Comment Set B0018
The Nevada Hydro Company Inc (Portions of this comment appear on DVD only)

THE HYDRO COMPANY, INC.
DBA THE NEVADA HYDRO COMPANY, INC.

April 7, 2008

California Public Utilities Commission and Bureau of Land Management
c/o Aspen Environmental Group
235 Montgomery Street, Suite 935
San Francisco, California 94104

B0018-1

Subject: Draft Environmental Impact Report/Environmental Impact Statement
Sunrise Powerlink Project (A.06-08-010)

Dear Lead Agencies:

On October 9, 2007, **The Nevada Hydro Company, Inc.** (TNHC) submitted an application for a "Certificate of Public Convenience and Necessity" (CPCN) to the California Public Utilities Commission (CPUC) for the proposed "Talega-Escondido/Valley-Serrano 500-kV Interconnect Project, CPUC No. 07-10-005" (TE/VS Interconnect). As described in TNHC's January 2008 "Proponent's Environmental Assessment" (TE/VS Interconnect PEA), from an environmental perspective, the TE/VS Interconnect project may be considered to be a part of or closely related to a larger undertaking proposed by TNHC and being processed through the Federal Energy Regulatory Commission (FERC). Unless acted upon as a single FERC action, that larger undertaking includes both the CPUC-permitted TE/VS Interconnect project and the FERC-permitted Lake Elsinore Advanced Pumped Storage (LEAPS) project (FERC Project No. 11858-002). THNC and the Elsinore Valley Municipal Water District (EVMWD) are co-applicants for the FERC hydropower license.

Because both the TE/VS Interconnect project and the LEAPS project are identified as separate alternatives in the CPUC's and Bureau of Land Management's (BLM) "Draft Environmental Impact Report/Statement–Sunrise Powerlink Project, SCH No. 2006091071" (Sunrise DEIR/DEIS), TNHC has elected to submitted comments in response to the CPUC's dissemination of the Sunrise DEIR/DEIS. As described and evaluated in the Sunrise DEIR/DEIS, TNHC's TE/VS Interconnect and LEAPS projects are identified as the "LEAPS Transmission-Only Alternative" and the "LEAPS Generation and Transmission Alternative," respectively.

When compared to San Diego Gas & Electric Company's (SDG&E) Sunrise Powerlink Project (Sunrise Powerlink), the Sunrise DEIR/DEIS concludes that the "LEAPS Transmission-Only Alternative is found to be the Overall Environmentally Superior Transmission Line Route Alternative" (pp. ES-84 and ES-85). That conclusion was recently reinforced by a separate FERC ruling. As noted on March 24, 2008, "the proposed TE/VS Interconnect will add another major transmission path into the San Diego area with a potential for increasing San Diego's import capability including relief on currently limiting Paths 43 (North of San Onofre) and 44 (South of San Onofre) while maintaining adequate system reliability."

FERC concluded that the "proposed transmission project is not routine in nature" and will "provide a critical link between two major transmission corridors in California." Based on its importance to the San Diego area, FERC granted "rate incentives for the proposed TE/VS Interconnect" (Docket Nos. ER06-278-000 *et al.*). TNHC would construe that action to be indicative of the federal government's intent to encourage corresponding State action to promote the expedited development of the TE/VS Interconnect project.

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Although receiving a lower impact-based ranking because it includes both transmission and generation (pumped storage) components and, therefore, has the potential to introduce additional environmental effects that would intuitively exceed those attributable to a transmission line only project, the Sunrise DEIR/DEIS acknowledges that the "LEAPS Generation and Transmission Alternative" (LEAPS) provides additional load management benefits which are clearly absent from the Sunrise Powerlink. B0018-1 cont.

TNHC believes that the Sunrise DEIR/DEIS' lower rating of the "LEAPS Generation and Transmission Alternative" is not the result of any absence of energy benefits to California ratepayers, environmental-soundness, or even the potentially greater number of environmental impacts that the LEAPS project may have when compared against other alternatives, but the consequence that a combined transmission and generation (pumped storage) project, although producing greater grid benefits than the Sunrise Powerlink, has the potential to generate additional environmental effects. As such, under these proceedings, the methodology applied by the CPUC to a combined project such as LEAPS appears unduly biased against the LEAPS alternative since it seeks to accomplish substantially more than the Sunrise Powerlink, for that, it is penalized through the associated comparison.

TNHC believes that if each of the other alternatives examined in the Sunrise DEIR/DEIS were considered as combined (transmission and generation) projects, not merely as single-purpose facilities, the environmental effects of those combined projects would be comparable to or would be found to be in excess of those associated with the LEAPS project.

As mandated under Section 21002 of the California Environmental Quality Act (CEQA): "The Legislature finds and declares that it is the policy of the state that 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." Since the CPUC, in its role as CEQA lead agency, has the ability to adopt the "environmentally superior" alternative in lieu of the proposed action (and TNHC encourages it to do so), TNHC has elected to submit comments on the Sunrise DEIR/DEIS. TNHC has elected to utilize this opportunity to further assist CPUC efforts to present a comparable environmental evaluation of and to advance TNHC's own efforts to entitle the "LEAPS Transmission-Only" (TE/VS Interconnect) and "LEAPS Generation and Transmission" (LEAPS) projects.

Alternative-Specific Mitigation Measures B0018-2

The following comments focus primarily on those mitigation measures identified by the CPUC and BLM (Lead Agencies) with regards to both the "LEAPS Transmission-Only Alternative" (TE/VS Interconnect) and the "LEAPS Generation and Transmission Alternative" (LEAPS).

As described in Section E.7.1 (LEAPS Transmission-Only Alternative) and Section E.7.2 (LEAPS Generation and Transmission Alternative) of the Sunrise DEIR/DEIS, a number of "additional mitigation measures" (pp. E.7-8 and E.7-228) have been formulated by the Lead Agencies with regards to both alternatives. In many instances, those "additional mitigation measures" incorporate the main body of other mitigation measures formulated by the Lead Agencies and applicable to the Sunrise Powerlink project and have been modified (through the use of general guidance describing the manner in which those measures are adapted) by the Lead Agencies' staffs to address the "LEAPS Transmission-Only Alternative" and the "LEAPS Generation and Transmission Alternative."

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In order to more precisely understand the full text of those measures that have been assigned to those alternatives, each measure was examined by TNHC based on our understanding of the guidance provided by the Lead Agencies in the Sunrise DEIR/DEIS. B0018-2 cont.

In order to eliminate any ambiguity with regards to those mitigation measures assigned to the TE/VS Interconnect and LEAPS alternatives and to focus meaningful discussion thereupon, TNHC has deemed it prudent to: (1) bring each of those mitigation measures forward as part of the Lead Agencies' deliberations concerning the Sunrise Powerlink project and its various alternatives; (2) ensure consistency and agreement between the Lead Agencies and TNHC as to the precise language of each measure; (3) suggest possible changes to certain measures which TNHC would propose for the purpose of clarity and consistency; and (4) identify those measures assigned to the TE/VS Interconnect and LEAPS alternatives where possible disagreement between parties as to application and interpretation may now exist.

As part of the Sunrise DEIR/DEIS, TNHC believes that it is important that the environmental review record clearly and precisely articulate those "additional mitigation measures" being considered by the Lead Agencies for both the TE/VS Interconnect and LEAPS alternatives so that those measures can be adopted by the Lead Agencies' decision-making bodies should those bodies select the "LEAPS Transmission-Only Alternative" and/or the "LEAPS Generation and Transmission Alternative" in lieu of the Sunrise Powerlink project under these proceedings. As noted, the inventory of mitigation measures identified herein is based on those mitigation measures identified in Section E.7.1 (LEAPS Transmission-Only Alternative) and Section E.7.2 (LEAPS Transmission and Generation Alternative) of the Sunrise DEIR/DEIS. In presenting this inventory, TNHC has sought to accurately interpret the applicable measures identified by the Lead Agencies and the alternative-specific modifications described in the Sunrise DEIR/DEIS.

In most instances, the mitigation measures presented in the Sunrise DEIR/DEIS were not specifically designed for the TE/VS Interconnect and LEAPS projects. Many of the mitigation measures presented therein specifically pertain to biological resources within San Diego County (representing the exclusive locale of the Sunrise Powerlink) and not to those resources in general or as they may exist in other non-San Diego County areas. Although a portion of the TE/VS Interconnect and LEAPS projects are also located in San Diego County, substantial portions of those projects are located in Riverside County. As formulated by the governing resource agencies, the existing plans and policies with regards to sensitive biological resources differ between those two jurisdictions. B0018-3

Because of its general San Diego County orientation, biological resource mitigation presented in the Sunrise DEIR/DEIS is primarily geared toward the effectuation of the species-specific and habitat-based conservation measures applicable to that area. As such, mitigation measures formulated specifically for compliance with the "Western Riverside County Multiple Species Habitat Conservation Plan" (Western Riverside County MSHCP) have not been included in the Sunrise DEIR/DEIS and, in certain instances, the measures which are presented therein are inconsistent with the Western Riverside County MSHCP.

Because the TE/VS Interconnect and LEAPS projects are primarily located in Riverside County (but both include components located in San Diego County), the Lead Agencies' recommended mitigation measures formulated in response to identified biological resource impacts have been reviewed for compliance with the Western Riverside County MSHCP and consistency with the

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United States Fish and Wildlife Service's (USFWS) March 19, 2008 "Formal Section 7 Consultation for the Lake Elsinore Advanced Pumped Storage Project (P-11858), Riverside County, California" (Final BO). B0018-3 cont.

A substantial portion of the TE/VS Interconnect and LEAPS projects are located on federal lands and are subject to federal jurisdictional authority. As such, those mitigation measures assigned to the TE/VS Interconnect and LEAPS alternatives should generally be limited to those geographic components of both projects that are situated on non-federal lands. Federal land management agencies, working in consultation with FERC, have already established those permit conditions which are to be applied by those agencies to those lands within each federal agency's jurisdiction. As a result and based upon definitive documentation from those federal agencies, TNHC has identified those changes to the Lead Agencies' recommended mitigation measures which would: (1) allow those measures to more specifically apply to the TE/VS Interconnect and LEAPS alternatives; (2) allow those measures to become final conditions of approval should the TE/VS Interconnect and/or LEAPS project be adopted under these proceedings; and (3) facilitate there later application in separate CPUC proceedings (CPUC No. 07-10-005) B0018-4

As they apply to those alternatives, TNHC has made the following general modifications to the alternative-specific mitigation measures in order to better link those measures to the "LEAPS Transmission-Only Alternative" and "LEAPS Generation and Transmission Alternative." Included as an attachment to these comments is a comprehensive listing of the measures now assigned to those alternatives. Because they are intended to universally apply to each of those measures, the following modifications have not been explicitly notated as changes in those measures. B0018-5

(1) The terms "SDG&E," "project proponent," "proponent," and "Licensee" have been changed to the more generic "Applicant." As used herein, with regards to references to the TE/VS Interconnect and LEAPS alternatives, the term "Applicant" is assumed to refer to TNHC (and not to SDG&E);

(2) The term "Proposed Project" has been changed to the more generic "project." As used herein, with regards to the TE/VS interconnect and LEAPS alternatives, the term "project" is assumed to refer to the TE/VS Interconnect project and/or the LEAPS project (and not to the Sunrise Powerlink); B0018-6

(3) Since there are no State park lands impacted by the TE/VS Interconnect and LEAPS alternatives, the term "State Park" (e.g., Mitigation Measure B-5a[LE]) has been changed to "USDA Forest Service" as an accurate reflection of the State and/or federal land-management agency(ies) traversed by the TE/VS interconnect and LEAPS alternatives; B0018-7

(4) Because the TE/VS Interconnect and LEAPS projects will not impact Anza Borrego Desert State Park, the acronym "ABDSP" has been changed to "CNF" (Cleveland National Forest) as an accurate reflection of the governmental reservation traversed by the TE/VS interconnect and LEAPS alternatives;

(5) References to "SDG&E's NCCP mitigation credits" (e.g., Mitigation Measure B-1d) have been deleted based on uncertainty as to the application of those credits to TNHC's two alternatives; B0018-8

(6) References to "CPUC" and "BLM" have been changes to the more generic "Lead Agencies" both for consistency and to allow for a broader interpretation of that term should lead agency status change as part of the separate proceedings for the TE/VS Interconnect and LEAPS projects; B0018-9

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(7) References to "State Parks," "USDA Forest Service," and "Wildlife Agencies" have been changed to the more generic "other agencies with jurisdiction over the project" based on the Lead Agencies' guidance with regards to other mitigation measures presented in the Sunrise DEIR/DEIS; B0018-9 cont.

(8) The term "Applicant Proposed Measures (APMs)" is assumed to be synonymous with TNHC's "Protection, Mitigation, and Enhancement Measures (PMEs)," as presented in the TE/VS Interconnect PEA. To the extent that the two terms are intended by the Lead Agencies to refer to other than the self-imposed actions of individual project proponents to minimize or eliminate the potential environmental effects of their respective projects, any reference to "APMs" in TE/VS Interconnect's and/or LEAPS' self-imposed mitigation measures should be changed to "PMEs" therein; B0018-10

(9) References to any project-specific mitigation obligations relating specifically to the "Proposed Project" have been deleted since those obligations refer specifically to the Sunrise Powerlink and not to the TE/VS Interconnect and/or LEAPS alternatives;

(10) For the purpose of consistency, references to "USFS" and certain references to the "CNF" have been changed to "USDA Forest Service" since that term is more widely used throughout the alternative-specific measures presented in the Sunrise DEIR/DEIS; B0018-11

(11) For the purpose of consistency, references to specific TE/VS Interconnect and/or LEAPS facilities have been changed to better correspond with the description of those facilities as presented in the TE/VS Interconnect PEA; and

(12) Through the use of ~~strikeouts~~, underlining, and [brackets], in order to improve the linkage between the identified alternative-specific mitigation measures and TNHC's energy projects, TNHC has sought to suggest modifications and/or to identify alternative language with regards to certain mitigation measures proposed by the Lead Agencies' for the "LEAPS Transmission-Only Alternative" and/or "LEAPS Generation and Transmission Alternative."

Except in the few instances noted, none of these proposed changes are intended to constitute substantive modifications and, in the opinion of TNHC, represent relatively minor word changes, intended solely to better match each of the Lead Agencies' recommended measure with the TE/VS Interconnect and LEAPS projects. If the Lead Agencies subsequently determine that these changes are not consistent with the CPUC's and BLM's intent and/or are found not to be acceptable to those agencies, TNHC requests the opportunity to discuss the suggested modifications prior to any formal action with regards thereto, both as part of these proceedings and as part of any other proceedings involving the TE/VS Interconnect and LEAPS alternatives. B0018-12

In certain instances, TNHC does not presently support the inclusion of certain measures or the precise language of those measures (or some portion thereof) and requests the deletion of or, in consultation with the Lead Agencies, the opportunity to formulate alternative measures or alternative language which satisfies the Lead Agencies' intent while, at the same time, addressing TNHC's concerns. In many instances, TNHC's concerns relate only to a few words in each of those measures and is not an expression of a general opposition to a specific measure's general intent or environmental efficacy.

As part of the Lead Agencies' deliberations of the alternative-specific measures identified in the Sunrise DEIR/DEIS, TNHC seeks to raise the following issues which, upon the Lead Agencies' reflection, may require additional changes to those measures presently assigned to the TE/VS Interconnect and/or LEAPS alternatives.

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A. Many of the mitigation measures (e.g., Mitigation Measures B-1a[LE], B-1b[LE], B-1c[LE], B-2l[LE], B-5a[LE], B-7e[LE], B-7i[LE], B-7j[LE], B-7k[LE], B-7l[LE], and B-10a[LE]) require TNHC to obtain the approval of not only the Lead Agencies but often many other agencies. Obtaining multiple agency consent and concurrence is seldom practical. Although TNHC agrees that early consultation is important in order to address multi-agency issues and work toward multi-agency concurrence, pursuant to Section 15020 of the State CEQA Guidelines (14 CCR 15020) and the statutory authority of each agency, mitigation obligations would typically vest with a single governmental entity (e.g., federal land-management agency). TNHC requests that, unless otherwise mandated by statute, those measures requiring multi-agency approvals be modified to stipulate early consultation but require only the approval of that single agency with statutory authority to grant the corresponding entitlement.

B0018-12 cont.

B. A substantial portion of the TE/VS Interconnect and LEAPS alternatives are on federal lands, including the USDA Forest Service's Cleveland National Forest and the United States Marine Corps' (USMC) Camp Joseph H. Pendleton. To the extent that any of the recommended measures impose permit obligations in excess of those requirements already identified by those federal land-management agencies (e.g., final 4[e] conditions), to the extent that any of those measures are in conflict with previously identified federal permit conditions, and/or to the extent that those measures seek to convey to another agency the corresponding federal resource management agency's independent obligations (e.g., Mitigation Measure V-S-14a), with regards to the Lead Agencies' recommended mitigation measures for the TE/VS Interconnect and LEAPS projects, deference should be provided to the recommendations of those federal agencies and the Lead Agencies' measures should be modified for consistency therewith.

B0018-13

C. As required under existing federal procedures, TNHC is already required to obtain a federal special use permit (SUP) from the USDA Forest Service and appropriate land-use authorization from the USMC for the TE/VS Interconnect and LEAPS alternatives. A number of the Lead Agencies' recommended mitigation measures (e.g., Mitigation Measures B-2b and B-3a[LE]) do not, however, appear to acknowledge the role and responsibility of the USDA Forest Service and/or the USMC, failing to specifically identify those agencies in consultation, project review, and ultimate discretionary approval. None of the Lead Agencies' recommended mitigation measures should result in the conveyance to other agencies the primary responsibility for project-specific discretionary actions on affected federal lands which are now the sole jurisdiction of the USDA Forest Service on National Forest System lands and/or the USMS on Camp Joseph H. Pendleton.

B0018-14

D. In certain instances (e.g., Mitigation Measure B-1a[LE]), the Lead Agencies' recommended mitigation measures appear inconsistent with the "conservation measures" presented in the attached Final BO, as prepared by the USFWS under Section 7 of the Federal Endangered Species Act. Unless subsequent data suggests otherwise, with regards to the TE/VS Interconnect and LEAPS projects, deference should be provided to the findings of the Final BO, including those "conservation measures" presented therein, relative to the potential impacts of the TE/VS Interconnect and LEAPS projects on the area's biological resources.

B0018-15

E. As specified in certain mitigation measures, TNHC is directed to submit specific material to designated agencies in advance of ground disturbance, construction, operation, and/or

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other alternative-specific milestones. With regards to any such measure, it is TNHC's expectation that the receiving/approving agency has acknowledged its own performance-related obligations thereunder and has appropriately committed to the Lead Agencies' that agency's intent act within the specified time periods. An agency's failure to meet the specified performance schedule should neither prevent TNHC from conducting the activity for which prior action was specified nor delay the initiation of an activity if TNHC has faithfully complied (e.g., met its performance obligations) but the identified agency has not.

B0018-16 cont.

G. The Federal Power Act (FPA) requires that all non-federal hydropower projects on navigable waters be licensed by FERC. FERC is the independent regulatory agency that has exclusive authority under the FPA to license such projects. Section 4(e) of the FPA (16 U.S.C. 797[e]) applies to hydropower facilities, including their associated transmission lines and other ancillary facilities, located on federal reserve lands and stipulates that FERC is obligated to ensure that its permits do not "interfere with. . .the purpose for which any reservation affected thereby was created or acquired." Under Section 4(e), the Secretary of the department with jurisdiction over the reserve land has the authority to issue any license conditions necessary to maintain the reservation.

B0018-17

FERC and the state in which a FERC-licensed project is located generally do not share the final decision of any issues in a licensing proceeding (First Iowa Hydro-Electric Cooperative v. Federal Power Commission). Under the Commerce and Supremacy Clauses of the United States Constitution, the FPA preempts state law that would otherwise apply to the FERC-licensed project, except where the FPA reserves state authority over a specific issue (Sayles Hydro Association v. Maughn). Those primary exceptions include: (1) water quality certification issued under Section 401(a) of the Federal Clean Water Act (CWA); (2) issuance and regulation of water rights necessary for project operation and to prevent injury to prior water rights (Section 27, FPA [16 U.S.C. 821]); (3) regulation of retail rates for electrical service (Section 16, FPA [16 U.S.C. 812]); and (4) authorization for a state or municipal agency to take over any licensed project, through a condemnation proceeding and on payment of fair-market value (Section 14(a), FPA [16 U.S.C. 807a]). Prior to the Lead Agencies' imposition of any mitigation measures upon the LEAPS alternative, TNHC encourages consultation between the Lead Agencies and FERC so that none of the recommended mitigation measures for the LEAPS project are inconsistent with the FPA.

H. Under both the TE/VS Interconnect and LEAPS alternatives, a Section 401 water quality certification or waiver from the State Water Resources Control Board (SWRCB) will be required. The SWRCB, therefore, constitutes a responsible agency and the Lead Agencies should actively seek to ensure that the resulting environmental documentation serves to fulfill the SWRCB's CEQA obligations (14 CCR 15086). TNHC encourage the Lead Agencies to fully involve the SWRCB in the current proceedings, including the solicitation of any additional mitigation measures that the SWRCB may require as permit conditions for the TE/VS Interconnect and/or LEAPS projects. Under these proceedings, appropriate inter-agency consultation and coordination should occur so that the SWRCB and/or any of its SWRCB's regional boards (e.g., Santa Ana and San Diego) can utilize this environmental document as the environmental basis for the issuance of a Section 401 water quality certification for the TE/VS Interconnect and/or LEAPS alternatives.

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Focusing more specifically on individual mitigation measures, without reiterating the broader set of comments presented above, TNHC wishes to bring to the Lead Agencies' attention those measures (as extracted from the Sunrise DEIR/DEIS) that TNHC would seek to modify. Where applicable, TNHC offers alternative language which responds to the specific environmental impact which predicated the Lead Agencies' nomination of that measure. Because of the length of certain mitigation measures, only those portions of each measure questioned by TNHC are presented herein. Requested changes and revisions are noted through the use of ~~strikeouts~~ and underlining. It is noted that a number of the following measures (i.e., V-S-14a, L-1h*, T-9b, P-6b, P-9a, H-9b, and H-14a) are only applicable to the "LEAPS Generation and Transmission Alternative." B0018-19

- Mitigation Measure B-10a(LE) (Utilize collision-reducing techniques in installation of transmission lines). ~~Where such markers are installed, the Applicant shall fund a study to determine the effectiveness of the markers as a collision prevention measure since there are few, if any, studies that show if such markers work, especially on transmission lines. The Applicant shall develop a draft study protocol and submit it to the Lead Agencies and other agencies with jurisdiction over the project for review. The Applicant shall continue to work with these agencies until approval of a final study protocol is obtained. If the study shows the markers to be ineffective, the Applicant shall coordinate with the agencies with jurisdiction over the project to develop alternate collision protection measures.~~ The Applicant shall implement an avian reporting system for documenting bird mortalities to help identify problem areas. The reporting system shall follow the format in Appendix C of "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006" (APLIC, 2006) or a similar format. The Applicant shall submit a draft reporting protocol and reporting system to the Lead Agencies and other agencies with jurisdiction over the project for review and approval. The Applicant shall continue to work with these agencies until approval of a final reporting protocol and reporting system is obtained from the Lead Agencies. The Applicant shall develop and implement methods to reduce mortalities in identified problem areas. The methods shall be approved by the Lead Agencies ~~and other agencies with jurisdiction over the project prior to implementation~~. Bird mortality shall continue to be documented in the problem areas per the avian reporting system to determine the effectiveness of the mortality reduction methods and to determine if new methods need to be developed.

  TNHC Response. As owner and operator of this new, single approximately 30-mile transmission line, TNHC should not be presumed to produce comparable impacts to those investor-owned utilities that operate large sections of the State's power grid. Although TNHC would agree to proportionally participate in any such study, obligations for payment and performance should appropriate rest with other parties.

- Mitigation Measure B-12a(LE) ~~(Animal Burrows/Dens). If any animal burrows or dens are identified during the pre-maintenance surveys for active bird nests, soil in a brush-clearing area shall be sufficiently dry before brush clearing to prevent damage to burrows or dens. At any time of year where maintenance would occur in occupied SKR habitat, all equipment and vehicles shall remain on existing access roads/staging areas (e.g., they shall not pull off the shoulder) to prevent the crushing of SKR burrows~~. B0018-20

  TNHC Response. As acknowledged in the USFWS' Final BO, a portion of the proposed transmission alignment is located within Stephens' kangaroo rat (SKR) Lake Mathews-

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Estelle Mountain Core Reserve Area. Mitigation measures for temporary and long-term project-related impacts upon that species have already been developed in consultation with the USFWS. Those actions, in combination with TNHC's compliance with permit obligations imposed by the USFWS under the provisions of the Federal Endangered Species Act, should serve as mitigation for SKR impacts and preclude the need for other independent measures formulated by the Lead Agencies.

B0018-20 cont.

- Mitigation Measure V-S-14a (Upper Reservoir Revegetation - Newly planted vegetation (per Mitigation Measure USFS-37) shall be fertilized, irrigated, and maintained by the Applicant. ~~Vegetation survival shall be guaranteed by the Applicant for the life of the LEAPS project. Upon abandonment of the reservoir, dam, pumping facility, the Applicant shall restore the landscape to near-natural conditions, as directed by the CNF [and FERC]. The Applicant shall provide a bond to the USDA Forest Service sufficient for removal of facilities and restoration of the landscape.~~

  TNHC Response. TNHC's obligations for compensatory mitigation within National Forest System lands, including obligations for landscape restoration and maintenance, should be appropriately deferred to the USFS. Similarly, the USFS shall dictate, through the issuance of a federal SUP, obligations for each facility's removal or adaptive reuse at the end of the license term and any extensions that may be granted thereto. The proposed measure would preclude the ability of the USFS and/or FERC to retain, convey, and/or allow for an adaptive reuse of the proposed improvements at the end of the license term.

  In addition, the LEAPS project is assumed to have a 50-year permit life (with the potential for relicensing beyond that term). Plants in nature are subject to a variety of stresses, including drought, fire, and transition, such that "guaranteed" survival of any landscape enhancements, compensation, and/or mitigation represents an unreasonable and unobtainable standard.

B0018-21

- Mitigation Measure V-3a (Reduce visual contrast of towers and conductors). The following design measures shall be applied to all new structure locations, conductors, and re-conductored spans, in order to reduce the degree of visual contrast caused by the new facilities: ~~[1]~~ All new conductors and re-conductored spans are to be non-specular in design in order to reduce conductor visibility and visual contrast. ~~[2] No new access roads shall be constructed such that they directly approach existing or proposed towers in a straight line from locations immediately downhill of the structures.~~

  TNHC Response. Under the provisions of the FERC license and the USFS' SUPs, TNHC will likely be granted authorization to construction new temporary and/or permanent access and maintenance roads to certain transmission tower sites. The proposed measure appears inconsistent with the entitlements now being processed by federal agencies, the final 4(e) conditions established by the USFS, and the authority of the USFS to grant SUP authorization for the construction of those facilities.

B0018-22

A small number of requested changes may be considered more substantive. In support of those changes, TNHC presents the following factual evidence for the requested changes and, where applicable, offers alternative language which responds to the potential environmental impacts which may have predicated the measures inclusion.

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- Mitigation Measure L-1h* ~~(Relocate Butterfield Elementary Visual and Performing Arts School). In coordination with the Lake Elsinore Unified School District, the proponent shall relocate the Butterfield Elementary Visual and Performing Arts School to an acceptable temporary location for the duration of construction of the Santa Rosa Powerhouse, Midpoint Substation, and water conduits within 1,000 feet of the school. Relocation site and plans shall be subject to approval of the district.~~ The Applicant will work closely with the Lake Elsinore Unified School District to minimize, to the extent feasible, construction-term impacts on Butterfield Elementary Visual and Performing Arts Magnet School. The Applicant's obligations do not, however, extend beyond those otherwise imposed under existing regulations concerning the physical siting of school facilities. Compliance with those standards shall constitute reasonable mitigation for the project's construction and operational impacts.

  TNHC Response. As indicated in TNHC's January 2008 PEA, the proposed Santa Rosa powerhouse site and Midpoint (LEAPS) substation will be located a substantial distance from Butterfield Elementary Visual and Performing Arts Magnet School. Section 14000-14010 in Division 1 of Chapter 13 in Title 5 of the California Code of Regulations (CCR) outlines minimum standards for school site selection. The separation distance between the LEAPS alternative's energy-related facilities and the existing school site is substantially in excess of the minimum requirements imposed under the CCR. Similarly, since development activities routinely occur in close proximity to existing school sites, typical construction mitigation would appropriately and reasonably address any short-term impacts associated with proximal construction activities. School closure and/or relocation of school functions constitutes excessive mitigation and extends substantially beyond that required to allow for continued school activities during LEAPS construction. As such, no nexus has been established between the project's potential short-term and long-term impacts and the obligations now being recommended under the identified measure.

B0018-23 cont.

- Mitigation Measure T-9b ~~(Add traffic lanes on Grand Avenue). The Applicant shall do one of the following in coordination with the City of Lake Elsinore: (1) add a second left turn lane to the Ortega Highway intersection approach to address the high number of left turns on to Ortega Highway from Grand Avenue, or (2) add a through lane on Grand Avenue (for a total of two) in both directions, at the Grand/Ortega intersection.~~

  TNHC Response. The project's traffic-related impacts will be primarily confined to the construction term and will cease or substantially diminish once the project is operational. The existing levels of service along Ortega Highway and Grand Avenue are the result of existing traffic volumes and continued regional growth. As indicated in TNHC's January 2008 PEA and as identified in the FERC FEIS, the following traffic mitigation measures have already been established and will become binding on the LEAPS projects: (1) Environmental Measure No. 28 - Include in the proposed road and traffic management plan applicable to National Forest System lands provisions addressing road construction, realignment, maintenance, use, and closure and identifying the co-applicants' responsibility for road maintenance and repair costs; and (2) Environmental Measure No. 29 - Include in the proposed road and traffic management plan applicable on non-National Forest System lands provisions addressing road construction, realignment, maintenance, use, and closure, as well as land management policies and practices associated with project-related roads

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