Sunrise Northern route is already established." [emphasis in original]. This new announcement continues a pattern of moving targets presented by SDG&E, making the agencies' responsibility for producing an adequate DEIR/EIS an unreachable goal, and calling into question at this late date whether a complete application was ever fully submitted by the Company.⁹

B0041-9 cont.

Other expansion plans may intrude in State Park wilderness. As discussed in the wilderness section, this possible expansion alone should prohibit these options, would delay authorization of the STP, and is in violation of state law.

Biology: Environmental Setting

CEQA requires that the EIR accurately describe the environmental setting of the project. 14 CCR § 15125. An EIR based on an inaccurate description of the environmental setting or baseline may, in turn, lead to an inaccurate description and analysis of the environmental impacts of the project, inadequate review of alternatives, and inaccurate assessment of the mitigation measures needed to avoid or minimize the significant impacts of the project. San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus (1994) 27 Cal. App. 4th 713; Cadiz Land Co. v. Rail Cycle (2000) 83 Cal. App. 4th 74. In San Joaquin Raptor the court found that "the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete and misleading; it does not comply with State CEQA Guidelines section 15125." Id. at 728-29.

B0041-10

NEPA has similar requirements for a "no action" alternative and environmental baseline. As the Ninth Circuit has noted, where an EIS fails to provide accurate, site-specific baseline information regarding the conditions which exist on the project site, there is "simply no way to determine what effect the proposed [project] will have on the environment, and consequently, no way to comply with NEPA." Half Moon Bay Fishermen's Marketing Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988). Accordingly, a DEIR/EIS must provide a full description of species and ecosystems present in the project area. Here, SDG&E failed to provide the BIM and the PUC with critical baseline information necessary to identify many of the environmental resources in the project area that are likely to be affected by the proposed project and failed to provide adequate baseline information about those environmental resources that are discussed. The problem occurred first when SDG&E failed to submit a Proponents Environmental Assessment for its proposed project, was again identified in the November 1, 2006 scoping order for A.06-08-010, and again identified in the Assigned Commissioners Ruling of July 24, 2007. The authors of the DEIR/EIS were left to do the best they can with available information that does not meet the requirements of CEQA and NEPA.

⁹Moving targets abound. Early Phase II hearing testimony, incorporated in full by reference through these comments, suggests SDG&E is now suggesting in portions of its testimony that rather than consider a 40 year life of the project, it now considers the project life to be over 50 years. One must question the basis for these changing assumptions, why they are occurring at this stage in the process, whether the changing assumptions are based on new information, and whether SDG&E is picking and choosing the new information it relies upon. For example, we have yet to see the Company present new information demonstrating the reduced costs of solar energy projected into the future, or more economical use of rooftop solar on commercial establishments.

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

An environmental baseline needs to be established based on up-to-date biological surveys. Thorough, updated protocol-level surveys should be performed during the appropriate seasons for sensitive plant species and vegetation communities and sensitive animal species. Full disclosure of survey methodology and results to the public and other agencies must be implemented to ensure compliance with CEQA and NEPA.

B0041-10 cont.

Here, one major problem with the DEIR/EIS is that it describes biological impacts as significant, yet many of the mitigation measures involve surveys. Typically, numerous years worth of surveys are conducted before the DEIR/EIS is completed in order to comprehensively identify the resource conflicts and to craft a proposed project and alternatives that avoid sensitive resources, or at least minimize the impacts to them. If avoidance and minimization of impacts still results in an impact, then mitigation is proposed. However, in the STP DEIR/EIS, biological impacts, such as impacts to rare plants and sensitive plant communities, are assessed from a single survey year in drought conditions. Such an approach is inadequate to properly determine potential impacts and to devise necessary mitigation – the proper approach is to conduct surveys so that they can be used to assess significance, and then mitigating for impacts caused by the project. The DEIR/EIS’s approach is hurried and rushed and certainly is not a comprehensive evaluation of the biological resources nor does it follow for instance, accepted plant survey protocols (CDFG 2000, CNPS 2001). Moreover, failure to conduct sufficient surveys prior to construction of the project also effectively eliminates the most important function of surveys - using the information from the surveys to minimize harm caused by the project and to reduce the need for mitigation. Often efforts to mitigate harm are far less effective than preventing the harm in the first place. In addition, without understanding the scope of harm before it occurs, it is difficult to quantify an appropriate amount of mitigation. In short, the DEIR/EIS failed to have the necessary information before it to adequately assess impacts and to then adequately determine how to avoid, minimize, or mitigate those impacts.

The above point matters all the more due to the fact that the year in which surveys were conducted, 2007, was one of the driest years on record in California. The DEIR/EIS even notes that the drought conditions precluded implementation of US Fish and Wildlife Service approved surveys for the Quino checkerspot butterfly. Likewise, the lack of adequate rainfall would preclude the ability of even seasoned botanists to unequivocally identify species, particularly annual species, which germinate, grow, flower and set seed in a single season. Therefore, while the DEIR/EIS recognizes that the impact to, for instance, sensitive plant communities and sensitive, rare or listed plant species, will be significant, the DEIR/EIS fails to quantify the impact or the significance of that impact on the species or plant community from the proposed action. Quantifying the impact is critical not only for understanding the impact to the species, but for establishing a route that avoids impacts in the first instance, and for establishing appropriate mitigation amounts if impacts cannot be avoided.

B0041-11

Finally, we note that according to the DEIR/EIS: “Survey areas did not always include all of the proposed impact areas (e.g. access roads and staging areas that occur outside of the 200-foot PSA) because, in most cases, these areas were not known at the time of the surveys.” Once all of these areas are identified, how will the PUC and BIM ensure that these areas are surveyed at the

B0041-12

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

appropriate time of year and under appropriate climate conditions prior to construction, and ensure that any impacts are avoided, minimized, or mitigated?

B0041-12 cont.

Biology: Impacts

We concur with conclusions in the DEIR that the proposed project has significant, unmitigable impacts on biological resources, including significant impacts on wildlife and habitat. However, we believe that some issues could have been more fully addressed and therefore we attach as part of these comments the PUC testimony of Ileene Anderson, Jerre Stallcup, Dr. Esther Rubin, Richard Halsey, and Dr. Travis Longcore. These 5 individuals, as part of the PUC proceeding, introduced testimony on behalf of the Center and the Sierra Club that addresses biological issues that were raised in the DEIR/EIS. The testimony discusses issues such as harm to Peninsular bighorn sheep, invasive species impacts, fire impacts, rare plant impacts, avian impacts, and cumulative impacts. See Attachments 4-8.¹⁰ Rather than repeat their statements, we ask that you read their attached testimony and consider the comments they made on our behalf regarding both biological impacts and fire issues. CEQA and NEPA require disclosure of these impacts prior to the public comment period.

B0041-13

We also submit the following comments in addition to the comments described in the submitted testimony (Attachments 4-8):

On page D.2-1, it is unclear if “special status species” includes Cleveland National Forest Management Indicator Species (MIS). If not, these species should be considered as follows as required by Forest Service regulations: 1) Identify which MIS have habitat that would be either directly or indirectly affected by the project alternatives; these MIS are potentially affected by the project; 2) Identify the land and resource management plan forest-level monitoring requirements for this subset of forest MIS; 3) Analyze project-level effects on MIS habitats or habitat components for this subset of forest MIS; 4) Discuss forest scale habitat and/or population trends for this subset of forest MIS, and; 5) Relate project-level impacts on MIS habitat to habitat and/or population trends for the affected MIS at the forest scale.

B0041-14

Page D.2-10 – “Temporary” impacts really can only be considered as such if measures are required to fully restore landforms, soils, and vegetation to pre-disturbance conditions with success criteria and monitoring. Slow growing microbiotic soils, desert scrubs, chaparrals, and any trees will require far more than 5 years of monitoring to ensure successful establishment.

B0041-15

Page D.2-11 – Any federally proposed critical habitat should be considered part of “Special Habitat Management Areas” as this carries regulatory requirements under the federal Endangered Species Act. Where there is a federal nexus (as with the STP), federal agencies must consult with the U.S. Fish and Wildlife Service to ensure that the proposed action will not destroy or adversely impact proposed critical habitat.

B0041-16

¹⁰ As noted earlier, we incorporate by reference Phase 1 testimony submitted by Ms. Stallcup, Mr. David Hogan, and Dr. Barry Butler. These documents and others referenced in this document are available on request.

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

National Forests and any special National Forest land use category should be considered "Special Habitat Management Areas."

B0041-16 cont.

Page D.2-28 Chaparral located between mile markers 146 and 148 are southern maritime chaparral according to David Hogan, lead author of the primary article describing this vegetation, *Southern Maritime Chaparral* (1996).¹¹ Key southern maritime chaparral indicators are present in this area including rare species such as *Arctostaphylos glandulosa* var. *crassifolia*, *Comarostaphylis diversifolia* ssp. *diversifolia*, and *Quercus dumosa*, site conditions such as proximity to the ocean, regular fog, and weathered sandstone soils (Terrace Escarpments). Any impacts to this extremely rare vegetation type should be classified as significant and unmitigable. This area is located within the City of San Diego's Multiple Habitats Planning Area and so mitigation should be consistent with City of San Diego mitigation requirements¹² at a minimum – 2:1 if offsite mitigation is located inside the MHPA, or 3:1 if offsite mitigation land is located outside of the MHPA. Restoration of this vegetation is unproven, so most if not all mitigation should include off-site acquisition and protection.

B0041-17

Page D.2-42 Several listed species identified as having a moderate to high potential to occur should be assumed present for the purposes of avoidance and calculating mitigation unless protocol surveys prove the species is not present.

B0041-18

Page D.2-86 – Any impacts to several particularly fragile vegetation communities, mature trees and woodlands, and the habitat of at least one federally listed endangered species should be considered permanent and mitigated accordingly. Impacts to particularly fragile vegetation and habitat for the Quino checkerspot butterfly should be considered permanent irrespective of whether project construction, operation, or maintenance activities are considered "temporary." Various desert scrub vegetation communities may never fully recover from temporary construction activities, and recovery to maturity of any impacted oak or juniper or other trees or woodlands will take centuries. Prime quino checkerspot butterfly habitat often includes intact microbiotic soil crusts and these may require decades to recover.

B0041-19

Mitigation ratios for impacts to trees and woodlands should be calculated based on a combination of both the acreage covered by the perimeter of the canopy of impacted trees / woodlands and the number of impacted individual trees.

Vernal pools should be avoided to the maximum extent practicable and/or mitigated at 3:1 consistent with local regulations. For example, the City of San Diego mandates that vernal pools be avoided to the maximum extent practicable and then requires 2:1 to 4:1 mitigation for unavoidable impacts. The 2:1 ratio is utilized when no endangered species are present, and the 4:1 ratio is required when endangered species with very limited distributions are present (e.g. San Diego mesa mint). Unavoidable STP impacts to vernal pools should be mitigated with at least 3:1 given the presence of San Diego fairy shrimp and San Diego button celery. One opportunity for vernal pool mitigation / restoration may be available in cooperation with Pardee Homes's Shaw-Lorenz development vernal pool mitigation around the location of most STP

B0041-20

¹¹ Fremontia 24(4): 3-7

¹² San Diego Municipal Code – Land Development Code – Biology Guidelines

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

vernal pool impacts in the Del Mar Mesa community. However, routing the line to avoid impacts is far preferable to mitigating for harm caused.

B0041-20 cont.

In recent years enormous areas of coastal sage scrub have been lost not only to development but also to unnaturally frequent fire. Based on this, permanent impacts to coastal sage scrub should be mitigated with at least a 2:1 ratio.

B0041-21

Impacts to southern maritime chaparral should be mitigated consistent with local regulations and mitigation ratios. For example, the City of San Diego requires that impacts to maritime chaparral be mitigated at 1:1 for impacts occurring outside of the Multiple Habitats Planning Area with mitigation inside the MHPA; 2:1 for impacts and mitigation both located inside the MHPA or both located outside the MHPA, and; 3:1 for impacts located inside the MHPA with mitigation outside the MHPA.

Temporary impacts to coastal or montane scrubs and any chaparral should also be mitigated at 2:1 with restoration of disturbed sites and other nearby areas (especially in preserves) to buffer any failure of inherently difficult restoration.

B0041-22

Pages D.2-103 & 2-110 – U.S. Forest Service Regional Forester’s sensitive species should be treated as if they are federally listed species to prevent any contribution to a trend towards federal listing.

B0041-23

Page D.2-106 – Please provide documentation that SDG&E’s BIO-APM 3 (“a 15-mile-per-hour speed limit shall be observed on dirt access roads to ... allow reptiles and small mammals to disperse”; D. 2-73) will adequately protect flat-tailed horned lizards from vehicle traffic. According to the DEIR/EIS at D.2-110: “Unlike other iguanid lizards that often flee when approached, the [flat-tailed horned lizard] remains still or may bury itself in loose sand. This reluctance to move, along with its cryptic coloration and body flattening habit, makes the FTLL very susceptible to mortality, especially from vehicles...”

B0041-24

Please add an additional mitigation measure requiring at least a 4:1 mitigation ratio for the loss of any suitable flat-tailed lizard desert habitat (double that considered for desert habitats in the DEIR/EIS) to offset not just the direct loss of suitable habitat but also for habitat and lizard populations indirectly impacted as individuals of the species from surrounding undisturbed areas are killed during STP construction, operation, and maintenance activities, (especially to vehicle traffic), and STP features such as roads and towers attract predatory ravens, round-tailed squirrels, and loggerhead shrikes.

Page D. 2-111 In many cases the DEIR/EIS concludes that impacts “are significant and not mitigable to less than significant levels (Class I) because adequate mitigation land may not be available to compensate for the impacts.” While we agree with this conclusion, please add additional requirements for habitat compensation that the wildlife agencies, in consultation with the PUC and BLM, shall have the final say on the question of whether habitat is available for mitigation compensation and that the cost of land shall not be a factor in determining the availability of habitat compensation land.¹³

B0041-25

¹³ Cost of land should not be a factor in mitigation throughout our comments, with mitigation focused on the acquisition and proper management of land, rather than a buyout of mitigation responsibilities.

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

Page D.2-115 – Thank you for the mitigation measure to fund construction of an overpass or tunnel to facilitate movement of Peninsular bighorn sheep movement across Highway 78. Given the significance of impacts to bighorn sheep identified in the DEIR/EIS, please consider additional mitigation measures to construct vegetated overpasses on Highway S-22 and Interstate 8 to facilitate sheep movement. Many highway road cuts on S-22 are very conducive to the construction of sheep overpasses.

B0041-26

Page D.2-132 Barring protocol surveys that definitively conclude that arroyo toads are absent, any areas considered in the DEIR/EIS as moderately to highly likely to be occupied by the arroyo toad should be considered occupied and mitigated accordingly. Also, we are unable to determine any basis to differentiate between the level of necessary mitigation for impacts to arroyo toad wetland breeding habitat vs. arroyo toad upland burrowing habitat – both types of habitat are equally important to the persistence of the species. Based on this, and based on the conclusion in the DEIR/EIS that “...arroyo toads may move between 1 and 2 kilometers into adjacent upland habitats to acstivate...”, 3:1 mitigation should be required for permanent impacts to BOTII wetland and uplands arroyo toad habitat, and a total of 3:1 should be required for temporary impacts to both wetland and upland habitat including 1:1 restoration. However, as described in the testimony of Ms. Anderson, it is far preferable and necessary to conduct adequate surveys in the first instance so every effort can be made to avoid occupied habitat.

B0041-27

Page D.2-135 – Stephens’ kangaroo rats are extremely vulnerable to mortality from vehicles even when vehicles move at a slow rate of speed and especially at dusk and dawn. Please add additional mitigation measures including mandatory 5mph speed limits and speed humps on any STP related access roads in suitable Stephens’ kangaroo rat habitat, barring SDG&E access to STP access roads between 1 hour before sunset and 1 hour after dawn except in emergencies, and provide double the mitigation contemplated in the DEIR/EIS for any habitats suitable for Stephens’ kangaroo rats to offset indirect effects.

B0041-28

Page D.2-147 Thank you for mitigation measures in the DEIR/EIS to reduce the harmful effects of the STP on sensitive bird species. Please add additional mitigation measures such as undergrounding the STP beyond those areas identified in the environmentally superior route segments, and/or consolidating or undergrounding existing lower voltage distribution lines using trenchless technology in areas of high raptor use and bird migrations to address the combined cumulative effects of bird electrocutions and collisions resulting from the STP and numerous other existing power lines. We recommend undergrounding existing distribution lines to offset any above ground segments of the STP with at least a 1:1 ratio. The same undergrounding of additional portions of the STP and/or existing distribution lines will also reasonably improve mitigation to reduce the risk of wildfire.

B0041-29

Page D.2-130 Quino checkerspot butterfly host plant *Plantago erecta* is extremely common in many areas of the Coastal Link between miles 147 and 148 based on field visits to the Los Penasquitos Canyon Preserve on April 8, 2008. Quino protocol surveys should be required here or the species should be assumed present and mitigated accordingly. Again, however, it is better to avoid impacts by routing the line around occupied areas.

B0041-30

Re: Comments on Draft EIR/EIS for Sunrise Powerlink Transmission Line
April 11, 2008

Page 13

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

Page D.2-242 The one known population of the Quino checkerspot butterfly near Jacumba is considered extremely important to the persistence of the species given apparent adaptations of this population to harsher climate conditions that may prove important for the species to persist in the face of global warming. This population appears to be located at or extremely close to the proposed Jacumba substation, and construction of the substation in this location or in this unit of critical habitat would require a jeopardy determination by the U.S. Fish and Wildlife Service. The location of the Jacumba substation out of any suitable quino habitat in this area is essential.

B0041-31

The DEIR/EIS does not adequately address the impacts of lights on power line poles, causing both light pollution for humans and impacts on birds and other species.

B0041-32

The DEIR/EIS does not adequately consider impacts from moving distribution lines to accommodate the STP, including co-locating transmission lines with distribution lines.

B0041-33

The DEIR/EIS says that APLIC guidelines shall be followed, yet construction and routing plans for the STP do not follow APLIC guidelines. Insufficient surveys were conducted, including surveys recommended by SDG&E in its PEA, Appendix C, to protect birds. Further, lines appear to be placed in a vertical array in portions of the project, contrary to APLIC recommendations to place lines in a horizontal array to reduce avian collisions. See testimony of Dr. Longcore in Phase 2 of the STP hearing (Attachment 8).

B0041-34

Visual Resources

Page D.3-49 – The STP will significantly impact views of scenic areas (especially from Key Viewpoints into protected natural areas – Anza-Borrego Desert State Park, the Cleveland National Forest, ACECs, wilderness, open space preserves, and others) – and more mitigation could reasonably be provided to reduce this harm. Please add an additional mitigation measure requiring the purchase of private inholdings within impacted protected natural area and that are visible from the Key Viewpoints to offset STP impacts by reducing the likelihood of future development and associated visual impacts.

B0041-35

Wilderness and Recreation

We concur with conclusions in the DEIR/EIS that the proposed project has significant, unmitigable impacts on wilderness, including significant impacts on wildlife and habitat. We also agree the impacts on the recreational use of wilderness areas are significant and unmitigable, including impacts to visual resources, noise, and the solitude sought by those who visit wilderness. We also agree that the proposed route or any expansion into Anza-Borrego Desert State Park would result in exceeding the existing easement and require, for the first time in California history, the de-designation of a wilderness area. D.5-22. Wilderness status of land that would be crossed by the proposed route is sufficient, as a stand alone issue, to eliminate consideration of this alternative.

B0041-36

The DEIR/EIS identifies approximately 50.2 acres of State Wilderness land that would be required for de-designation because a wider Right of Way would be necessary. ES-27. Power lines are not to be found within wilderness areas. D.5-21, citing the Anza-Borrego Final General Plan. The existing easement is specifically excluded from wilderness areas. D.5-23. The

Comment Set B0041, cont.
Center for Biological Diversity/Sierra Club

Commission has no authority to change wilderness boundaries. Wilderness boundaries may only be changed by the Legislature or the State Park and Recreation Commission. Criteria that must be met to change a wilderness boundary effectively eliminates the ability of State Parks to de-designate wilderness for the proposed STP. If the legislature were to consider the first ever de-designation of wilderness anywhere, let alone in one of the most loved state parks in the state, the likelihood of success would be highly uncertain and clearly controversial. SDG&E has testified that given the choice between the immediate selection of an alternative route and the delayed selection of its proposed route, it would seek the alternative route.¹⁴

B0041-36 cont.

The DEIR/EIS proposes mitigating any loss of wilderness with a 5:1 ratio of replacement lands for lands removed from wilderness. Any ratio, however, does not account for or change the Commission's lack of jurisdiction. Quantity of habitat does not replace high quality habitat, and the precedent set would be fundamentally inconsistent with the purpose of wilderness designation. We are opposed to any action that removes or infringes on wilderness lands, including their use as pull sites, access roads, and for other activities associated with power line construction, operation, or maintenance. Moreover, California legislation is emphatic in regard to protection of wilderness. The state code mandates that the California wilderness preservation system "shall be administered for the use and enjoyment of the people in such manner as will leave [the wilderness areas] unimpaired for future use and enjoyment as wilderness, provide for the protection of such areas, [and] preserve their wilderness character,"¹⁵

It is axiomatic, of course, that a massive powerline directly degrades wilderness, would not leave Anza-Borrego's wilderness "unimpaired for future use and enjoyment," nor would a powerline help "preserve the wilderness" for present and future generations. The proposed power line and its attendant infrastructure (such as roads and support vehicles), would likewise fly in the face of the definition of state wilderness as:

an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. A wilderness area... is an area of relatively undeveloped state-owned land which has retained its primeval character and influence or has been substantially restored to a near natural appearance, without permanent improvements or human habitation, other than semi-improved campgrounds and primitive latrines, and which is protected and managed so as to preserve its natural conditions¹⁶

De-designating the wilderness areas in order to avoid the obvious inconsistencies, however, would not cure the problem—the inherent contradiction between power lines and wilderness can

¹⁴ Phase I testimony of James Avery.

¹⁵ Cal. Pub. Resources Code § 5093.33 (2007).

¹⁶ Cal. Pub. Resources Code § 5093.33 (2007); *see also* Cal Pub Resources Code § 5019.68 (2007) (same); Cal. Pub. Resources Code § 5001.8 (2007) (prohibiting the use of motor vehicles in state wilderness).

Comment Set B0041, cont. Center for Biological Diversity/Sierra Club

not be fixed by reclassifying the land in question. That too would violate state law seeking to “leave [the wilderness areas] unimpaired for future use and enjoyment *as wilderness*...”¹⁷

B0041-36 cont.

Wilderness is not the only issue, however. State law is likewise emphatic in its protection of state parks in general. Cal. Pub. Resources Code § 5019.53 (2007) declares:

The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California, such as the . . . southwest mountains and valleys, . . . foothills and low coastal mountains, . . . desert and desert mountains.

Each state park shall be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established. (emphasis added).

Section 5019.53 clearly establishes that California’s state parks are set aside for their “outstanding natural, scenic, and cultural values” and are to be managed as a “whole” in order to enhance those values. It is self-evident that the construction of a 500 kilovolt power line through Anza-Borrego will not benefit the “natural, scenic, and cultural values” of the park nor will it help “restore, protect, and maintain [the park’s] native environmental complexes.” Instead, it would cause habitat fragmentation, edge effects, disruption of ecological processes, and air, noise, and water pollution.

The California Code also states:

Improvements that do not directly enhance the public’s enjoyment of the natural, scenic, cultural, or ecological values of the resource, which are attractions in themselves, or which are otherwise available to the public within a reasonable distance outside the park, shall not be undertaken within state parks.¹⁸

That clear mandate is reiterated in Anza-Borrego Desert State Park’s General Plan:

The purpose of Anza-Borrego Desert State Park is to preserve the unique and diverse natural, cultural, and scenic resources of this Western Colorado Desert Region and to provide opportunities for high quality recreation that supports a healthy natural environment. This desert park environment nurtures peaceful solitude, astronomical clarity, amazing forms of life, glimpses of the past, and a tremendous scope for the imagination. Therefore, management of Anza-Borrego

¹⁷ Cal. Pub. Resources Code § 5093.33; *see also* Cal. Pub. Resources Code § 5093.31 (“In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas on state-owned lands within California, leaving no areas designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the State of California to secure for present and future generations the benefits of an enduring resource of wilderness.”)

¹⁸ Cal. Pub. Resources Code § 5019.53 (2007).