



August 25, 2008

BY ELECTRONIC MAIL

CPUC/BLM
c/o Aspen Environmental Group
235 Montgomery Street, Suite 935
San Francisco, CA 94104
Fax: (866) 711-3106
E-mail: sunrise@aspene.com

Re: Recirculated draft environmental impact report/supplemental draft environmental impact statement for the Sunrise powerlink transmission project

Dear Ms. Blanchard and Ms. Kastoll:

The Center for Biological Diversity and the Sierra Club appreciate the opportunity to submit comments on the recirculated draft environmental impact report and supplemental draft environmental impact statement (RDEIR) for the proposed Sunrise powerlink transmission project (STP). Our organizations thank the California Public Utilities Commission (PUC) and Bureau of Land Management (BLM) (together, “the agencies”) for their continued efforts to review the STP.

To our knowledge, no transmission project has more significant environmental impacts that cannot be mitigated below a significant level in California history. When questioning the project proponent, San Diego Gas & Electric (SDG&E), they too were unable to identify any transmission project with more significant and unmitigable impacts than the proposed project. The proposed project, as confirmed again in the RDEIR, also has more significant impacts than five viable alternatives to the proposed project identified in the DEIR and again in the RDEIR. In offering the following comments, we acknowledge the substantial effort the agencies have made to assess the impacts of the project, particularly in light of the incomplete and at times inaccurate information presented to the agencies by the project proponent.

Existing Transmission Capacity Supports Wind Projects

As an initial matter, we address the underlying assumption of much of the RDEIR. The agencies offer the document in part because Sempra Generation¹ provided the agencies with inaccurate information about its La Rumorosa wind project. The initial information provided by Sempra grossly understated the scope of the project by identifying a 250 megawatt (MW) wind

¹ Sempra Generation and SDG&E are both subsidiaries of Sempra Energy.

project when it now states it intends to develop up to 1250 MW of wind power near La Rumorosa. The agencies are treating the wind farms as a connected action to the STP by concluding additional capacity in the SDG&E transmission system in the Jacumba area is necessary to carry this load.² The conclusion that the wind projects are a connected action to the STP, however, is premature.

Whether additional transmission capacity is necessary for moving renewable energy from the Imperial Valley and wind farms in Mexico is contested in the STP hearing, A.06-08-010. Testimony was presented during the STP hearing by both the PUC's Division of Ratepayer Advocates and the Utility Consumers Action Network demonstrating that SDG&E can meet all of its renewable energy needs without building the STP, as well as maintain reliability at a lower cost to SDG&E customers than constructing the STP.³ Both parties demonstrated there is existing transmission to move the energy produced by the wind farms and other renewable energy sources without the STP. The agencies should not prejudge this issue in their DEIR.

Comments from Powers Engineering included in the RDEIR also demonstrate existing capacity exists to transmit power from the wind farms without the STP. A contract with the California Department of Water Resources (DWR) requiring Sempra to provide 1,200 MW continuously and 1,600 MW during on-peak times during 2008-11 timeframe expires in 2011.⁴ This amount exceeds the maximum full capacity for wind power from the La Rumorosa project.

A simple way to deliver the wind power without the STP is to replace the expiring DWR contract with the wind power from La Rumorosa. Replacement of fossil fuels with renewable energy is consistent with the requirements of the California Global Warming Solutions Act and the Governor's June 2005 Executive Order, which aims to reduce emissions 80 percent below 1990 levels by 2050. Prioritizing renewable energy before fossil fuels is also required by the energy loading order in California. Applying existing law and policy, the agencies should determine that the STP is not needed to deliver renewable energy from the wind farms.

The agencies rely on the unsupported statements of Sempra that it may produce "up to" 1250 MW of wind energy in La Rumorosa to conclude there is a lack of existing capacity for this energy. The RDEIR presents "a generic description" of projects not yet proposed or even identified, with unknown locations, assumes design and operational standards, lacks one to three years of monitoring data typically collected to support project design, and provides no supporting contracts.⁵ Only one 250 MW power purchase agreement has been put forward. That agreement, the Baja Wind contract proposed by Southern California Edison (SCE), was withdrawn from consideration by SCE, stating it "requires additional time to prepare and present

² In particular, the agencies assert the Southwest Powerlink (SWPL) does not have adequate capacity. RDEIR, page 2-2.

³ See Phase 2 Opening Brief of the Division of Ratepayer Advocates; Phase II Opening Brief Of Utility Consumers' Action Network

⁴ RDEIR Appendix 2, document B0012, pages 18-19. The estimated operational date for the STP, if approved, has moved from 2010 to 2011 since the cited testimony was presented.

⁵ RDEIR page 2-14 and subsequent pages.

material relevant to the Commission’s consideration of this matter.”⁶ No other contract is identified at this time, and the RDEIR notes Sempra Generation is merely “arranging for additional wind resource properties.”

The conclusion in the DEIR that there is a lack of capacity to support wind projects is arbitrary and must be based on evidence, not unsupported statements. The public is then entitled to comment on the supporting evidence, as it serves as the entire premise that the wind projects are a connected action.

The DEIR Must Be Recirculated to Consider Additional Wind Project Locations

If the agencies continue to conclude the La Rumorosa wind projects rely upon the STP and are therefore a connected action, then by the same reasoning the RDEIR is incomplete and must be recirculated. On July 28, 2008, the BLM announced it was proposing to change its Eastern San Diego County Proposed Resource Management Plan to expand wind energy access from 6,931 acres to 20,426 acres in the vicinity of the McCain Valley. In making additional lands available for wind energy development, the BLM specifically identifies the “proximity to the existing utility corridor make it a logical area to focus wind energy development...”⁷ This is the same corridor that the agencies assert cannot be used for wind power from La Rumorosa without the STP. Applying the agencies’ logic, the initial 6,931 acres of BLM land available for wind energy development, as well as the recently proposed increase to 20,426 acres, must then also be considered connected to the STP. Recirculation to assess these impacts is required.

The proposed land management changes increase BLM land available for wind power production by 13,495 acres.⁸ In comparison, the 1250 MW of power anticipated by the La Rumorosa project are claimed to require 7500 acres.⁹ BLM’s proposed management plan was formally announced within three weeks of the release of the RDEIR and should not have been a surprise to the authors of the RDEIR, as BLM is the lead federal agency in the STP project. The same lack of transmission the agencies assert requires construction of the STP to bring wind power from La Rumorosa also requires analysis of the environmental impacts of the STP allowing for the land management proposed by the BLM in and near the McCain Valley. The environmental footprint of the management plan is much larger than the La Rumorosa project and shares the same connection to the STP as La Rumorosa.

The Agencies Must Not Assume New Transmission Is for Wind Power

The agencies limit their greenhouse gas emission analysis in the RDEIR by assuming the new transmission will be used strictly to support wind power. This assumption is used to

⁶ Letter from SCE to the PUC, August 4, 2008, withdrawing SCE advice letters 2143-E, 2143-E-A, and 2143-E-B.

⁷ 73 Fed. Reg. 43779 (July 28, 2008).

⁸ 73 Fed. Reg. 43779 (July 28, 2008).

⁹ RDEIR page 2-5.

conclude that the project will result in reducing emissions from carbon-based fuels.¹⁰ However, the old rule “never assume” should be applied. Unless a binding and enforceable commitment is made by the project proponent, or enforceable permits are issued to restrict use of the lines to the transmission of wind power, there are multiple reasons to assess the potential greenhouse gas emissions from the line as if it were to carry power generated by liquefied natural gas (LNG) and/or other fossil fuels:

1. There is no indication the project is required to carry wind power. Sempra has not made a binding commitment to limit the line to wind power and the DOE has not stated it will limit the new transmission to wind power.¹¹
2. History tells us that promises for using transmission for renewable power cannot be relied upon. The Southwest Powerlink was sold to the public as necessary for renewable power, but its primary use has been transmitting power from fossil generation.¹²
3. The only tangible evidence that the project would carry wind energy has been withdrawn. The Baja Wind contract between Sempra and Southern California Edison was the only power purchase agreement put forward relying on La Rumorosa. The contract is the subject of Advice Letter 2143, which was withdrawn by Southern California Edison in an August 4, 2008, letter to the PUC.¹³
4. SDG&E has failed to respond to an example used in Minnesota to help ensure transmission be used for wind power rather than fossil fuels by requiring viable wind power contracts be put in place before approving of additional transmission.¹⁴
5. The La Rumorosa project is located near the Sempra liquefied natural gas infrastructure in Mexico. LNG has been identified by Sempra as a major part of its corporate strategy.¹⁵

¹⁰ RDEIR 2-187.

¹¹ See December 18, 2007, Sempra Generation application to DOE; March 19, 2008 addendum to the application, and DOE notice in the Federal Register, 73 Fed. Reg. 45218 (August 4, 2008).

¹² See A.06-08-010, SWPL 1984 press release, exhibit U-75.

¹³ The STP has been advertised as necessary for SDG&E to meet the 2010 Renewable Portfolio Standard requirements and to meet energy needs in San Diego. The Baja Wind contract meets neither objective, as the power generated would serve SCE’s territory.

¹⁴ To our knowledge, SDG&E has not contracted for power from the La Rumorosa project. At this point, the project is “only vaguely defined in the Presidential Permit.” RDEIR 2-185. Included in our comments on the DEIR is the testimony of David Hogan. Mr. Hogan identified an approach taken in Minnesota that follows the maxim “never assume.” Before exercising its transmission siting authority, the Minnesota PUC required approved wind energy contracts sufficient to fully utilize transmission capacity on the requested line. The approach is a step forward from the proposals of Sempra subsidiaries asking the agencies to base their decisions on assumptions and unsupported promises.

¹⁵ See A.06-08-010 transcript, pages 3257-3258; also see map of infrastructure at: http://www.sdsmartenergy.org/sunrise-powerlink_fossil-fuel-corridor-map.pdf

The agencies must also further explore whether the proposed 69 kV, 13.4 mile transmission line identified in the RDEIR will only be used to transmit wind energy and determine whether use of this line shall also be limited to wind energy.

Moreover, if the STP or the newly proposed transmission lines will facilitate the continued use of fossil fuels through the SWPL or any transmission line, or support an increase in the use of fossil fuels, this continued or increased use must be analyzed. The analysis must include an assessment of global warming impacts from any generation that may come from fossil fuels, or the continued generation of fossil fuels that would otherwise be discontinued through displacement by renewable energy on existing transmission lines.

The agencies reliance on unfounded assumptions is apparent at page 2-187. Impact AQ-3 describes the proposed wind farms and associated transmission lines as enabling reductions of CO₂ that would otherwise occur from fossil fuel-fired power plants. Impact AQ-4 concludes that overall GHG emissions would be avoided by generating wind power. The discussion, however, presents no evidence that fossil fuel usage will be *reduced* by the project. Rather, the discussion is apparently focused on the project possibly resulting in slowing the *increase* in fossil fuel use.

Under the scenario presented by the agencies, the additional transmission capacity from the STP would result in allowing *both* existing fossil fuel fired power and wind generated power. The scenario may also lead to the use of existing transmission capacity by additional fossil fuel generated power.¹⁶ The result would be no contribution to state requirements to reduce GHG emissions. The agencies, by concluding the project relies upon the STP, also ignore how the project could be consistent with GHG reduction requirements of the State: allow the wind projects to replace the existing fossil fuel plants. This would be consistent with both the State loading order and GHG *reduction* requirements.

In light of the above, additional analysis of the impacts of the La Rumorosa project is necessary to account for the likely green house gas impacts of using the proposed transmission to import into the United States power generated from LNG or other fossil fuels.

Routing Considerations

Changes in the “Environmentally Superior Southern Alternative” identified in the RDEIR highlight the extreme extent of environmental harm that will result from this alternative and raise the obvious question of why at least one much less harmful routing alternative has never received serious attention – construction of segments of the STP underground inside the footprint of Interstate 8. Since distribution of the DEIR, and as a means to avoid Indian reservations, the agencies have relocated a large segment of the Environmentally Superior Southern Alternative through extremely sensitive areas of the McCain Valley and Cleveland National Forest among

¹⁶ Additional fossil fuel generated power may use the line if the maximum wind power capacity is not achieved. Even if achieved, the agencies describe wind generation as intermittent at RDEIR 5-14. They are silent on whether fossil fuels may be used to fill capacity when wind generation is not available and provide no analysis to account for this power.

other areas. These areas contain extraordinarily rich biological and visual resources among many other values (see, e.g., BCD Alternative and BCD South Option Revision). The agencies have also incorporated suggested route modifications to reduce impacts to the Pacific Crest Trail (PCT Reroute), and to the Cleveland National Forest (Western MRDA Reroute). While we appreciate the intent behind these reroutes to uphold Indian sovereignty and reduce some environmental impacts (while unfortunately increasing others), these particular reroutes beg the question of why a much shorter and much less harmful route located underground inside the footprint of Interstate 8 was not seriously considered.

The existing Interstate 8 footprint owned by the California Department of Transportation contains a large amount of land not occupied by vehicle lanes that is not likely to be necessary for freeway expansion and that could be utilized for the project. Biological and visual resources have already been significantly impacted by freeway construction and additional impacts from the STP are likely to be far less than those resulting from the proposed reroutes. Construction of segments of the STP underground in the freeway corridor would address the important concern of reducing or removing impediments to fighting the large number of fires that start along the freeway. Opposition from the California Department of Transportation must not be considered an absolute barrier to consideration of this potential alternative given that opposition from another state agency, the California Department of Parks and Recreation, has not been considered a barrier to consideration of alternatives through Anza-Borrego Desert State Park. We request that another recirculated DEIR present an alternative and thorough environmental analysis for underground construction of the STP inside the footprint of Interstate 8 from approximately the community of Boulevard to the Viejas Reservation to reduce significant environmental effects of the Environmentally Superior Southern Alternative.

Inadequacy of the Biological Surveys, Impact Analysis and Mitigation

The RDEIR is correct in determining that impacts to biological resources from the proposed project and its alternative transmission routes are significant and adequate mitigation measures are not possible. Jurisdictional waters and wetlands are among the areas that may be significantly impacted without adequate mitigation measures. Inadequate biological surveys make it impossible to evaluate project impacts, avoidance and minimization opportunities, and the adequacy of mitigation measures. Not unlike our April 2008 comments on the DEIR, the primary failure of this RDEIR is that most of the project sites did not have biological surveys completed for them, and those that did had a single survey season (or in some cases, a single survey) on which to base the determination. For this complex of a project, additional surveys need to be completed, analyzed, and considered prior to a decision.

The goal of project design, for compliance under CEQA and NEPA, is to first avoid any environmental impacts and then minimize the impacts to environmental resources. When project impacts still occur, then achievable mitigation that off-sets development impacts must be proposed. Because the RDEIR does not include even a basic assessment of the biological resources in most cases, the impact analysis fails to provide meaningful avoidance and minimization, and makes it impossible to evaluate how the mitigation measures relate to the actual project impacts.

The absence of surveys that follow State-required protocols¹⁷ render the process under CEQA of avoiding and minimizing environmental harm fatally flawed. This level of survey is also appropriate for the NEPA process, resulting in the same failure. The DEIR must have “high quality” survey data and other information for public review to ensure the public and decision makers have an accurate assessment of information necessary to evaluate a proposed action. *Border Power Plant Working Group v. Department of Energy*, 467 F. Supp. 2d 1040, 1063, 1066 (S.D. Cal. 2006). Legally sufficient analysis of mitigation measures requires such data; merely listing measures is not sufficient, nor is the failure to estimate how effective measures would be if adopted. *Id.* at 1068-1069.

Many of the “mitigation” measures require surveys. However, these surveys should already have been completed as part of CEQA and NEPA requirements. Surveys to evaluate impacts should not be relegated to mitigation measures. Rather, they should be a crucial first step in identification of project alternatives. For example, at page 2-33, mitigation measure B-1d states that “SDG&E would perform any detailed on-the-ground protocol surveys, with regard to specific sensitive plant or wildlife species whose habitat would be impacted by the project based on final design, in accordance with state or federal regulations or statutes.” These surveys are properly done before the release of the DEIR and survey results should be included in the document and available for agency and public review prior to making a decision on a project.

Because some of the proposed project areas and mitigation measures are in different jurisdictions, the document fails to clarify the legal mechanisms to assure successful implementation of the mitigation. For example, the agencies state on page 2-32:

Mitigation Measure B-1a(CA) is identical to Mitigation Measure B-1a for the Proposed Project with the exception that CPUC and BLM shall be replaced with “Lead Agencies”, and State Parks, USDA Forest Service, USFWS, CDFG, and/or Wildlife Agencies shall be replaced with “other agencies with jurisdiction over the project”.

The measure is not adequate to ensure that actions required to mitigate the impacts of the project will actually be implemented or to hold the appropriate parties accountable for those actions. The agencies need to clearly identify responsible agencies and actions that ensure mitigation will be implemented.

Specific Comments on the RDEIR

Page 2-5¹⁸ - The only source of power identified to use the proposed transmission lines is wind generation. As the power source is a critical component of the environmental review of the proposed project, the agencies must coordinate with DOE to ensure an enforceable condition is placed on the Presidential Permit, if issued, to require the transmission lines be used exclusively

¹⁷ An example is California Department of Fish and Game (CDFG) 2000. *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities*. Revised May 8, 2000. Page 2.

¹⁸ Page references are to the RDEIR. Although a specific page is identified as the source of comments, the comments are often applicable to other portions of the RDEIR addressing related matters.

for wind energy. If a restriction on the use of the lines is not included in any permit, the agencies must assume the lines may also be used to transmit fossil fuels.

To the extent the lines allow continued fossil fuel use that would otherwise be displaced by renewable power under the California loading order that gives preference to the use of renewable energy, this impact must also be assessed as significant. Compliance with AB 32 requires a reduction in greenhouse gas emissions derived from fossil fuels; actions that would facilitate continued use of fossil fuels at current or increased levels at the cost of renewable sources are inconsistent with this requirement.

Page 2-6 - The RDEIR identifies both the length of wires that will stretch across the environment and that 150 foot towers will be constructed every 1,300 feet. No analysis is provided of the impacts on birds from this construction, including birds identified to use or migrate through the area, whether and how the placement of the lines and towers can reduce collisions and other detrimental impacts to birds, the number of birds anticipated to be harmed by the project and the impact of this number on bird populations, the impact a change in bird populations or movements may have on other species, how the decision to construct one 500 kV line or two 230 kV lines will influence the impacts of the lines to birds and other species, and the impacts lights associated with the lines and substations will have on birds and other species. The same issues and analysis must be addressed in assessing the impacts of the 110 new poles and 13.5 miles of additional 69 kV transmission lines. See also pages 2-13 and 2-56. Guidance provided on alignment of wires is very vague and not based on survey data.

Page 2-18 - The RDEIR does not present an analysis comparing Mexican Federal Electricity Commission (CFE) standards with environmental requirements in the United States. The analysis should include an assessment of the monitoring and enforcement record of the CFE.

The agencies unduly limit their analysis of the impact of activities in Mexico on the U.S. environment. To state the obvious, species and ecological impacts do not stop at political borders. For example, the migratory bird populations cross both sides of the border and may be influenced by activities on either side of the border; the Quino Checkerspot butterfly population in the United States is linked to the population in Mexico and may depend upon it for its health; a goal in the recovery of the Peninsular bighorn sheep is connecting populations on both sides of the border (Peninsular bighorn Recovery Plan 2000, p. 79). Re-establishing connectivity to populations south of the border will increase the long-term viability of the U.S. Peninsular Ranges population; invasive species (identified as a threat with mitigation measures in the U.S. at page 2-40) do not stop at borders, and fire does not respect border distinctions.

The California Attorney General (AG) has issued an opinion on the applicability of CEQA and NEPA to the construction of developments, including power transmission facilities, that extend outside of California. The AG concluded that CEQA “clearly requires public agencies to consider the direct or ultimate impact of a project upon the environment of California – whether the cause of that impact originates within the boundaries of the state or outside of the state.”¹⁹

¹⁹ 1975 Cal. AG LEXIS 120 (Cal. AG 1975); 58 Op. Atty Gen. Cal 614, at page 4. The opinion also specifically addresses the link between ecosystems at page 5 and the interdependence across borders on pollution issues. As

Pages 2-20, 2-22 through 2-24 - The RDEIR states repeatedly that the projects are not in “Special Habitat Management Areas.” Many of the project areas do in fact fall within areas identified as requiring special management for biological resources.²⁰ In fact, the La Rumorosa project area is within one of three “critical opportunity areas” for conservation along the U.S. - Mexico border.²¹ Many of the project areas fall into the category (C) that “Promote sustainable land uses and maximize biological resource values by preserving the rural character of the backcountry through low-density residential development and extensive agriculture (e.g., grazing), providing parkland and open space, protecting isolated high value resources (e.g., vernal pools), and maintaining a landscape permeable to wildlife movement.”²²

Page 2-21 - The list of rare animal species fails to include the Quino checkerspot butterfly or the barefoot banded gecko, although both of these species are mentioned in the text. Additionally, the actual status of the species included in the table is not mentioned other than they are “Special Status Wildlife Species”. Impact analysis is very relevant to the actual status of the species being evaluated and therefore the actual status needs to be included. This issue of status is relevant for the lists on pages 2-22 through 2-24.

Page 2-21 - California condors should be identified as a sensitive species in the project area in the table on page 2-21. A condor crossed from Baja California into San Diego County in 2007, probably in the vicinity of the project.²³ It is likely that as the condor population recovers, more birds will cross through and possibly inhabit this area. The effects of wind turbines and new transmission facilities on highly imperiled California condors should be added to the DEIR. The effects of wind turbines on highly imperiled California condors must therefore be analyzed and disclosed in the DEIR.

Page 2-25, Section 2.2.2 - The damage to critical habitat of the Quino checkerspot butterfly and Peninsular bighorn sheep, lack of replacement habitat, lack of surveys and interdependence between populations in Mexico and the United States all lead to a violation of the BLM’s duty to pro-actively conserve federally listed species under section 7 of the federal endangered species act.

Page 2-29 - type conversion; also 2-39 – The RDEIR does not address the issues raised by Richard Halsey in his testimony regarding habitat type conversion and fire risks in general. These issues require recirculation of the DEIR. Contrary to statements in the RDEIR, Mr.

discussed elsewhere, there are significant air pollution risks from global warming related pollutants that may result from the La Rumorosa project and related transmission facilities.

²⁰ Conservation Biology Institute, Pronatura and The Nature Conservancy 2004. Las Californias Binational Conservation Initiative. Prepared for The San Diego Foundation, Resources Legacy Fund Foundation and the International Community Foundation. September 2004.

²¹ Id.

²² Id.

²³ http://cres.sandiegozoo.org/projects/sp_condor_sighting.html

Halsey discusses evidence demonstrating that fires from power lines are already resulting in significant habitat type conversion.²⁴

Page 2-29 refers to “restoration/compensation for affected sensitive vegetation communities.” Several issues not fully addressed are required in order to evaluate the effectiveness of the mitigation for the impact. First, the restoration plan needs to be included for public review of adequacy. Secondly, compensation needs to be more clearly defined – what kind of compensation, who oversees the compensation, what is adequate compensation. Third, sensitive, rare and relic vegetation communities need to be identified and an evaluation of the amount of impact to each needs to be quantified. This is necessary to evaluate if restoration/compensation is even a feasible mitigation strategy. There simply may not be adequate restoration/compensation opportunities available.

Page 2-30 - References to mitigation ratios for flat-tail horned lizard are included, yet this species is not mentioned as a species of concern.

Page 2-31- The mitigation ratio for replacement trees requires greater clarity. If native trees are to be impacted as part of this project, we support planting trees as mitigation. However, the measures fail to identify where the trees would be planted, and how these mitigation trees would be protected in perpetuity. Any proposed mitigation that requires a plan needs to have that plan presented as part of the NEPA/CEQA process, so that it can be evaluated for its effectiveness in actually mitigating the impacts of the project. In the case of trees, not all species can grow everywhere. Effective mitigation would identify what trees would be grown, the location they would be grown at, and the conservation mechanisms put in place to assure the survival of the mitigation area in perpetuity.

Page 2-39 - The “Weed Control Plan” should be included as part of the NEPA/CEQA document, available for public review so that adequacy of mitigation can be evaluated.

Pages 2-39 – 2-40 - The agencies concede surveys for special status plant species have not been conducted, then assume significant impacts. As discussed in comments on the DEIR and testimony attached to those comments of Dr. Longcore and Ms. Anderson, presuming impacts does nothing to avoid harm in the first place, does not provide an assessment of the damages to populations, and provides decision makers and the public with little actual information.

Page 2-44 - Mitigation measure B-5c seems to be in direct conflict with B-5d. Distinctions need to be made between collecting and salvage.

Page 2-47 - While currently the Peninsular Bighorn Sheep in Mexico are isolated from populations in California, maintaining robust genetic connections are essential to recover the

²⁴ Direct and Rebuttal testimony of Mr. Halsey, previously submitted in comments on the DEIR and also accepted as exhibits C-19 and C-20 in the STP hearing.

species in California.²⁵ Analysis of opportunities to restore the barrier between these populations and to preclude additional barriers, needs to be more thoroughly analyzed. Analysis should include impacts from the La Rumorosa wind farm and proposed transmission.

Page 2-50 – According to the DEIR, “If the protocol pre-construction survey is conclusive for determining absence of the [quino checkerspot butterfly], then areas without the butterfly would not require mitigation.” We disagree with this conclusion; Quino checkerspot butterflies appear to form a metapopulation so land and vegetation that provide the characteristics of suitable habitat for the species but which may not be occupied in any particular year may still provide extremely valuable long-term habitat for the species. The availability of suitable but currently unoccupied habitat for population expansion or adjustment may be particularly important for the Jacumba area population of the quino checkerspot butterfly given the relatively harsh conditions experienced by the species in this area and the likelihood that global warming will shift the location of suitable habitat and quino populations. Protecting unoccupied suitable habitat is therefore necessary for recovery. We request that pre-construction surveys determine not only the presence or absence of the species but also the suitability of habitat based on the presence of and/or proximity to patches of host and food plants, microbiotic soils, blocks of relatively weed-free native vegetation, and other elements of high quality quino habitat. We also request that any impacts to high quality yet unoccupied quino habitat be mitigated with at least a 1:1 ratio for restoration and compensation. As stated in *Gifford Pinchot Task Force v. United States Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004), “The ESA was enacted not merely to forestall the extinction of species (i.e., promote a species survival), but to allow a species to recover to the point where it may be delisted.” Recovery, of course, requires sufficient habitat and here, unoccupied suitable habitat must be protected if the butterfly is to recover.

Page 2-61; 2-63 - The agencies asked that the applicant “consider” implementing the California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. We recommend the agencies ask Sempra to make an enforceable, binding commitment to implement the guidelines. If Sempra declines, this should be a factor to consider in assessing the environmental impacts of the projects, deciding whether to approve of the projects, or a factor in assessing appropriate mitigation. The analysis cannot rely on effects that would result from non-binding and uncertain actions.

Page 2-118 - The agencies should expand the discussion of impacts the proposal will have on the Las Californias Binational Reserve Conservation Initiative. While the portion of the 69 kV line through property owned by The Nature Conservancy is discussed in this context, the impacts of the transmission lines and wind farms on preserve planning, future land acquisition, and meeting preserve biological objectives is much broader than assessed in the RDEIR or DEIR. Please see the testimony of Ms. Jerre Stallcup attached to our comments on the DEIR for a discussion of potential impacts that must be considered.

²⁵ See also attachment to DEIR comments, Phase II direct testimony of Dr. Rubin at pages 8-9. This testimony is also Exhibit C-23 in the STP hearing.

Additionally, the project areas may fall within “Baja Target Protected Areas”, which are proposed to be established in the U.S- Mexico border region to link with U.S. “protected” areas.²⁶

Page 2-224, Section 2.15 - This section provides no discussion of the recent determinations by CalFire that at least two of the October 2007 fires were the result of criminal negligence by SDG&E. Risks of mismanagement by the Company are no longer speculative, but based on its operating practices. The safety and environmental consequences of failing to comply with existing safety standards and fully implementing mitigation measures must be discussed.

Not discussed in the RDEIR and DEIR is the areas near the border between the U.S. and Mexico that were identified by SDG&E in its testimony in A.06-08-010 as high risk areas because of human activities. An assessment of whether additional power lines in the area may interfere with efforts to fight fires from sources other than the lines must be included in the DEIR.

The RDEIR is silent in addressing concerns raised by SDG&E itself to the PUC in its petition for a rulemaking to review fire safety standards.²⁷ The PUC denied the petition as premature and because SDG&E failed to offer specific standards for consideration. At the same time, the PUC anticipated that new standards may be needed and should be considered after it completed its investigation of the role of utilities in causing the October 2007 fires. The risk of moving forward and approving new lines in a fire prone area with safety standards that even SDG&E asserts are outmoded should be addressed in the DEIR.

Mitigation measure F-1a does not include Mexican authorities in reviewing fire prevention plans. The possible lack of coordination or equivalent fire prevention standards and compliance monitoring must be identified and assessed as an additional risk of the project.

The RDEIR identifies SDG&E as having “enforcement responsibility” for this mitigation measure. Presumably the agencies would maintain their enforcement responsibilities and intended to identify SDG&E with plan “implementing” responsibility.

Our concerns regarding defensible space grants as a mitigating measure were identified in the testimony of Richard Halsey submitted in our comments on the DEIR. We incorporate these concerns here. Non-wire alternatives, or limited wire alternatives, have lower fire risk than transmission laden alternatives.

We agree with the conclusion in impact F-3 that the presence of overhead transmission lines is a significant, unmitigable impact. The 69 kV line is 13.5 miles, and 9.3 miles of the line would run parallel to the existing SWPL transmission. Additional analysis is necessary to

²⁶ Conservation Biology Institute. 2003. La Posta Linkage Portfolio. Prepared for The San Diego Foundation, July 2003.

²⁷ Petition of San Diego Gas & Electric Company (U902E) to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5, petition number 07-11-007, filed on November 6, 2007 and decided in D.08-05-030, May 29, 2008.

describe how the presence of the lines, particularly where the line runs parallel to the SWPL, may interfere with firefighting efforts.

The testimony of Richard Halsey, attached to our earlier comments, provides details on the significant interference lines may have in stopping ongoing fires, and in increasing the likelihood of fires occurring. Mr. Halsey's testimony also highlights that the mitigation identified by the agencies as "a key element" for success in fire prevention, the immediate de-energizing of the lines during fire emergencies, cannot be relied upon to happen quickly once a fire has started.

It is our understanding that Southern California Edison has taken steps to reduce the number of times its system will automatically attempt to re-power tripped lines in high fire risk areas. Further, it may have been automatic re-powering events that may have contributed to the Witch fire. We recommend that the agencies consider this issue in further refining its mitigation measures and consider inclusion of a mitigation measure that would bar automatic re-starts of any tripped power lines in high fire risk areas.

The introduction of non-native plants described in impact F-4 does not appear to account for the invasion of these plants through habitat type conversion. The testimony of Mr. Halsey again cites to specific evidence of power line fires leading to this conversion. As stated in the RDEIR, increased presence of non-native plants will lead to increased ignition rates and wildfire spread.

Additional Reasons to Recirculate the DEIR

There are multiple reasons to recirculate the DEIR as addressed in our initial comments. We do not repeat all of the reasons here, but merely summarize and highlight some of the reasons previously expressed. The comments in this section are not intended to reduce the importance of reasons to recirculate the DEIR expressed in our initial comments that are not raised in the discussion below.

1. The October 2007 fires made a major change in the habitat conditions because of type conversion. The RDEIR specifically rejects this when it alleges, without support, that burn areas are expected to recover. Mr. Halsey's testimony, attached to our April 2008 comments, demonstrates that (as an example) areas that overlap between the October 2007 fires and the Cedar fire are changing, and are unlikely to recover. The analysis needs to look at the increasing amount of fires and likely permanent changes.
2. The DEIR lacks adequate species surveys, resulting in a failure to "avoid" damage before moving on to lesser remedies, such as minimizing harm or mitigating what can't be avoided or minimized. Some areas or species were never surveyed, others have an inadequate number of surveys, and others were surveyed under inadequate conditions. One example we gave: SDG&E failed to do the bird surveys its own bird expert recommended. Ileene Anderson and Dr. Longcore addressed this issue in testimony attached to our April 2008 comments.

3. The failure to assess the impacts of the project on the existing regional conservation plans. The RDEIR says in response to our comments, more on this issue will be in the final EIR. This response deprives affected agencies and the public of a chance to comment and is unacceptable.
4. The DEIR also failed to assess the impact on the Los Californias Preserve. The RDEIR makes this omission more glaring, since it covers the same areas.
5. The RDEIR says adequate analysis on GHG impacts are in the DEIR. We disagree. Among the impacts not assessed is the increased use of LNG that will be enabled by Sunrise and releases of sulfur hexafluoride discussed in our earlier comments.

Conclusion

If the PUC determines existing transmission capacity exists to support the wind energy projects in La Rumorosa, it may no longer consider the project a connected action to the STP. If, however, the agencies continue to proceed with the assumption that existing capacity is inadequate and the wind energy projects are a connected action, then the agencies must recirculate the DEIR to consider the impacts of the revised management plans announced by the BLM on July 28, 2008. For the reasons expressed above and in our earlier comments, the DEIR must also be recirculated to account for critical information that was not available for public review.

Thank you for considering these comments. Please note in the signature block below that we have moved our San Francisco office and we request all future notices be sent to our new address.

Sincerely,

/s/ Steven Siegel

Steven Siegel
Staff Attorney
Center for Biological Diversity
3421 Park Place
Evanston, IL 60201
Phone: (619) 241-6409
Email: ssiegel@biologicaldiversity.org

/s/ Justin Augustine

Justin Augustine
Staff Attorney
Center for Biological Diversity
351 California St., Ste. 600
San Francisco, CA 94104
Phone: (415) 436-9682 x 302
Email: jaugustine@biologicaldiversity.org