

March 23, 2009



Ms. Vicki Wood  
El Centro Field Manager  
U.S. Department of the Interior  
Bureau of Land Management, El Centro Field Office  
1661 South 4<sup>th</sup> Street  
El Centro, CA 92243

607 Fourteenth Street N.W.  
Washington, D.C. 20005-2011  
PHONE: 202.628.6600  
FAX: 202.434.1690  
www.perkinscoie.com

**Re: Notice of Appeal**

Dear Ms. Wood:

On behalf of the Viejas Band of Kumeyaay Indians (hereinafter, "Viejas"), and pursuant to the regulations in 43 C.F.R. §§ 4.411 and 4.413, Viejas is appealing the January 20, 2009 decision of the Bureau of Land Management of the Department of the Interior to grant rights-of-way to San Diego Gas & Electric for the Sunrise Powerlink Transmission Project and associated Amendment to the Eastern San Diego County Resource Management Plan. The attached Notice of Appeal is being filed concurrently with the U.S. Department of Interior's Office of Hearings & Appeals at the Interior Board of Land Appeals, in addition to your office. A statement of reasons will be submitted separately to the U.S. Department of Interior's Office of Hearings & Appeals in accordance with applicable requirements.

Please do not hesitate to contact me should you have any questions.

Respectfully submitted,

Donald C. Baur  
Jena MacLean  
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(202) 434-1621  
Attorneys for the Viejas Band of  
Kumeyaay Indians

Kimberly R. Mettler, Director of  
the Viejas Office of Legal Affairs  
Viejas Band of Kumeyaay Indians  
Attn: Legal Department  
5000 Willows Road  
Alpine, CA 9190  
(619) 659-1710

Enclosures

BEFORE THE  
INTERIOR BOARD OF LAND APPEALS

IN RE: JANUARY 20, 2009 DECISION TO  
GRANT TWO RIGHTS-OF-WAY AND  
AMENDMENT TO EASTERN SAN DIEGO  
COUNTY RESOURCE MANAGEMENT  
PLAN FOR THE SUNRISE POWERLINK  
TRANSMISSION PROJECT

**NOTICE OF APPEAL**

Pursuant to 43 C.F.R §§ 4.411 and 4.413, the Viejas Band of Kumeyaay Indians (hereinafter, "Viejas" or "Viejas Band"), appeals the January 20, 2009 decision of the Bureau of Land Management ("BLM") to grant rights-of-way to San Diego Gas & Electric ("SDG&E") for the Sunrise Powerlink Transmission Project ("Project") and to amend the Eastern San Diego County Resource Management Plan ("RMP"). The Viejas Band intends to submit to the Interior Board of Land Appeals ("IBLA") a separate Statement of Reasons within 30 days of filing this Notice of Appeal in accordance with 43 C.F.R. §§4.412 and 4.413, or on such date as specified by any briefing schedule that may be established by IBLA.

1. The name, address, and contact numbers of the Appellant are as follows: Viejas Band of Kumeyaay Indians, represented by Donald C. Baur, Perkins Coie LLP, 607 Fourteenth Street NW, Suite 800, Washington, DC, 20005, (202) 434-1621 (phone), (202) 434-1690 (facsimile), DBaur@perkinscoie.com, and Kimberly R. Mettler, Director of the Viejas Office of Legal Affairs, Viejas Band of Kumeyaay Indians, 5000 Willows Road, Alpine, California, 91901, (619) 659-2441, kmettler@viejas-nsn.gov.

2. The Viejas Band is a federally recognized Indian Tribe as evidenced by current listing in the Federal Register at 73 Fed. Reg. 18,553 as the Viejas (Baron Long) Group of Capitan Grande of Mission Indians of the Viejas Reservation, California. The

Viejas Band is a self-governing Tribe exercising sovereign authority over the Viejas Indian Reservation, located on the eastern edge of Viejas Mountain. The Viejas Band also shares joint ownership (with the Barona Band) of the Capitan Grande Indian Reservation located to the north of Viejas Mountain. Both Reservations would be affected by the Project. Throughout its history, the Viejas Band and its people have inhabited and used the area covered by affected elements of the RMP for tribal, cultural, religious, economic, environmental, subsistence, and governmental purposes.

3. The decision being appealed is the January 20, 2009, decision of BLM to amend the Eastern San Diego County RMP and grant rights-of-way to SDG&E for the construction and operation of the Sunrise Powerlink Transmission Project. 74 Fed. Reg. 7,916-17 (Feb. 20, 2009). The rights-of-way will allow SDG&E to use public lands to construct, operate, maintain, and terminate a 500kV electrical transmission line from the Imperial Valley Substation to a newly-constructed 500/230kV substation, identified as the Modified Route D Alternative Substation, and a 230 kV electrical transmission line from the Modified Route D Alternative Substation to Sycamore Canyon Substation in San Diego. A copy of the decision is attached as Attachment A.

4. The Viejas Band has submitted extensive comments to the BLM and California Public Utilities Commission ("CPUC") regarding the detrimental effects of the Project. On April 11, 2008, and August 25, 2008, Viejas submitted comments in response to the Draft EIR/EIS urging BLM and the CPUC to avoid choosing a route within the vicinity of the Viejas and Capitan Grande Reservations. Further, on October 30, 2008, the Viejas Band submitted comments again on the Final EIR/EIS for the Project. Most recently, the Viejas Band submitted a letter to the CPUC. The Viejas Band has consistently voiced its concerns regarding the significant impacts of the proposed transmission line and BLM's

failure to fulfill its duty to consult with the Viejas Band. The Tribe is yet to reach a resolution with interested parties, the BLM, or the CPUC regarding its concerns.

5. The Viejas Band will be directly and irreparably harmed by the construction and operation of SDG&E's proposed transmission line. The will be built in the vicinity of the Viejas and Capitan Reservations and within the historic lands of the Tribe. SDG&E's proposed transmission line will impact the Viejas and Capitan Grande Reservations, the tribal members who live there, and sacred Native American cultural and religious sites, such as Viejas Mountain. The development of the proposed line will directly harm the Viejas Band due to the resulting impacts to the environment, public health and safety, and future economic development of both Reservation lands and the lands surrounding the Viejas and Capitan Grande Reservations, as well as the religious, cultural and historic rights of the Tribe and its members.

6. BLM failed to comply with all of the following legal requirements:

a) requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Parts 1500-1508 (Council on Environmental Quality), 43 C.F.R. Part 46 (Department of the Interior), including a failure to consider the cumulative impacts of the proposed project on the Viejas Band, the environment, and cultural, historic and religious sites. As evidenced by the Final EIR/EIS, BLM has also not considered adequate alternatives to the proposed project to mitigate the potential for significant environmental harm;

b) requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.*, and its implementing regulations, 36 C.F.R. Part 800, by not adequately consulting with the Tribe or taking necessary actions to address the impacts of the project on subject properties;

c) requirements of the Endangered Species Act ("ESA"), 16 U.S.C. §§460 *et seq.*, and its implementing regulations, 43 C.F.R. Part 402. The proposed transmission line has the potential to cause significant adverse impact on numerous listed species (e.g., coastal California gnatcatcher, least Bell's vireo, southwestern flycatcher, and arroyo toad) that inhabit the lands surrounding the Tribe's Reservations. However, the impacts have not been adequately evaluated under the ESA. As required by Secretarial Order 3206, BLM has also failed to adequately consult with the Viejas Band on ESA issues;

d) the planning directives of the Federal Land Policy and Management Act, 43 U.S.C. §§1701 *et seq.*, and its planning regulations, 43 C.F.R. Parts 1600-9260;

e) the consultation duty of Executive Branch policy. Executive Order 13175 requires federal agencies to "respect Indian Tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique relationship between the Federal Government and Indian Tribal governments." 65 Fed. Reg. 67,249-250 (Nov. 9, 2000). The general purpose of the Executive Order is to "establish meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications [and] to strengthen the United States government-to-government relationships with Indian Tribes..." *Id.* at 67,249. This policy is enforceable through administrative appeal. *Fort Berthold Land and Livestock Assoc. v. Great Plains Regional Director*, 35 IBIA 266, 271 (2000). See also *Ogala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 721 (8th Cir. 1979). BLM is required to make every effort to satisfy this requirement, yet has failed to consult in a meaningful way with the Viejas Band regarding the Project.

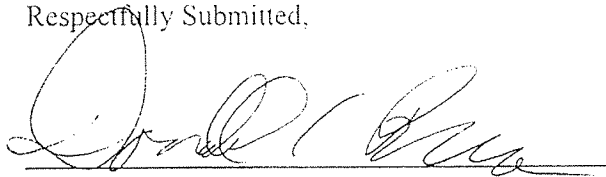
7. Throughout the BLM decision-making process, the Viejas Band expressed strong concern over the location of the rights-of-way and indicated that it would withdraw its opposition to the Project if direct and adequate assurances were provided by BLM and

SDG&E that the transmission line corridor would be located such that the Tribe's interests would not be harmed. To date, adequate assurances have not been received, and, as a result, the Viejas Band has no choice other than to file this appeal.

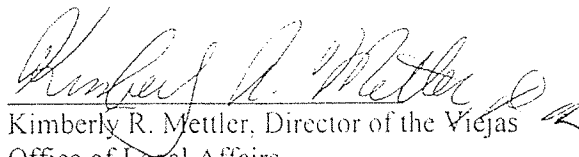
8. The notice of appeal has been served on interested parties as prescribed by 43 C.F.R. § 4.413, and as set out in the Certificate of Service.

9. The Statement of Reasons for the Viejas Band's appeal will be submitted separately within 30 days of filing this Notice of Appeal in accordance with 43 C.F.R. §§4.412 and 4.413.

Respectfully Submitted,



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Dated: March 23, 2009

## CERTIFICATE OF SERVICE

Pursuant to 43 C.F.R. 4.413, I hereby certify that I have on this day served by certified mail, return receipt requested, a copy of each of the foregoing documents upon:

U.S. Dept. of the Interior  
Office of the Solicitor-Pacific Southwest  
Region  
2800 Cottage Way, Room E-2753  
Sacramento, CA 95825-1890

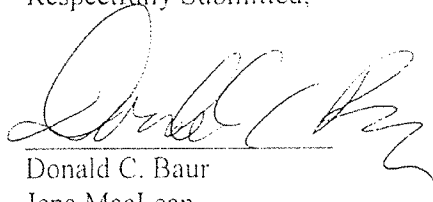
Ms. Vicki Wood  
El Centro Field Manager  
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Bureau of Land Management, El Centro  
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\* Parties were served as a courtesy.

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Respectfully Submitted,



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# **Attachment A**

[The document has been excluded due to its size, but is attached to the paper filing accompanying the Petition for Appeal]