



*protecting and restoring natural ecosystems and imperiled species through
science, education, policy, and environmental law*

via email and Federal Express Overnight Delivery

April 8, 2011

Billie Blanchard, CPUC
c/o Aspen Environmental Group
235 Montgomery Street, Suite 935
San Francisco, CA 94104 - 3002
Fax: (800) 491 - 6153
E - mail: dpv2@aspene.com

RE: Draft Supplemental Environmental Impact Report – Southern California Edison Company’s Application for Devers-Palo Verde No. 2 Transmission Line Project and Colorado River Substation Expansion, California SCH No. 2005101104

Dear Ms. Blanchard,

These comments are submitted on behalf of the Center for Biological Diversity’s 320,000 staff, members and on-line activists in California and throughout the United States regarding the Draft Environmental Impact Report (DSEIR) for Southern California Edison Company’s Application for Devers-Palo Verde No. 2 Transmission Line Project and Colorado River Substation Expansion, California SCH No. 2005101104.

The proposed project will support the approved renewable energy projects in the adjacent areas, which are a critical component of efforts to reduce greenhouse gas emissions, avoid the worst consequences of global warming, and to assist California in meeting emission reductions set by AB 32 and Executive Orders S-03-05 and S-21-09. The Center for Biological Diversity strongly supports the development of renewable energy production, and the generation of electricity from solar power, in particular. However, like any project, proposed facilities to move the solar power to the energy consumers should be thoughtfully planned to minimize impacts to the environment. In particular, substation and transmission projects should avoid impacts to sensitive species and habitats. Additionally alternatives should be considered for development of renewable energy in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors, far-flung substations and the efficiency loss associated with extended energy transmission. Only by maintaining the highest environmental standards with regard to local impacts, and effects on species and habitat, can renewable energy production be truly sustainable.

The DSEIR is deficient in several ways and fails to provide the level of detailed data and information about resources and impacts or proposed mitigation and minimization measure that
Arizona • California • Nevada • New Mexico • Alaska • Oregon • Washington • Illinois • Minnesota • Vermont • Washington, DC

is needed. Nonetheless, even based on the information provided it is clear that constructing the proposed substation at the proposed project site has unacceptable impacts and that there are several alternatives that would reduce the impacts of the proposed substation project to sensitive biological resources including the Mojave fringe-toed lizard and its sand habitat. Because there are feasible alternative sites that would reduce or eliminate impacts to sensitive resources, the CPUC cannot approve the proposed substation at the proposed site.

The DSEIR Fails to Comply with CEQA.

A. The DSEIR Does Not Adequately Describe Environmental Baseline

The establishment of the baseline conditions of the affected environment is a practical requirement of the CEQA process. Similarly, without a clear understanding of the current status of these public lands CPUC cannot make a rational decision regarding proposed project and alternatives. The DSEIR fails to provide adequate baseline information and description of the environmental setting in many areas including in particular the status of rare plants, animals and communities including desert tortoise, burrowing owls, badgers, kit foxes and rare plants, particularly in the Avoidance Alternatives and Southern impact analyses.

The baseline descriptions in the DSEIR are inadequate particularly for the areas where surveys were a single season, a day, or not performed at all. As discussed below, because of the deficiencies of the baseline data for the proposed project area, the DSEIR fails to adequately describe the environmental baseline. Many of the rare and common but essential species and habitats have incomplete and/or vague on-site descriptions that make determining the proposed project's impacts difficult at best. Some of the rare species/habitats baseline conditions are totally absent and as a result no impact assessment is provided either. More documentation is required to fully identify the baseline conditions of the site, and that baseline needs to be used to evaluate the impacts of the proposed project or any alternatives.

B. Failure to Adequately Identify and Analyze Direct and Indirect Impacts to Biological Resources

The DSEIR fails to adequately analyze the direct, indirect, and cumulative impacts of the proposed project on the environment. The CPUC must ensure adequate environmental information is gathered and that the environmental impacts of a proposed project are fully identified and analyzed before it is approved. "To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 724.) Environmental review documentation

is more than a set of technical hurdles for agencies and developers to overcome. [Its] function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those

consequences have been taken into account.” (*Laurel Heights I, supra*, 47 Cal.3d at pp. 391-392.) For the [environmental review documentation] to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450.) The environmental review documents must “contain facts and analysis, not just the agency's bare conclusions or opinions.” (*Laurel Heights Improvement Assn. v. Regents* (1989) 47 Cal. 3d 376, 404 [and cases cited therein].) The environmental review documents “must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Id.*)

The project as proposed is located in the middle of a large and critical sand transport system that originates in Joshua Tree National Park and terminates east of the proposed substation project site at the boundary of the agricultural area near Blythe, California¹. This sand transport corridor is essential to maintaining sand dunes, which are unique desert landscape features and provide habitat for a suite of rare species that are evolutionarily adapted to exploiting the constantly shifting sands, including fringed-toed lizards and endemic insects and plants. Dunes in the deserts typically form as a result of eolian (wind-blown) processes, where sand particles are moved with the prevailing winds. These eolian processes form sand transport corridors. Blockage of even a portion of the sand transport corridors will impact the “downstream” dunes systems upon which rare species rely and may eventually eliminate them.

As detailed below, there are many inadequacies in the DSEIR. For example, the Center failed to find a quantitative analysis of impacts other than the number of acres that will be impacted. The DSEIR fails to adequately identify the on-the-ground impacts to connectivity, and species essential habitat types (breeding/foraging etc.), leaving the public and decisionmakers clueless as to true nature of the impacts. Because of the failure to identify the true impacts, it is impossible to evaluate if the proposed mitigation would be adequate. In addition, many of the mitigation measures for the species listed in Table C.6-10 involve implementing biological surveys. Surveys do not mitigate for impacts, but instead should be the basis for analyzing the impacts. Therefore, they should not be included in the mitigation scenario.

Because the DSEIR is deficient as an informational document the CPUC has failed to comply with CEQA. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 717-718 [holding that a misleading impact analysis based on erroneous information rendered an EIR insufficient as an informational document]; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357-58 [where baseline was inaccurate “comparisons utilized in the EIRs can only mislead the public as to the reality of

¹ Muhs et al. 2003

the impacts and subvert full consideration of the actual environmental impacts which would result.”].)

Under CEQA, the CPUC must look at reasonable alternatives to avoid impacts in the DSEIR and the DSEIR does provide alternatives but due to the lack of data and information on many resources it is impossible to fully evaluate and compare the alternatives provided.

The DSEIR also fails to provide needed information regarding proposed mitigation and minimization measures which again may be a result of the lack of adequate data and information. However, even in those cases where the extent of impacts may be somewhat uncertain due to the complexity of the issues, the CPUC is not relieved of its responsibility under CEQA to discuss mitigation of reasonably likely impacts at the outset.

Many of the plans that are identified in the DSEIR and proposed as measures to minimize or mitigate impacts are simply not provided in the DSEIR for public review. For example, the Habitat Restoration/Compensation Plan (MM B-1a from the DPV2 EIR/S) is not provided in this DSEIR. These types of plans are key for minimization and mitigation, yet it is impossible for the public and decision makers to evaluate the adequacy of the plan(s) because they are not available. While the Center supports the development and implementation of these plans in general, in the absence of even a draft plan being presented in the DSEIR, it is impossible to evaluate or determine the efficacy of proposed minimization and mitigation to actually adequately mitigate impacts. The CPUC has the responsibility to ensure that mitigation measures are adequate and implemented and without a well defined plan, there is no ability to ensure that the mitigation measures are adequate or are fully implemented. Unfortunately, studies of mitigation compliance have shown that mitigation is often not fully implemented.² Making all of the plans available as part of the public process is important to assure the public that their public resources are being protected – without public disclosure of these plans during the process there is no way to evaluate whether the CPUC has put in place adequate plans to prevent degradation of our natural heritage, clean air and water. The CPUC must supply these essential plans as part of the public process that enables public input on the plethora of “mitigation” plans that are being proposed as conditions of this proposed substation project.

1. *Mojave Fringe-toed Lizard*

The DSEIR acknowledges that proposed project sits directly in the most active area of the sand transport corridor (DSEIR at Figure ES-3). Clearly the project footprint needs to be moved to avoid this important sand transport corridor and minimize the impacts to this rare habitat type. The sand dunes and sand transport corridor in this area is the southern most range of the Mojave fringe-toed lizard. The population in the southern most part of its range is unique because it survives at the lowest elevation and the least amount of precipitation, adaptations that will serve the species well in light of global climate change³. The northern range – Amargosa River Distinct Population Segment of the Mojave fringe-toed lizard (*Uma scoparia*) (MFTL) is already petitioned for Endangered Species Act protection due to threats from off-road vehicles and other

2 Moilen et al. 2009, Norton 2009, Ambrose 2000

3 Murphy et al. 2006

factors⁴. Further impacts to the sand habitat and sand transport corridors in the range of the lizard may require additional Endangered Species Act protection for this species.

While Avoidance Alternatives 1-3 and the Southern Alternative all achieve the goal of moving the project out of the active sand transport corridor and will likely reduce impacts to MFTL. Unfortunately, the analysis is not sufficient or clear regarding potential impacts on those alternative sites to other species (for example see next section on desert tortoise). We would generally support an alternative that removes impacts to the sand transport corridor, but absent a full analysis of the impacts of the proposed substation construction at the alternative sites to species that do not rely on the sand transport corridor, it is impossible to tell which alternative is most environmentally benign and does the best job of avoiding impacts to sensitive species.

2. *Desert Tortoise*

The desert tortoise has lived in the western deserts for tens of thousands of years. In the 1970's their populations were noted to decline. Subsequently, the species was listed as threatened by the State of California in 1989 and by the U.S. Fish and Wildlife Service in 1990, which then issued a Recovery Plan for the tortoise in 1994. The DSEIR incorrectly identifies the tortoise in the project area as Sonoran desert tortoise (DSEIR at pg. D-24 and D-25), when actually they are part of the Mojave population and protected by both state and federal Endangered Species Acts. The U.S. Fish and Wildlife Service is in the process of updating the Recovery Plan, and a Draft Updated Recovery Plan was issued in 2008, however it has not been finalized to date. Current data indicate a continued decline across the range of the listed species⁵ despite its protected status and recovery actions.

The original and draft updated Recovery Plans both recognize uniqueness in desert tortoise populations in California. This particular subpopulation of tortoise at the proposed project site is part of the Eastern Colorado Recovery unit⁶. Recent population genetics studies⁷ have further reconfirmed 1994 Recovery Plan conclusions - the Eastern Colorado Recovery unit was one of the most genetically unique recovery units. While the proposed project site and alternatives sites may have low desert tortoise densities, this particular recovery unit has also been documented to have the second highest declines in population over the last two years – 37% decline⁸. The DSEIR fails to identify the number of desert tortoise that would be affected by the project or the alternatives. It also fails to identify and consider the localized impact to this recovery unit that is already in steep decline.

⁴ http://www.biologicaldiversity.org/species/reptiles/Mojave_fringe-toed_lizard/endangered_species_act_profile.html

⁵

http://www.fws.gov/nevada/desert_tortoise/documents/reports/2007_Rangewide_Desert_Tortoise_Population_Monitoring.pdf

⁶ http://ecos.fws.gov/docs/recovery_plans/1994/940628.pdf

⁷ Murphy et al. 2007

⁸

http://www.fws.gov/nevada/desert_tortoise/documents/reports/2007_Rangewide_Desert_Tortoise_Population_Monitoring.pdf

The DSEIR fails to provide much needed information regarding the desert tortoise including the number of burrows and the number of live tortoises documented for the proposed project or alternatives, nor does it present the estimated number of desert tortoises on the project site or alternative sites. While protocol level desert tortoise surveys were done on some of the project area (DSEIR at pg. D-5), the results are not presented. Protocol level surveys do not appear to have been done on the Avoidance or Southern Alternatives. Therefore it is impossible to determine the impacts to desert tortoise from the proposed project or alternatives. Even where protocol level surveys are performed using USFWS methodologies for estimating the number of desert tortoise on the proposed project site, it is important to understand that tortoise numbers on site can be significantly underestimated using these methods. Recent experience at the ISEGS project site, which utilized the same type of surveys and estimation methodology, the numbers of desert tortoise on the whole three-phase site were estimated to be 38. However more recent estimates from BLM conclude that up to 140 desert tortoise could occur on site⁹. That site in Ivanpah Valley is also located in BLM designated “Category 3” habitat, as is this proposed project.

No avoidance strategies or translocation/relocation efforts are discussed for desert tortoise in the DSEIR. No mechanisms are included to assure that any and all mitigation acquisitions will be conserved in perpetuity for the conservation of the desert tortoise as required under state law. If those acquisitions are within existing Desert Wildlife Management Areas (DWMAs), higher levels of protection than are currently in place for DWMAs need to be put in place.

The 1:1 mitigation ratio of desert tortoise habitat outside of critical habitat is inadequate to mitigate for habitat destruction, if indeed the project or alternatives are occupied habitat in which case the ratio should be far higher.¹⁰ Mitigation presumes that acquisition will be appropriate tortoise habitat (occupied or unoccupied) which is currently existing and providing benefits to the species, to off-set the elimination of the proposed project site. However, this strategy is still *a net loss of habitat* to the desert tortoise, as currently they may be using or could use both the mitigation site and the proposed project site. Therefore, in order to aid in recovery of this declining species, at a minimum a 3:1 mitigation ratio should be required as mitigation for the total elimination of occupied desert tortoise habitat on the proposed project site.

If tortoises or MFTL are relocated or translocated then the relocation and/or translocation areas need to be secured for conservation in perpetuity, to preclude moving the animals subsequently if additional projects move forward on the relocation or translocation site(s).

3. *Burrowing owl*

The DSEIR notes that burrowing owls occur on the project site (DSEIR at D-17). However the DSEIR fails to mention them again in the context of the proposed project or alternatives’ impact analysis.

9 BLM letter dated 2 14 2011 reinitiating consultation; FWS letter dated 3 15 2011; BLM email dated 3 25 2011 estimating 140 tortoises on site; FWS letter dated 3 28 2011: *See also* article

http://www.pe.com/localnews/stories/PE_News_Local_D_tortoises31.2893802.html

10 Moilanen et al 2009, Norton 2008

Preliminary results from the 2006-7 statewide burrowing owl census identified that the central western interior area actually harbors few Western burrowing owls.¹¹ The evidence of on-site burrowing owls suggests that the proposed project site is good habitat for burrowing owls in an area that generally does not support many burrowing owls. The stronghold for burrowing owls in California – the Imperial Valley – has had a recently documented decline of 27% in the past 2 years¹², resulting in an even more dire state for burrowing owls in California. Because burrowing owls are in decline throughout California, and now their “stronghold” is documented to be declining severely, the burrowing owls on this proposed project site (and on other renewable energy projects) become even more important to species conservation efforts.

While “passive relocation” does minimize immediate direct take of burrowing owls, ultimately the burrowing owls’ available habitat is reduced, and “relocated” birds are forced to compete for resources with other resident burrowing owls and may move into less suitable habitat, ultimately resulting in “take”. No data is available on the fate of passively relocated birds, therefore it is unclear if the birds survive or not.

Mean burrowing owl foraging territories are 242 hectares in size, although foraging territories for owl in heavily cultivated areas is only 35 hectares¹³. Mitigation is proposed as habitat acquisition. Adequate acquisition of burrowing owl habitat needs to be acquired, calculated using the mean foraging territory size times the number of owls. Also using the average foraging territory size for mitigation calculations may not accurately predict the carrying capacity of the mitigation lands. It may be that in this arid region of California, the acres necessary to support a burrowing owl is much larger. While CDFG provided mitigation guidance in 2003, that guidance is now out of date in light of identified population declines¹⁴, a more thorough census of burrowing owls throughout the state¹⁵ and additional research on the species habitat¹⁶. Because the long-term persistence of burrowing owls lie in their ability to utilize natural landscapes, not human-created ones and the carrying capacity is tied to habitat quality, mitigation must include lands that are native habitats on undisturbed lands, not cultivated lands, which are subject to the whims of land use changes.

4. *Rare Plant Species and Communities*

In addition to the rare psammophytic vegetation community, which was never actually identified in the DSEIR despite the occurrence of the sand transport corridor, numerous rare plants were also identified on the proposed project site and alternatives. Minimization or mitigation strategy for these unique California species needs to be more clearly identified. Will seed collections occur? Will conservation lands contain adequate seed bank for these species? Absent this information the DSEIR fails to meet CEQA standards.

11 IBP 2008

12 Manning 2009.

13 Klute et al. 2003

14 Manning 2009

15 Wilkerson and Siegel 2010

16 Klute et al. 2003

5. *Insects*

The DSEIR fails to address insects on the proposed project site. In fact no surveys or evaluation of rare or common insects are included in the DSEIR. Sandy habitats are notorious for supporting endemic insects, typically narrow habitat specialists¹⁷. These data must be included along with an analysis of rare insects on the proposed project site and alternatives.

C. The DSEIR Fails to Adequately Identify and Analyze Habitat Connectivity Fragmentation, Augmentation of Predators and Introduction of Exotic Species.

The habitat fragmentation, loss of connectivity for terrestrial wildlife, and augmentation of predators and introduction of invasive weed species associated with the proposed project in the proposed location is not apparent in the DSEIR.

D. The Analysis of Cumulative Impacts in the DSEIR Is Inadequate

Cumulative impacts analysis is a critical part of any CEQA analysis. [t]he cumulative impact analysis must be substantively meaningful. “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.] [Citation.] [¶] While technical perfection in a cumulative impact analysis is not required, courts have looked for ‘adequacy, completeness, and a good faith effort at full disclosure.’ (Cal. Code Regs., tit. 14, § 15151.) "A good faith effort to comply with a statute resulting in the production of information is not the same, however, as an absolute failure to comply resulting in the omission of relevant information." [Citation.]” (*Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal. App. 3d 1043, 1051-52.) (*Joy Road Area Forest and Watershed Assoc. v. Cal. Dept. of Forestry* (2006) 142 Cal. App. 4th 656, 676.)

Where, as here, the impacts of a project are “cumulatively considerable” the agency must also examine alternatives that would avoid those impacts and mitigation measures for those impacts. (CEQA Guidelines §15130(b)(3).) In some cases the potential cumulative impacts will be best addressed by compliance with existing regulations (such as land use plans, conservation plans, or clean air act standards), in other cases avoidance and mitigation measures will be site specific, and in some cases new regulations or ordinances may be needed to address cumulative concerns. Just because a supplemental evaluation in the DSEIR is being prepared after the full project analysis does not mean that the cumulative impacts of the project as a whole should not be addressed in the DSEIR.

E. The DSEIR’s Alternatives Analysis is Inadequate

Under CEQA, a lead agency may not approve a project if there are feasible alternatives that would avoid or lessen its significant environmental effects. (Public Resources Code §§

¹⁷ Dunn 2005.

21002, 21002.1(b).) To this end, an EIR is required to consider a range of potentially feasible alternatives to a project, or to the location of a project, that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening any of the project's significant environmental impacts. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456.)

The alternatives analysis does provide some range of alternatives that appear to avoid many of the impacts of construction at the proposed substation site however is inadequate even with the inclusion of the alternative site locations, because the level of detail on the resources is not complete, and therefore the analysis of avoidance, minimization and impact is not comprehensive.

Conclusion

As stated above the Center generally supports an alternative that moves the proposed project outside of the sand transport corridor. However, the level of detail on the biological resources occurring on the Avoidance and Southern Alternatives fail to provide enough information on which to do an adequate analysis.

Thank you for your consideration of these comments. In light of the many omissions in the environmental review to date, we urge the CPUC revise and recirculate the DSEIR for public review to provide additional data and information along with detailed plans for mitigation and minimization of impact that cannot be avoided by the choice of a feasible alternative. Please feel free to contact us if you have any questions about these comments or the documents provided.

Sincerely,

Ileene Anderson
Biologist/Public Lands Desert Director
Center for Biological Diversity
8033 Sunset Boulevard, #447
Los Angeles, CA 90046
(323) 654-5943

cc: (via email)

Brian Croft, USFWS, Brian_Croft@fws.gov
Kevin Hunting, CDFG, khunting@dfg.ca.gov
Tom Plenys, EPA, Plenys.Thomas@epa.gov

References: (Provided in electronic format on disk).

Ambrose, R.F. 2000. Wetland Mitigation in the United States: Assessing the Success of Mitigation Policies. *Wetlands (Australia)* 19: 1-27.

Bureau of Land Management

2011a. Letter reinitiating consultation on the Ivanpah ISEGS Biological Opinion dated 2-24-2011. Pgs 9.

2011b. BLM email to FWS estimating 140 desert tortoises on the Ivanpah ISEGS site, dated 3-25-2011. Pgs 2.

Dunn, R.R. 2005. Modern Insect Extinctions, the Neglected Majority. *Conservation Biology* 19 (4): 1030-1036.

Institute for Bird Populations (IBP) 2008. Breeding Burrowing Owl Survey Newsletter, Spring 2008. pgs.4.

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTP-R6001-2003, Washington, D.C. Pgs. 120.

www.fws.gov/mountain.../Western%20Burrowing%20Owlrev73003a.pdf

Manning, J.A. 2009. Burrowing owl population size in the Imperial Valley, California: survey and sampling methodologies for estimation. Final report to the Imperial Irrigation District, Imperial, California, USA. April 15, 2009. Pgs 193.

Moilanen, A., A.J.A. van Teeffelen, Y. Ben-Haim and S. Ferrier. 2009. How much compensation is enough? A framework for incorporating uncertainty and time discounting when calculating offset ratios for impacted habitat. *Restoration Ecology* 17(4): 470-478.

Muhs, D.R., R.L. Reynolds, J. Been and G. Skipp 2003. Eolian sand transport pathways in the southwestern United States: importance of the Colorado River and local sources. *Quaternary International* 104: 3-18.

Murphy, R.W., T.L. Trepanier and D.J. Morafka 2006. Conservation genetics, evolution and distinct population segments of the Mojave fringe-toed lizard, *Uma scoparia*. *Journal of Arid Environments* 67: 226-247.

Murphy R.W., K.H.Berry, T. Edwards and A.M. McLuckie. 2007. Genetic Assessment of the Recovery Units for the Mojave Population of the Desert Tortoise, *Gopherus agassizii*. *Chelonian Conservation and Biology* 6(2): 229-251

Norton, D.A. 2009. Biodiversity offsets: two New Zealand case studies and an assessment framework. *Environmental Management* 43(4):698-706.

U.S. Fish and Wildlife Service (USFWS)

2011a. FWS acknowledgement of request to reinstate formal consultation on the Ivanpah ISEGS project Letter dated 3-15-2011. Pgs. 2.

2011b. FWS acknowledgement of request to reinstate formal consultation on the Ivanpah ISEGS project. Letter dated 3-28-2011. Pgs. 2.

Wilkerson, R.L. and R.B, Siegel, 2010. Assessing changes in the distribution and abundance of burrowing owls in California, 1993-2007 Bird Populations 10: 1-36.