United States Department of Agriculture
Forest Service
Pacific Southwest Region
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File Code: 1570-1
Appeal No.: 10-05-00-0090-A-215
Date: October 14, 2010

Susan Keller
2509 Larkspur Dr.
Alpine, CA 91901

CERTIFIED-RETURN RECEIPT REQUESTED

Dear Ms. Keller:

On July 29, 2010, we received your Notice of Appeal (NOA) pursuant to 36 CFR 215 on the Sunrise Powerlink Project. William Metz, Forest Supervisor of the Cleveland National Forest, signed the Record of Decision (ROD) approving the Sunrise Powerlink Project Environmental Impact Statement (FEIS) on July 9, 2010.

Your appeal was postmarked on July 27, 2010. The appeal filing period closed on August 30, 2010. Your appeal was timely and is being processed under the provisions of 36 CFR 215 and is assigned control number 10-05-00-0090-A215.

I was not able to find any evidence in the project record that you provided any comments on the project during the May 15, 2010 to June 30, 2010 comment period, the comment period for the draft EIR/EIS, or the comment period for the recirculated draft EIR/EIS. I am dismissing your appeal without review in accordance with 36 CFR 215.16 (6), "The individual or organization did not submit substantive comments during the comment period."

Although you are not eligible to appeal this decision, I have included a copy of the Appeal Reviewing Officer's letter. I agree with his recommendation and approve the Responsible Official's decision.

This is the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ Randy Moore
RANDY MOORE
Regional Forester

Enclosure

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File Code: 1570-1 **Date:** October 14, 2010

Subject: Sunrise Powerlink Transmission Line Project, Cleveland National Forest
Appeal Numbers: 10-05-00-088-A215, 10-05-00-089-A215, 10-05-00-090-A215, 10-05-00-091-A215, 10-05-00-092-A215, 10-05-00-093-A215, 10-05-00-094-A215, 10-05-00-095-A215, 10-05-00-098-A215, 10-05-00-100-A215, 10-05-00-103-A215, 10-05-00-104-A215

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for these appeals. This is my recommendation on disposition of the appeals filed by Gretchen Calabrese, Nancy Mitchell, Susan Keller, Carlette Anderson. Ruth D'Spain, Rose Lee Graf, Janelle House, Charles David Stout, Mary Stewart, Tom and Judy Myers, Stephen C. Volker and Cindy Buxton appealing the Cleveland National Forest Record of Decision (ROD) for the Sunrise PowerlinkTransmission Line Project Final Environmental Impact Statement (FEIS*)* signed by Forest Supervisor William Metz.

BACKGROUND

San Diego Gas and Electric Company (SDG&E) proposes to construct, operate, and maintain a new 230/500 kV transmission line project called the Sunrise Powerlink. Applications were filed in 2005 with the Bureau of Land Management (BLM) and California Public Utilities Commission (CPUC), and notices of the applications were published in August 2006. SDG&E's project purposes are to promote renewable energy, improve system reliability, and reduce transmission congestion and energy supply costs.

The CPUC approved the project on December 18, 2008, selecting a combination of alternative routes called the Final Environmentally Superior Southern Route (Selected Alternative) through the Cleveland National Forest (Cleveland NF). The BLM approved the project on January 20, 2009, selecting the same alternative. SDG&E applied to the Forest Service for a Special Use Permit for the Selected Alternative in January 2009. The Selected Alternative crosses approximately 49 miles of BLM land, approximately 19 miles of National Forest System land, approximately two miles of Department of Defense land, and approximately 0.4 miles of state land. The remainder of the line crosses private land and land owned by local government. This route utilizes portions of a utility corridor (corridor 115-238) designated as part of the Energy Policy Act of 2005, Section 368, National Forest Land Management Plan amendments.

Forest Supervisor William Metz signed a Record of Decision on July 9, 2010, approving the Sunrise Powerlink Transmission Line Project (Sunrise Powerlink). The decision authorizes the construction, operation, and maintenance of the Sunrise Powerlink on National Forest System lands. Authorization of this project will be implemented by issuing a 50 year special use permit for the construction, operation, and maintenance of project facilities. A temporary special use

permit will be issued for locations needed to support project construction that are outside of the long-term special use permit area. Required mitigation measures will be incorporated into the special use permit conditions.

The decision includes non-significant, project specific Land Management Plan amendments to provide an exception to plan standards associated with visual resources and riparian areas. The decision also includes a non-significant, project specific amendment to authorize construction in an area of "Back Country Non-Motorized" land use zone.

Scoping - The Sunrise Powerlink 230/500-kV Transmission Line Project has been listed in the Schedule of Proposed Actions since April 2009. The BLM published the Notice of Intent (NOI) to prepare a joint EIS/EIR and Proposed Land Use Plan Amendment for the Proposed Sunrise Powerlink Transmission Project on August 31, 2006 in the Federal Register. A Notice of Public Scoping Meetings was mailed to federal, state, regional, and local agencies, elected officials of affected areas, and the general public. Copies of the NOI were available at 26 local repositories.

The comment period began on August 31, 2006, the day of the NOI publication, and ended October 20, 2006. Government-to-government consultation with interested Native American tribes was initiated by the BLM as lead federal agency concurrent with scoping letters, including a copy of the Notice of Intent and a map sent to interested and affected parties. Newspaper notices were published in five local papers. Two public meetings were held and a public hotline was established to receive public comments.

Comments to the DEIS –A Notice of Availability (NOA) for the Draft EIR/EIS was published in the Federal Register on January 11, 2008. This initiated a 90-day public comment period. The NOA was mailed to 13,616 interested parties, agencies, Native American tribes, county and city departments, special districts, property owners, and occupants on or adjacent to the Sunrise Powerlink Transmission Project and alternative routes. Copies of the Draft EIR/EIS were shipped to 181 interested parties, and 561 copies of the Executive Summary and 570 copies of the DVD were also mailed. Informational workshops on the Draft EIR/EIS were held on:

- January 28, 2008 at 12:30 p.m. in El Centro, California
- January 28, 2008 at 7:00 p.m. in Alpine, California
- January 29, 2008 at 1:00 p.m. in Temecula, California
- January 29, 2008 at 7:00 p.m. in San Diego–Rancho Peñasquitos, California
- January 30, 2008 at 2:00 p.m. in Ramona, California
- January 30, 2008 at 7:00 p.m. in Warner Springs, California
- January 31, 2008 at 3:30 p.m. and 7:00 p.m. in Pine Valley, California
- February 1, 2008 at 1:00 p.m. in Borrego Springs, California

Public participation hearings on the Draft EIR/EIS were conducted on:

- February 25, 2008 at 6:30 p.m. in Pine Valley, California
- February 26, 2008 at 1:00 p.m. in Borrego Springs, California
- February 26, 2008 at 7:00 p.m. in Ramona, California
- May 12, 2008 at 1:00 p.m. and 6:30 p.m. in Borrego Springs

Due to additional information submitted following publication of the Draft EIR/EIS, BLM prepared and published a Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) in July 2008. The RDEIR/SDEIS was released for public review on July 11, 2008 with a 45-day comment period (ending on August 25, 2008). Following the release of the Recirculated Draft EIR/Supplemental Draft EIS, the CPUC and BLM held two informational workshops in Jacumba, California on August 4, 2008.

The Final EIR/EIS was distributed to a variety of federal, state, and local government agencies, elected officials, environmental organizations, Native American tribes, and other interested parties for review. A NOA for the Final EIR/EIS was published in the Federal Register on October 17, 2008.

The Forest Service offered a separate 45-day comment period beginning on May 15, 2010. The Sunrise Powerlink project was also listed in the Forest Service Schedule of Proposed Actions (SOPA) beginning in April, 2009.

APPEAL SUMMARY

Timely comments on the project were received from over 700 groups or individuals. For groups or individuals to have standing to appeal a decision, they must provide comments on the project during the comment period. The situation for this project, commenting on the project during either the official comment periods of May 15-June 30, 2010; July 25-Aug. 25, 2008 or January 11-April 11, 2008 is required to have standing to file an appeal.

The Project Record for the Sunrise Powerlink Project does not contain any evidence that Gretchen Calabrese, Nancy Mitchell, Susan Keller, Rose Lee Graf, and Mary Stewart provided any comments on the project during any of the comment periods; therefore in accordance with 36 CFR 215.16(a)(6), their appeals on the project will be set aside without review. All other appellants have eligibility to file an appeal.

The appellants were contacted and offered an opportunity to meet and discuss resolution of the issues raised in the appeal. Meetings and conference calls were conducted with appellants between September 10, 2010 and September 13, 2010, however no isssues were resolved.

Appellants request that the Appeal Deciding Officer grant the appeal and overturn the Record of Decision for this project.

ISSUES AND RESPONSES

<u>Issue 1:</u> The Sunrise Powerlink Project violates the National Environmental Policy Act and a supplemental EIS should have been prepared because of changes to project alignment, increased helicopter use, increased impacts to riparian areas, special status wildlife and plants species, and visuals. (Appeal 91, Issue 3; Appeal 95, Issue 5; Appeal 103, Issue 1)

Response: The Analysis for the Sunrise Powerlink Project was completed in a Final Environmental Impact Statement (FEIS) (October 2008). The California Public Utility Commission (CPUC) approved the project on December 18, 2008 for the Final Environmentally Superior Southern Route. SDG&E applied to the Forest Service for a Special Use Permit for the Selected Alternative in January 2009 (ROD, pg. 1). A Project Modification Report (PMR) was submitted on May 14, 2010 by SDG&E. The Forest Service completed a Supplemental Information Report (SIR) based on the design proposed in the PMR in July 2010, which was incorporated into the public record and was made available online (ROD, pg. 2). The SIR specifically considers whether the new information or changed circumstances are within the scope and range of the effects considered in the original analysis (Forest Service Handbook (FSH) 1909.15 Section 18.1). In addition, comments received during the 45 day comment period of the PMR were considered as part of the decision (ROD, pg. 5). The Final EIR/EIS, PMR, SIR, and Clarifications and Revisions to Mitigation Measures adequately address each of the appellant's concerns: Changes to alignment/route (Chapter H of the FEIS, in various sections of Chapter E, on detailed map sheets in Appendix 11, the response to comments, revised chapter 3 of the Recirculated Draft EIR/Supplemental EIS, and SIR, pages 3-20); Increased helicopter use (Final EIR/EIS Chapter B.4.4.2, D.11 Air Quality, Clarifications and Revisions to Mitigation Measures (pg.61)); Increased impacts to riparian areas / special status species / sensitive vegetation communities (Final EIR/EIS in various sections of Chapter E (E.1.2 to E.4.2; SIR, pp. 8-13) depending upon route segment; Cultural resources (Final EIR/EIS in various sections of Chapter E (E.1.7 to E.4.7), SIR pg.11); Increased visual impacts (SIR, the final EIR/EIS in various sections of Chapter E (E.1.3 to E.4.3), depending upon route segment, the ROD, pg.2); Infrared lighting (Final EIR/EIS (Section D.2); SIR, pg.8; ROD, pg. 5); and Temporary work areas / additional construction yard / increased size of helicopter access pads (Final EIR/EIS Chapter B).

Many of the adjustments to the project were made in response to mitigation requirements and as described in the ROD, the overall effect of these changes is to reduce the project's impacts. The Final EIR/EIS analyzes and discloses the impacts of the proposed project, including a number of significant impacts. The analysis of new information related to the project shows that there are no significant impacts not already analyzed and disclosed in the Final EIR/EIS.

I find that the impacts of implementing the project were adequately analyzed and disclosed, including the impacts associated with changes to project alignment and changes to other project components, and that the Forest Supervisor properly determined that supplementation was not required.

<u>Issue 2:</u> The Sunrise Powerlink Project violates the National Environmental Policy Act because the selected route is not clearly and concisely described and analyzed in the EIS for growth inducing impacts, fire, biological impacts, climate change, viewsheds, wilderness and recreation resources, increased public access, and cumulative impacts. (Appeal 95, Issue 1; Appeal 103, Issue 2; Appeal 104, Issue 2)

Response: The CPUC approved an alternative route to the proposed project on December 18, 2008, selecting a southern route through the Cleveland National Forest (Cleveland NF). The BLM approved the project on January 20, 2009, selecting the same southern route alternative as

the CPUC. The Selected Alternative crosses approximately 49 miles of public land administered by the BLM, approximately 19 miles of public National Forest System lands administered by the Cleveland National Forest, approximately two miles of public land administered by the Department of Defense, and approximately 0.4 miles of land administered by the State of California.

The Final Environmentally Superior Southern Route Alternative is a composite of segments from four southern alternatives, and is described in Chapter H of the Final EIR/EIS, in various sections of Chapter E, on detailed map sheets in Appendix 11, the response to comments, and revised Chapter 3 of the Recirculated Draft EIR/Supplemental EIS (SIR, pg. 3).

A number of mitigation measures also provided for design changes as necessary to avoid sensitive habitat, cultural resource sites, and to reduce visual impacts from roads and other ground disturbing impacts. These measures applied to the entire project (SIR, pg. 3).

A review of the various resource sections of the Final EIR/EIS; the General Response Section; and Appendices, indicated an adequate analysis of project impacts on the various resources and adequate mitigation measures were proposed to minimize these impacts. The Final EIR/EIS analyzed growth inducing impacts on pages D.14-53, D.14-172, E.4.14-8 and F-28 to F-31; fire impacts on pages D.15-55 to 61, E.1.15, E.2.15, E.3.15, E.4.15, H-135, GR-9 2-47 to 56, and Appendix 3; biological impacts on pages D.2-1 to 75, E.1.2-1 to 39, E.2.2 all, E.4.2-1 to33, GR13 to GR 18 (pp. 2-71 to 78), Appendix 8A, 8B, 8C, 8D, 8H, 8J, 8M, 8N, 8O, 8P, 8Q, 8R; climate change was analyzed on pages D.11-5 to 15, D.11-50 to 55, E.1.11-3 to 5, E.2.11-3, E.4.11-3 to 5; viewsheds were analyzed on pages D.3-89 to 95, D.3-224 to 225, E.1.3-1 to 25, E.1.3-45 to 47, E.2.3-1 to 16, E.4.3-1 to 23, Appendix 14 all; wilderness and recreation resources, and increased public access were analyzed on pages D.5-1 to 22, E.1.5-1 to 8, E.1.5-11 to 12, E.2.5-1 to 5, E.4.5-1 to 7; and cumulative impacts were analyzed on pages G-1 to G-2, G-74 to 95, and G-105 to 155.

I find the Forest Supervisor adequately described and analyzed the project effects for growth inducing impacts; fire and biological impacts; climate change, viewsheds, wilderness and recreation resources; increased public access, and cumulative impacts.

<u>Issue 3:</u> The FEIS failed to consider a reasonable range of alternatives. (Appeal 103, Issue 3)

Response: Forest Service policy (FSH 1909-15 Chapter 20 sec. 22.3(5)) states "The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed."

The Final EIR/EIS analyzed 27 alternatives to the Proposed Project, including 18 alternative route segments along the Proposed Project route, 4 routes following portions of the existing Southwest Powerlink (SWPL), two non-wires alternatives, two alternatives including components of the Lake Elsinore Advanced Pumped Storage (LEAPS) Project, and the No Project/No Action alternative. One alternative route segment associated with the Proposed

Project, four alternatives associated with the SWPL alignments, and both LEAPS alternatives crossed National Forest System lands along a portion of the respective alternative. The alternatives are described in greater detail in Final EIR/EIS Chapter C, Alternatives. The comparison of alternatives is described in Final EIR/EIS Chapter H, Comparison of Alternatives.

Appendix 1 describes the alternatives screening analysis that has been conducted for the Proposed Project and provides a record of the screening criteria and results that were reached regarding alternatives carried forward for full EIR/EIS analysis and alternatives eliminated. Appendix 1 documents: (1) the range of alternatives that was suggested and evaluated; (2) the approach and methods used to screen the feasibility of these alternatives according to guidelines established under CEQA and NEPA; and (3) the results of the alternatives screening. For alternatives that were eliminated from EIR consideration, Appendix 1 explains in detail the rationale for elimination. "Non-Wires Alternatives" 1 are addressed as well.

Numerous alternatives to the Proposed Project were suggested during two scoping periods (September 11 to October 20, 2006 and January 24 to February 24, 2007) by federal, State and local agencies and members of the general public. Other alternatives were developed by EIR/EIS preparers or presented by SDG&E in its preliminary EA.

In total, the alternatives screening process has culminated in the identification and preliminary screening of over 100 potential alternatives (EIR/EIS, pg. C-1). These alternatives range from minor routing adjustments to SDG&E's Proposed Project location, to entirely different transmission line routes, to alternative energy technologies, as well as non-wires alternatives.

There were 68 alternatives eliminated after a detailed alternatives screening process (Section 3.1 of Appendix 1 describes screening methodology). Table C-3 summarizes the rationale for eliminating each of these alternatives from further consideration.

I find the Forest Supervisor complied with NEPA by considering a reasonable range of alternatives.

<u>Issue 4:</u> The approval process for the Sunrise Powerlink Project violated the National Forest Management Act because the FEIS failed to acknowledge that the Powerlink would require amendments to the CNF Plan and failed to disclose what those proposed amendments would entail. (Appeal 103, Issue 4)

Response: The appellant claims that proposed Forest Plan Amendments were not available for review by the public.

A determination was made as to whether the Proposed Project or alternatives were consistent with each applicable policy in the Cleveland Forest Plan. This information was provided in Chapter D of the 2008 Final EIR/EIS on pages D.16-19 to D.16-34. This determination found that the project was not consistent with a number policies included in the Cleveland National Forest Land Management Plan.

The Forest Service is required by law and regulations to maintain consistency between their land management plans and any project they intend to approve. When a project is approved, the relevant plan is amended as well, thereby making the project and plan consistent.

The necessity for Forest Plan amendments as a result of the route alternatives is discussed in Chapter D of the 2008 Final EIR/EIS on pages D.17-4 and 5; and on pages D.17-7 to D.-14.

The Forest published a Legal Notice in the San Diego Union Tribune on May 15, 2010 that notified the public that the Forest was considering several Forest Plan Amendments that would be required to approve the special use permit for the powerline right-of way. This Legal Notice described three amendments that were being considered:

1. Amending the plan to permit an exception to standards for scenic integrity along the Sunrise Powerlink Project alignment in the Morena, Sweetwater, and Pine Creek places. See Final EIR/EIS at D.17-12.

2. Amending the plan to permit an exception to Riparian Condition and Biological Resource Condition goals for project activities in Riparian Conservation Areas. See Final EIR/EIS at D.16-24.

3. Amending the plan to permit construction of a transmission line tower in a Back Country Non-motorized land use zone. See Final EIR/EIS at D.17-13 & 14.

This legal notice provided the public with a 45-day comment period with which the public could comment on the proposed Forest Plan Amendments or the project.

I find the Forest Supervisor adequately disclosed what the proposed amendments would entail and provided the public with an adequate amount of time to voice their concerns.

<u>Issue 5:</u> The Sunrise Powerlink Project is inconsistent with the Cleveland National Forest Management Plan in regards to fire prevention standards, land-use zoning designations, visual resource standards, special use standards, riparian conservation standards, and special species protection standards. (Appeal 103, Issue 5)

Response: The Cleveland National Forest Management Plan (LMP) has three integrated parts. Part 1 is the vision for the forest expressed through goals and desired conditions. Not every goal and desired condition is implemented by or applicable to every site-specific project. As described in the LMP, desired conditions are not commitments and may only be achievable over the long term (LMP, Part 1, pg. 2). Goal 4.1 is applicable to the proposed project and provides that energy development should be managed to facilitate energy production while protecting ecosystem health. This goal is implemented through the strategic direction provided in Part 2 of the LMP, which consists of program strategies (Appendix B) and suitable uses consistent with the achievement of the desired conditions in Part 1 (LMP, Part 2, pg. 2). Part 2 establishes suitable uses through land use zones. Part 3 contains LMP standards, which are mandatory requirements that apply to site-specific projects.

The ROD has many mitigation measures that will be implemented as part of this project to reduce the amount of environmental impacts and to make the project consistent with the LMP. For Fire Prevention, Special Uses, and Special Species Protection, the proposed project, including all the associated mitigation measures, is consistent with the LMP (Final EIR/EIS, Chapters D.16 and D.17; SIR, pg. 18). The analysis did determine for Aesthetic Management Standards, Riparian Conservation Area Standard, and Land Use Standard that a site specific plan amendment would be required and was completed as part of this decision (ROD, pp. 2-3, 11-12; SIR, pg. 18).

I found evidence that the Forest Supervisor brought the project into LMP compliance through use of mitigation measures and provided site specific plan amendments where consistency could not be met; hence the project is consistent with the LMP.

<u>Issue 6:</u> The Sunrise Powerlink Project is inconsistent with the Federal Land Policy and Management Act because it failed to minimize damage to scenic and aesthetic values and fish and wildlife habitat and other wise protect the environment (43 U.S.C. 1765(a)(ii)). (Appeal 103, Issue 6)

Response: Special use permits for transmission lines on National Forest System lands are authorized under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA requires, in part, that right-of-way authorizations contain conditions to minimize damage to scenic and aesthetic values, fish and wildlife habitat, and protect the environment.

The Sunrise Powerlink Project, with the adoption of the mitigation measures identified in the ROD, ensure the project minimizes the damage to scenic and aesthetic values, fish and wildlife habitat, and protection to the environment. The selected alternative is the Final Environmentally Superior Southern Route. Implementation of the Forest Service design criteria (Mitigation Measures in ROD) has reduced the miles of road necessary to access the transmission line and reduced the total amount of disturbed area. The changes in alignment, as defined in the PMR, have reduced the visual impacts to the project and avoided cultural resources.

I find the Forest Supervisor's decision is consistent with FLPMA.

<u>Issue 7:</u> The Forest Service's approval of the permit violates ESA and the Bald Eagle Protection Act. (Appeal 103, Issue 7)

Response: Under Section 7 of the Endangered Species Act, a federal agency that authorizes, funds, or carries out a project that "may affect" a listed species or its critical habitat must consult with the US Fish and Wildlife Service. A Biological Assessment was completed by the lead federal agency, BLM. Informal and formal consultation was conducted with the FWS, and a Biological Opinion (BO) was offered on January 16, 2009. The BO determined that the project is not likely to jeopardize the species or result in adverse modification of critical habitat and has established mitigation measures to reduce any anticipated impacts (Biological Opinion). All mitigation measures from the BO will be implemented as part of this project. The Forest Service

will amend the project conditions, if necessary, to respond to any revised BO issued for this project by the FWS (ROD, pg. 12).

The analysis for Bald Eagle was completed as part of the FEIS (Impact B-7), SIR (pg. 9-10), and Biological Evaluation (BE). The analysis for Golden Eagle is documented in the FEIS (Impact B-7), PMR (pg. 3.23-24), and SIR (pg. 9). Mitigations Measure B-7h and B-8a provide protection to eagle nests and require monitoring and protection for raptors, respectively. Mitigation Measure B-7h requires SDG&E to have a permit or letter stated a permit is not required from Fish and Wildlife Service to meet compliance with the Bald and Golden Eagle Protection Act. Forest Service will not issue a Special Use permit to SDG&E until Mitigation measure B-7h is completed.

I find the project is in compliance with the Endangered Species Act and the Bald and Golden Eagle Protection Act.

<u>Issue 8:</u> The impact to golden eagles which nest on Bell's Bluff needs to be analyzed. The scope of cumulative impacts to eagles, the Quino checkerspot butterfly and arroyo toad is insufficiently disclosed. (Appeal 95, Issue 2 & 3; Appeal 104, Issue 1)

Response: Impacts to golden eagles, located within the vicinity of Bell's Bluff, were analyzed as part of the SIR (pg. 9, Figure 5). To protect the nesting locations of golden eagles, exact nest locations were not disclosed in the FEIS (Chapter D.2). Mitigation measure B-7h provide for a 4000 foot buffer around each known nest location.

Impact analysis to bald eagles, golden eagles, Quino checkerspot butterfly, and arroyo toad are addressed in detail in the FEIS (Chapters D.2, E.2, G, and H, Appendix 8P), BE (bald eagle only), BA, BO, PMR (pp. 3.14-24), and SIR (Pages 9-10). Mitigation measures are incorporated as part of the project to reduce impacts to these species.

I found evidence that the golden eagles on Bell's Bluff were analyzed and the impact analysis for eagles, Quino checkerspot butterfly, and arroyo toad was sufficiently analyzed.

<u>Issue 9:</u> Foreseeable future actions were not properly identified and disclosed or reviewed before releasing the FEIS. (Appeal 104, Issue 3)

Response: The BLM/FS adequately considered likely cumulative impacts (which includes foreseeable actions) for the Southern Route in the EIR/EIS at G-1 to G-2; G-74 to G-73, and G-105 to G-155.

The United States Department of the Interior, Interior Board of Land Appeals (Case IBLA 2009-153) concluded that Backcountry Against Dumps *et al*. failed to establish, by convincing argument or supporting evidence that BLM failed to adequately address the likely cumulative impacts of the Sunrise Powerlink Project, together with other reasonably foreseeable future projects or activities.

I find that the Forest Supervisor did properly identify and disclose foreseeable future actions in regards to the Sunrise Powerlink Project.

<u>Issue 10:</u> The decision document statement that "The selected alternative best meets the project purpose and need while minimizing the impact to the environment." is incorrect. (Appeal 100, Issue 1)

Response: The appellant contends that since there were three other alternatives considered that had less environmental impacts and met the purpose and need, the alternative that had the least amount of environmental impact should have been selected.

Regulations at 40 CFR 1505.2(b) requires the agency to identify all alternatives considered in reaching its decision. An agency may discuss preference among alternatives based on relevant factors including economics and technical considerations and agency statutory missions. This section also instructs the agency to specify the alternative or alternatives which were considered to be environmentally preferable-but does not specify that the environmentally preferred alternative has to be selected.

Regulations at 40 CFR 1505.2(c) requires the agency to state whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why.

The decision to approve the Sunrise Powerlink Project was made with full recognition of the changes this development will bring to the character of the Cleveland NF and the Selected Alternative best meets the project purpose and need while minimizing the impact to the environment (FS ROD, pg. 4; FEIR-FEIS Executive Summary, pg. 8).

The Forest Supervisor considered the issues raised by the public during the environmental review. Several of those issues are directly related to the Cleveland NF, and are addressed in the Record of Decision (pp. 4-7) and the mitigation package that is part of the ROD. While other alternatives may have less impact to the Cleveland NF, they either do not meet the purpose and need or do not have less overall impact to the environment (FS ROD, pg. 4).

I find the Forest Supervisor adequately addressed why his selected alternative best meets the project purpose and need while minimizing impacts to the environment.

<u>Issue 11:</u> The decision document statement that, "Under the Energy Policy Act of 2005, federal agencies are directed to encourage the development of renewable energy," is misleading. (Appeal 100, Issue 2)

Response: The Energy Policy Act of 2005 (the Act) included direction to Secretaries and agency heads regarding electricity transmission and distribution projects. While the Act did not include the specific quote referenced, a number of sections could be summarized and reasonably construed to direct federal agencies to encourage the development of renewable energy. Within the 550 pages of the Act, the following are some of the references related to the overall context of direction to Secretaries and agency heads relevant to this project: Section 211; Section 368 (a),

(c), and (d); and Section 1223 (a) and (b). Renewable energy is only one consideration for electricity transmission line and distribution facilities on public lands.

The BLM ROD page 12 and FS ROD page 5 used the word "encourage". Specifically the FS ROD stated: "Under the Energy Policy Act of 2005, federal agencies are directed to encourage the development of renewable energy. The Forest Service National Strategic Plan Goal 4 directs the Forest Service to help meet energy resource needs" (LMP, Part 1 page 16 referencing the 2003 Strategic Plan- Goal 2 of the two subsequent FS National Strategic Plans (2004-08 and 2007-12) also directs the Forest Service to this same end). Approving this project furthers that national goal, and the adopted mitigation measures will protect ecosystem health, consistent with LMP Goal 4.1b.

I find the Forest Supervisor effectively summarized his decision as it relates to the context of the Energy Policy Act of 2005.

<u>Issue 12:</u> There are several errors and misrepresentations in this statement, "The Forest Service National Strategic Plan Goal 4 directs the Forest Service to help meet energy resource needs (LMP, Part 1, page 16). Approving this project furthers that national goal, as the adopted mitigation measures will protect ecosystem health, consistent with LMP Goal 4.1b." (Appeal 100, Issue 3)

Response: The National Strategic Plan Goal 4 (2003 Revision) as stated in the Cleveland LRMP and referenced in the ROD does direct the Forest Service to "Help meet energy resource needs". The route utilizes portions of the utility corridor (115-238) designated by the Energy Policy Act of 2005 Section 368 corridors (LMP amendment) (SIR Introduction). LMP Goal 4.1b referenced in the ROD states the Cleveland NF will "administer energy resource developments while protecting ecosystem health". The ROD in Attachment 1 provides necessary Forest Service revisions and clarifications to the Mitigation Measures in the FEIS. These changes are further discussed in the SIR (pp. 3-8). The Mitigation measures in the FEIS that are applicable to the Superior Southern Route Alternative are provided and include Mitigation Measures for Biological Resources, Visual Resources, Land Use, Wilderness and Recreation, Agriculture, Cultural Resources, Noise, Transportation and Traffic, Public Health and Safety, Air Quality, Water Resources, Geology and Mineral Resources, Socioeconomics, Services, and Utilities, and Fire and Fuels Management.

I find there is no misrepresentation in the referenced statement. The approval of this project will help meet energy resource needs. The Forest Supervisor made three project specific Forest Plan amendments and the extensive list of Mitigation Measures in the FEIS have been revised and clarified as necessary to be consistent with the Cleveland NF LMP.

<u>Issue 13:</u> Both the 2004-8 and the 2007-12 Strategic Plans include as their highest ranked objective to "reduce the risk to communities and natural resources from wildfire." Approving the construction of the Sunrise Powerlink through the Cleveland National Forest directly conflicts with this objective. (Appeal 91, Issue 2; Appeal 92, Issue 1; Appeal 100, Issue 4)

Response: The objectives listed in the 2004-8 and the 2007-12 Strategic Plans are numbered; however, these numbers provide a reference and are not stating a priority ranking. While 2007-2012 Strategic Plan Objective 1.1 is "reduce the risk to communities and natural resources from wildfire," Objective 2.3 tasks the agency to "help meet energy resource needs" through the issuance of Special Use Permits. The legally binding document guiding decisions on a National Forest is the Land Management Plan, in this case the Cleveland National Forest Land Management Plan.

The Forest Service's "multiple use" mission can result in competing policy priorities and decisions that inevitably involve tradeoffs; thoughtful decisions require as much information as possible and consideration of multiple options and tradeoffs in an attempt to optimize all variables in the agency's obligation to care for the land and serve the people.

There are unavoidable wildfire risks associated with any aerial powerline located in a wild land setting and, based on the Final EIR/EIS, this is particularly true for the areas within the Cleveland NF. This issue was addressed in the Final EIR/EIS Chapter D.15, Sections E.1.15 through E.4.15, and Appendix 3. The location of the selected alternative was designed to avoid strategic areas, such as major ridgelines, that are typically used for containment lines. The Forest Supervisor considered over 650 comment letters or emails received during the 45-day comment period, many of which raised concerns about the risk of wildfire. The Forest Supervisor's decision incorporates mitigation measures designed to reduce the potential for a powerline related wildfire. In accordance with Forest Service regulations for processing special use applications,(36CFR251.54(g)(2)(iii)), the Forest Supervisor stated he deferred to the CPUC and BLM determination of the overall purpose and need for the project as described in the project record, including the BLM ROD and CPUC Decision D08-12-058. Based on their findings, he concluded occupancy of National Forest System lands is appropriate and the project is in the public interest.

I find the Forest Supervisor thoroughly considered the competing Strategic Goals, the Land Management Plan, and incorporated appropriate mitigation measures regarding the impacts of the SRPL project. The Forest Supervisor also appropriately considered and made Forest plan amendments.

<u>Issue 14:</u> The backcountry will be adversely altered. (Appeal 91, Issue 1; Appeal 94, Issue 2)

Response: The proposed project will place one tower and 1500 feet of line in the Back Country Non-motorized Land Use Zone. This action will require a plan amendment which is included as an action in the ROD. As stated in the SIR, this route was chosen to avoid adverse impacts to private land, sensitive resources, and riparian habitat. This is the only action planned in this Land Use Zone. No other related areas such as Inventoried Roadless Areas, or Wilderness are impacted by the proposed project. The route changes described in the SIR and ROD additionally restrict road construction and increase use of helicopters for tower placement, avoid crossing the Pacific Crest Trail, and reduce impacts to biological and cultural resources.

The proposed project will impact a small portion of the Back Country Land Use Zone. I find that impacts to the Back Country Land Use Zone were adequately analyzed and disclosed.

<u>Issue 15:</u> There is no requirement that the Sunrise Powerlink be used to transmit renewable energy. Due to this lack of a mandate, the proposed mitigation for the environmental impact of the SRPL is inadequate. (Appeal 95, Issue 4)

Response: As stated by SDG&E and adopted by the CPUC and BLM (Final EIR/EIS A.2.2) the purpose of the proposed project is threefold: (1) to maintain the reliability in the delivery of power to the San Diego region; (2) to reduce the cost of energy in the region; and (3) to accommodate the delivery of renewable energy to meet State and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.

While one of three primary purposes of the project is to accommodate the transmission of renewable energy, the appellant is correct that there is no *mandate* that the Sunrise Powerlink be used to transmit renewable energy. New energy projects that are strictly renewable in nature may be subject to streamlined guidelines designed to both protect fragile desert ecosystems while accelerating the rollout of renewable energy generation capacity in CA; however, this guidance, currently in interim form, applicable only to projects in the Mojave and Colorado deserts, and developed by the Renewable Energy Action Team (REAT) composed of Bureau of Land Management (BLM), US Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and California Energy Commission (CEC), is not applicable in this case. Therefore, this project has undergone a standard, thorough EIR/EIS process. The proposed mitigation for the environmental impact of the SRPL is relevant to the analysis as documented in the Final EIR/EIS, and supported by a review of changed circumstances and new information as documented in the SIR.

I find the Forest Supervisor fully realized the SRPL across the Cleveland NF was needed to meet the 3 major objectives identified by SDG&E and adopted by CPUC and BLM (Final EIR/EIS A.2.2) and that the proposed mitigation measures contained within the standard Final EIR/EIS are adequate and relevant to the purposes of this project.

<u>Issue 16:</u> The line will create a danger to communities and water recreationists. (Appeal 92, Issue 3; Appeal 94, Issue 1)

Response: The issue of "Communities are threatened by unsafe towers" was addressed in the FEIS in several resource areas including environmental contamination and electric and magnetic field effects concerns in the analysis of Public Health and Safety, and construction safety in Geology, Minerals and Soils resources. The FEIS acknowledges that electric power facility projects can create both safety and nuisance issues related to radio/television/electronic equipment interference; induced currents and shock hazards and potential effects on cardiac pacemakers. The FEIS concludes that EMF effects would only impact the immediate area of the Proposed Project, because the electric fields from a transmission line cannot create impacts at a distance greater than approximately 500 feet from the corridor. Proper implementation of

required Public Health and Safety Mitigation Measures would reduce the interference with electronic equipment, and eliminate shock hazard.

The FEIS also acknowledges that the Proposed Project could contaminate soil or groundwater through accidental releases of hazardous materials used during construction. However required mitigation measures would be implemented as part of the Proposed Project to decrease the potential for accidental releases to occur and to clean up potentially harmful materials in the unlikely event of a release. Similarly implementation of Geology, Minerals, and Soils Mitigation Measures would mitigate or eliminate construction related hazards by identifying potential slope failure sources, using project design to avoid them or implement slope stabilization practices and avoid construction on geologic hazards. The transmission line passes just to the south of El Capitan reservoir and poses no known danger to water based recreationists other than the Public Health and Safety concerns discussed above. The transmission line will cross several small stream courses and the danger to recreationist would also be the same Public Health and Safety concerns.

A summary of the fire risk to the community is provided in the SIR on page 16. The summary provides reference to the Sections in the FEIS where fire risk was analyzed. As noted in the SIR, the analysis in the FEIS demonstrates that mitigation can reduce but not eliminate impacts relative to fire risk. The ROD on page 4 states that the Decision Maker is aware of wildfire risks and cites the analysis in the FEIS.

Based on the information provided in the FEIS, SIR, and ROD, I find the Responsible Official was informed of the dangers posed by the proposed project. The approved route and required Mitigation Measures were developed to minimize the danger posed by the project.

<u>Issue 17:</u> The effects to the town of Alpine include: carcinogenic EMFs, effects to underground water wells, and 80 homes destroyed through eminent domain. (Appeal 94, Issue 3)

Response: The effects of EMFs are addressed in several places in the FEIS. Section 2, "General Responses to Major Comments" GR-10 specifically addresses EMF studies, assessments, and scientific findings relative to EMF exposure. Sections D.10.10 –D.10.31 of the FEIS addresses EMF issues including summarizing the results of scientific review panels that have considered the body of EMF health effects research. Because there is no agreement among scientists whether exposure to EMF creates a potential health risk and there are no defined or adopted CEQA or NEPA standards for defining health risk from EMF, the CPUC requires proponents In accordance with CPUC Decisions D.93-11-013 and D.06-01-042, "no-cost" and "low-cost" to evaluate magnetic field reduction steps for the proposed transmission and substation facilities requiring certification under General Order 131-D.76. Appendix 7 of the FEIS (Magnetic Field Management Plan) presents details of the EMF Plan in accordance to these requirements.

Effects to groundwater and wells are addressed in both the Public Health and Safety and Water Resources sections of the FEIS. As noted in the response to Issue 16, the FEIS contains Mitigation Measures to protect against contamination to groundwater. The FEIS also addresses

dewatering of wells during construction activities and requires implementation of Mitigation Measures to prevent or mitigate for dewatering.

There are no homes on the Cleveland NF portion of the project hence the CNF would not exercise any action through eminent domain. Section 2, "General Responses to Major Comments" GR-11 notes that no properties are anticipated for taking under the Proposed Project, except possibly for the expansion of the Boulevard Substation. GR-11 also provides information on the CPUC's eminent domain procedures.

I find that the FEIS addressed impacts of EMFs, impacts to underground water wells, and eminent domain issues. Mitigation Measures are provided that address and reduce these impacts.

Issue 18: The environmental effects regarding biological diversity are not in keeping with planned land use as governed by the County of San Diego General Plan. (Appeal 92, Issue 2)

Response: Management actions on the Cleveland NF are governed by the Forest LMP and not the San Diego General Plan. Also, as noted in the FEIS Section D.16 "Policy Consistency" transmission and substation facilities are under the land use authority of the CPUC and not local jurisdictions. Because this jurisdictional authority preempts local land use decisions, there is no requirement that the General Plan and the proposed project be consistent. The General Plan does not need to be amended to accommodate the project. Although matters related to the siting of a public utility's electrical facilities are within the exclusive permitting authority of the CPUC, Commission rules require the utility to consult with local entities on land use matters.

While the project is not required to be consistent with the County's General Plan as noted above, the FEIS in Section D.16.4 pages D.16-59 through pages D.16.92 provides a Chart denoting the consistency of the proposed project with not only the County of San Diego General Plan but also with the Community and Special Area Plans in the county. In general, the proposed project is consistent with elements of the County Plan. Inconsistency was primarily related to visual impacts, not biological impacts. The Chart on pages D.16-59 through D.16.92 shows that the Proposed Project is consistent with the County's Open Space Element (I) for the "Conservation of Resources and Natural Processes" which includes consideration of plant and animal habitats (page D.16.59). The Proposed Project is also consistent with the County's Conservation Element (X), which includes a section of discussing consistency with "Vegetation and Wildlife Policies" (page D.16.61).

The FEIS addressed the consistency of the project with the San Diego County Plan with respect to biological elements and that the project is consistent with those elements of the San Diego County Plan.

Issue 19: The huge towers will be out of scope in size and devalue property values within vision of that property. (Appeal 92, Issue 4)

Response: Upon review, I found that the final EIR/EIS concluded that the I-8 Alternative would not generate effects that would significantly impact property values (Class III). Within

Chapter E.1.14-8, the discussion of *Impact S-5: Presence of the project would decrease property values (class III)* under the Imperial Valley Link (see Section D.14.5) addresses in detail the issues associated with the potential for impacts on property values and industrial facilities such as transmission lines and provides detailed background information based on extensive literature review and the property value issues of past similar projects. As also discussed in Section D.14.5, incremental effects on property values that may result from the changes resulting from this project would be very small, would diminish over time, and would be very difficult to quantify. Based on the studies discussed under Impact S-5 in Section D.14.5, it is concluded that the I-8 Alternative would not generate effects that would significantly impact property values (Class III). Although not required because the impact is less than significant, it should be noted that implementation of mitigation measures in the Visual Resources section (Section E.1.3), such as Mitigation Measures V-3a (Reduce visual contrast of towers and conductors) and other visual resources mitigation specific to Key Viewpoints, would help to reduce the visual impacts of the project, which is one of the components perceived to affect property values. Appendix 12 presents the full text of the mitigation measures.

Chapter E.2.14 describes impacts of the selected Alternative for socioeconomics, particularly the analysis regarding property values within the vision of the property. Based on the studies discussed under Impact S-5 in Section D.14.5, it is concluded that the selected Alternative would not generate effects that would significantly impact property values (Class III).

I find that the Forest Supervisor adequately addressed why his selected alternative best meets the SRPL purpose and need while minimizing the project's impacts on property values.

FINDINGS

Clarity of the Decision and Rationale

The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. His reasons for his decision are logical and responsive to direction contained in the Cleveland National Forest Land and Resource Management Plan.

Comprehension of the Benefits and Purpose of the Proposal

The Sunrise Powerlink Transmission Project was developed for three major objectives: (1) to maintain reliability in the delivery of power to the San Diego region; (2) to reduce the cost of energy in the region; (3) and to accommodate the delivery of renewable energy to meet State and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.

Effectiveness of Public Participation Activities and Use of Comments

Public participation was adequate and well documented. The project was included in the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, and distributed a draft EIS to interested groups and individuals. Responses to the comments received are detailed and included as part of the final EIS. The decision of the Forest Supervisor indicates she considered and responded to public input.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the Appellant's objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision be affirmed.

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ELI ILANO
Appeal Reviewing Officer
Deputy Forest Supervisor, Lake Tahoe Basin Management Unit