

Director's Protest Resolution Report

**Sunrise Powerlink Transmission Line
Amendment to the
Eastern San Diego County
Resource Management Plan**

January 8, 2009



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

Issue Topics and Responses

NEPA — Topic heading

Submission number

Protest issue number

Issue Number: PP-CA-ESD-08-0020-10

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Issue Excerpt Text: — Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary — General statement summarizing the issue excerpts (optional).

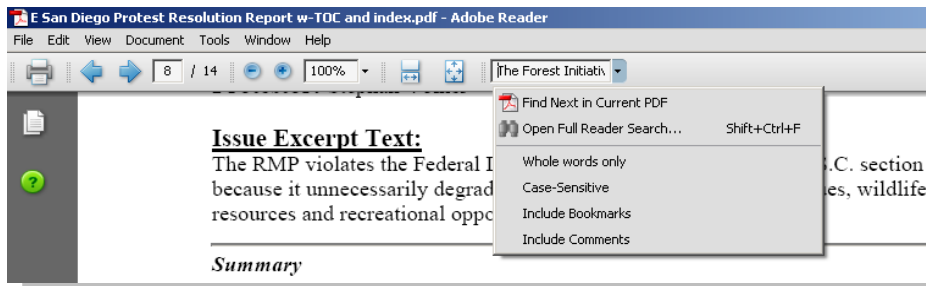
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response — BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
APD	Application for Permit to Drill	IM	Instruction Memorandum
BA	Biological Assessment	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VRM	Visual Resource Management
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		

Protesting Party Index

Protester	Organization	Submission Number	Determination
	Backcountry Against Dumps and Desert Protective Council, Law Offices of Stephen Volker	PP-CA-Sunrise-09-0017	Dismissed – Only Comments
	Boulevard Planning Group	PP-CA-Sunrise-09-0009	Denied – Issues/Comments
	Center for Biological Diversity	PP-CA-Sunrise-09-0008	Denied – Issues/Comments
	Committee for Responsible Growth	PP-CA-Sunrise-09-0004	Dismissed – Only Comments
	County of San Diego Planning Department	PP-CA-Sunrise-09-0015	Dismissed – Only Comments
	Flying Cloud Ranch	PP-CA-Sunrise-09-00011	Dismissed – Only Comments
	JAM Investments, Herum/Crabtree Attorneys	PP-CA-Sunrise-09-0016	Denied – Issues/Comments
	Lambron Lakeside Ranch, LLC	PP-CA-Sunrise-09-0018	Dismissed – Only Comments
	Mussey Grade Road Alliance	PP-CA-Sunrise-09-0020	Dismissed – Only Comments
	Potrero Community Planning Group	PP-CA-Sunrise-09-0006	Dismissed – Only Comments
	Save Potrero	PP-CA-Sunrise-09-0005	Dismissed – Only Comments
	Sierra Club, San Diego Chapter	PP-CA-Sunrise-09-0010	Dismissed – Only Comments
Bretz, William L.		PP-CA-Sunrise-09-0002	Dismissed – Only Comments
Butler, Thomas J.		PP-CA-Sunrise-09-0019	Dismissed – Only Comments
Buxton, Cynthia		PP-CA-Sunrise-09-0014	Dismissed – Only Comments
Davis, William E.		PP-CA-Sunrise-09-0001	Dismissed – Only Comments
Ellison, George W.		PP-CA-Sunrise-09-0021	Dismissed – Late Submission
Faulkner, Robie		PP-CA-Sunrise-09-00013	Dismissed – Only Comments
Lafaso, Edward		PP-CA-Sunrise-09-0003	Dismissed – Only Comments

Serrano, Lina		PP-CA-Sunrise-09-0022	Dismissed – Only Comments
Snipes, Sally		PP-CA-Sunrise-09-0007	Dismissed – Only Comments
Snyder, Lynn		PP-CA-Sunrise-09-00012	Dismissed – Only Comments

Issue Topics and Responses

Eastern San Diego County RMP Amendment

Issue Number: PP-CA-Sunrise-09-0008-18
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:
Proposed Plan Amendments

BLM states in the EIS that it "proposes to amend the existing land use plan for Eastern San Diego County to provide a one-time exception to the plan requirement that new gas, electric, and water transmission facilities and cables for interstate communication be allowed only within designated corridors" and that the "amendment would apply to the public lands along the BCD/BCD South Option Reroute portion of the Final Environmentally Superior Southern Route (SWPL) Alternative." However, BLM has not complied with NEPA, nor done any analysis, regarding this proposed plan amendment.

Issue Number: PP-CA-Sunrise-09-0008-20
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:
In short, both the DEIS and EIS only state that a plan amendment would be necessary. No analysis, however, is provided as to the impacts of such an amendment. Nonetheless, the EIS goes on to state that the "decision regarding the approval of any route and plan amendment would be made in a Record of Decision to be issued in late 2008 or early 2009." This makes no sense. Until NEPA analysis is conducted for this proposed amendment, such an amendment is illegal. Therefore, any approval of such a plan amendment in the Sunrise ROD would be flatly inconsistent with NEPA process and hence, illegal.

Issue Number: PP-CA-Sunrise-09-0008-23
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:
Caltrans Option

The BLM's acknowledgement that an amendment to the land use plan for the Eastern San Diego County is a "one-time exception" demonstrates the agency is dealing with an unusual situation. We refer the

agency to our comment (page 4-807) requesting consideration of a routing alternative constructing segments of the STP underground inside the footprint of Interstate 8. Response G0018-5 states this alternative can only be considered in "unusual situations," but provides no explanation of why the Caltrans exception does not apply. We ask that further effort be made with Caltrans. If BLM is unsuccessful in its talks with Caltrans, the EIS should clearly articulate why the project alternative does not amount to an unusual situation. Additionally, unless distinctions are made between why this is not an unusual situation and why BLM can characterize its potential plan amendment as a "one-time exception," its assessment must be considered arbitrary and capricious or otherwise not in accordance with the law.

Issue Number: PP-CA-Sunrise-09-0008-35
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:
Failure to conduct sufficient surveys, particularly on what BLM has identified as its preferred alternative prior to construction of the project also effectively eliminates the most important function of surveys - using the information from the surveys to minimize harm caused by the project and reduce the need for mitigation.

Issue Number: PP-CA-Sunrise-09-0008-81
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:
The BLM, in selecting a Sunrise alternative, would violate Section 7 of the Federal Endangered Species Act (ESA), 16 D.S.C. Section 1536(a)(2). This section states that an agency may not authorize, fund, or carry out any action that will result in the destruction or adverse modification of critical habitat for threatened or endangered species. The BLM, in the FEIS, concluded:

"there would be impacts to bighorn sheep critical habitat that could not be reduced to a less than significant level. Therefore, the proposed project and alternatives would not be consistent with this goal." 88 (emphasis added)

This finding demonstrates BLM approval of a southern alternative would place the agency in violation of Section 7 of the ESA.

Issue Number: PP-CA-Sunrise-09-0009-17

Organization: Boulevard Planning Group

Protester: Donna Tisdale

Issue Excerpt Text:

the new Land Use Plan Amendment for a new Utility Corridor for the highly controversial and contested 500kV Sunrise Powerlink. None of the documents presented for public review reflect the area's [McCain Valley] true value or the true extent of damage/harm that will be done-much of it irreversible and irretrievable.

Issue Number: PP-CA-Sunrise-09-0009-6

Organization: Boulevard Planning Group

Protester: Donna Tisdale

Issue Excerpt Text:

Cultural and Historical resources and issues and impacts were not properly analyzed or disclosed. I direct your attention to the attached letter (11-4-08) from Courtney Ann Coyle, attorney for Carmen Lucas. Lucas, a well-known defender of cultural and environmental resources. Lucas objects to the "significant changes", proposed July 28, 2008, and requests that her concerns be made part of the record. It is clear from Map3-8 (PRMP/FEIS) that a majority of the McCain Valley area has not been surveyed.

The attached e-mail message (11-7-08) from the Cal Fire CEQA coordinator, Mark Ostrander, also documents the existence of recorded and unrecorded prehistoric sites and the McCain House Historic Site.

Issue Number: PP-CA-Sunrise-09-0009-8

Organization: Boulevard Planning Group

Protester: Donna Tisdale

Issue Excerpt Text:

Deferring critical scientific surveys, reviews, consultations, and public involvement and comment on these major and significant issues and changes until separate project-specific review processes, not only violates the law itself, it violates the spirit of the law as well. Once land use management categories and new corridors are incorporated into the RMP, the irreversible and irretrievable commitment of at risk resources and community character and values has already been made.

Issue Number: PP-CA-Sunrise-09-0016-13

Organization: Herum/Crabtree Attorneys rep. JAM Investments

Protester: Brett Jolley

Issue Excerpt Text:

As noted, Figure E.2.1-1 b does shows a "Mitigation Measure WR-2b Reroute" in the BCD alternative revision. Unfortunately, although the FEIS expressly requires the WR-2b Reroute, it defers evaluation and selection of the exact reroute to be determined after Project approval. In addition to violating CEQA's restrictions on deferring formulation of mitigation measures and precluding certifying the EIR (as explained in JAM's Motion to Become a Party to the CPUC proceedings on the Project filed November 14, 2008 and attached hereto and incorporated herein), this requirement also prevents BLM from approving an ROW Grant or plan amendment for the BCD Revised Alternative.

Issue Number: PP-CA-Sunrise-09-0016-15

Organization: Herum/Crabtree Attorneys rep. JAM Investments

Protester: Brett Jolley

Issue Excerpt Text:

BLM, however, is asked to grant a specific ROW along a specific route. BLM cannot grant a ROW for the initial BCD Revised Alternative because the EIR mandates rerouting that Alternative. BLM cannot grant a ROW for the rerouted Alternative because the integral and mandatory reroute is not yet known or identified.

Accordingly, BLM should make no decision until the final Project route is determined and identified in the EIS and any plan amendments must conform to the final route approved by the CPUC.

Issue Number: PP-CA-Sunrise-09-0016-4

Organization: Herum/Crabtree Attorneys rep. JAM Investments

Protester: Brett Jolley

Issue Excerpt Text:

ftnt 1: Neither the NOA nor the Final EIR/EIS appears to identify the specific plan amendments to be approved or the specific action to be taken by BLM other than noting "On November 2, 2005 San Diego Gas & Electric Company (SDG&E) filed with the Bureau of Land Management (BLM) a Right-of-Way (ROW) Grant application." (FEIS at Section ES.1.1 at p. ES-1) and the DEIS' statement that "In addition to approving a ROW grant, because the proposed route deviates from designated utility corridors, the BLM would need to amend both the California Desert Conservation Area Plan (CDCA Plan, as amended) and the Eastern San Diego County Resource Management Plan (RMP; see Plan

descriptions in Section D.17.1.1 and Plan amendment processes in Section D.17.2.1)" (FEIS at Section A.6 at p. A-20). Based on the undersigned's conversations with Lynda Kastoll at the BLM El Centro Field Office on November 13, 2008, however, JAM is informed and believes the final Project may only entail amending the RMP - but includes any and all other proposed plan amendments for the Project in an abundance of caution.

Issue Number: PP-CA-Sunrise-09-0016-9

Organization: Herum/Crabtree Attorneys rep. JAM Investments

Protester: Brett Jolley

Issue Excerpt Text:

B. Mitigation Measure WR-2b Requires Additional Determinations and Precludes Approving an Incompatible ROW

Even if the CPUC approves a route along the Environmentally Superior Southern Route Alternative, amending the plan(s) and approving the ROW would conflict with Mitigation Measure WR-2b.

Summary

The BLM has not clearly articulated the nature of the land use plan amendment and which plan(s) it would amend. BLM has not presented any impact analysis or baseline data, such as sufficient surveys for special status species and cultural resources, as required by the National Environmental Policy Act for the land use plan amendment.

Response

The BLM selected the Final Environmentally Superior Southern Route including the BCD/BCD South Option Reroute as the Preferred Alternative which would result in the need to amend the Eastern San Diego County Resource Management Plan (RMP). The Notice of Availability of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) states, "BLM proposes to amend the existing land use plan for Eastern San Diego County to provide a one-time exception to the plan requirement that new gas, electric, and water transmission facilities and cables for interstate communication be allowed only within designated corridors. The proposed plan amendment would apply to the public lands along the BCD/BCD South Option Reroute portion of the Final Environmentally Superior Southern Route (SWPL) Alternative." The amendment allows the Sunrise Powerlink Project to be outside of the RMP established corridor, and specifically to cross BLM-administered lands along BCD/BCD South Option Reroute.

The prerequisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The baseline data provided in Chapter E.2 and various appendices in the Sunrise Powerlink EIR/EIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from the proposed land use plan amendment.

A land use planning level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although BLM realizes that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. In this specific case, the level of analysis went into more project specific analysis as the amendment is part of the larger implementation level decision to deny or grant a Right-of-Way to SDG&E. Should a decision be made to grant a

Right-of-Way to SDG&E, BLM will require completion of additional site-specific cultural resource inventories and biological surveys prior to the start of construction in accordance with mitigation measures identified in the FEIR/EIS, the Programmatic Agreement for the project developed pursuant to Section 106 of the National Historic Preservation Act, and the U.S. Fish and Wildlife Service's Biological Opinion for the project rendered in accordance with Section 7 of the Endangered Species Act.

Throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan-level. The data needed to support the proposed amendment are substantially different than the data needed to support the site-specific analysis of the Sunrise Powerlink Project proposed for implementation. Much of the data in the Final EIR/EIS is presented in narrative, tables, and maps and is sufficient to support not only the scale analyses required for land use planning, but also the level of analyses needed to reach an implementation level decision regarding the proposed Right-of- Way.

The BLM used the most recent and best information available that was relevant to a land use planning scale of analysis. During preparation of the EIS/EIR, the BLM consulted with and used data from other agencies and sources, including but not limited to: U.S. Geological Survey; California Game and Fish Department; California State Historic Preservation Office; United States Bureau of Indian Affairs; U.S. Fish and Wildlife Service; Native American Tribes; San Diego County; Imperial County; California Department of Transportation; California State Lands Commission; United State Forest Service; Department of Defense El Centro Naval Air Station; Department of Defense Marine Corps Air Station Miramar; City of San Diego; San Diego Regional Energy Office; California Department of Forestry and Fire Protection; Vista Irrigation District; California Department of Parks and Recreation; and the California Department of Conservation. The BLM consulted on the analysis and the incorporation of available data into the Final EIR/EIS with its cooperating agencies and other agencies with jurisdiction or expertise. Considerations included but were not limited to: bighorn sheep herd numbers and trends; migratory routes and uses; crucial habitat areas (i.e., calving), locations, and sensitivities; golden eagle breeding, nesting, and brood-rearing areas; threatened and endangered species and their habitat; renewable energy development potential; uses on State and Forest Service lands; and heritage resource values including traditional Native American concerns and historic structures.

As a result of these actions, the El Centro Field Office gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the Final EIR/EIS. The BLM utilized the available data to provide an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives. The Final EIR/EIS analyzed the route across the BLM-administered lands of the BCD/BCD South Option Reroute in Chapter E.2 BCD Alternative and Chapter 3.3.2 BCD/BCD South Option Reroute. The analysis addressed the environmental setting of and impacts to biological resources including special status plant and wildlife species (i.e., Dunn's mariposa lily, the Arroyo toad, Quino checkerspot butterfly, Peninsular bighorn sheep, and 76 non-listed sensitive plants and animals), and cultural resources including several prehistoric and historic sites (pp. E.2.2-1 to E.2.2-32 and pp. E.2.7-1 to E.2.7-10, respectively). As a result, the BLM has taken a "hard look," as required by the NEPA, at the environmental consequence of the alternatives in the draft, supplemental draft, and final EIR/EIS to enable the decision maker to make an informed decision.

Public Opportunity to Comment

Issue Number: PP-CA-Sunrise-09-0008-21
Organization: Center for Biological Diversity
Protester: Steven Siegel

Issue Excerpt Text:

Furthermore, the availability of the Eastern San Diego County Resource Management Plan ROD appeared in the November 12, 2008 Federal Register (73 Fed. Reg. 66918-66919), and the ROD was signed on October 10, 2008. Despite the overlap between the finalization of BLM's decision on the RMP and its review of the Sunrise Powerlink project, nowhere in the Eastern San Diego County RMP process has BLM notified the participants that it would be amending the Plan as part of the Sunrise process even though the planning process expressly dealt with energy development management. That information was only disclosed in the Sunrise EIS (Executive Summary, p. ES-8). Therefore, the Eastern San Diego County Resource Management Plan parties must be notified, comments allowed, and NEPA analysis conducted.

Issue Number: PP-CA-Sunrise-09-0009-13
Organization: Boulevard Planning Group
Protester: Donna Tisdale

Issue Excerpt Text:

This creates an odd cart before the horse scenario where the 30-day protest period for the Plan Amendment closes three days after the protest/appeal process starts for the RMP ROD which is now being amended. This has created confusion on part of the decision makers and the public, some of whom who have been reviewing the Sunrise Powerlink EIR/EIS process only, and were not made fully aware of the significance of the proposed Land Use Plan Amendment for the new Sunrise Powerlink Utility Corridor.

Issue Number: PP-CA-Sunrise-09-0009-19
Organization: Boulevard Planning Group
Protester: Donna Tisdale

Issue Excerpt Text:

No where in previous documents or maps does a new utility corridor show up. The fact that the Plan Amendment was announced less than a week after the ROD for the new resource management plan was announced, it is obvious that the BLM, and the State Director, knew of the potential change well in advance.

Issue Number: PP-CA-Sunrise-09-0016-16
Organization: Herum/Crabtree Attorneys rep. JAM Investments
Protester: Brett Jolley

Issue Excerpt Text:

c. The Final Land Use Plan Amendment is Not Available

According to the October 13, 2008 joint BLM/CPUC memo on the Notice of Availability, "The Final EIR/EIS and Proposed Land Use Plan Amendment will be available for review for 30 calendar days from the date the Environmental Protection Agency publishes the Notice of Availability (NOA) in the Federal Register, which is expected to occur on October 17, 2008...At a minimum, a ROD cannot be issued until this 30-day period has lapsed" However, the "Proposed Land Use Plan Amendment" (presumably amending the RMP and/or CAP) does not appear to be available for review.

Specifically, this document is omitted from the DVD including all documents on the environmental review process. Likewise, according to the actual NOA published in the Federal Register [ftnt 2] "A copy of the FEIR/EIS/Proposed Plan Amendment will be available electronically at the following Web site: <http://www.cpuc.ca.gov/Environment/info/asp/sunrise/sunrise.htm>." However, that link merely takes the reader to the CPUC website on the Sunrise Powerlink Project which does not include the text/diagrams of any actual plan amendment. Nor does the BLM website on the RMP include any information about the proposed amendments. ftnt 3

ftnt 2: See, <http://frwebgate1.access.gpo.gov/cqi-bin/TEXTgate.cgi?WAISdocID=957970452047+2+1+0&WAIAction=retrieve>

ftnt 3: See, <http://www.blm.gov/ca/st/en/fo/elcentro/esdrmp.2.html>

Instead, the most recent entry is the October 2008 record of decision amending the RMP with which the Alternative is inconsistent. Thus, omitting this information limits the public's ability to understand the proposed plan amendment(s) and meaningfully participate in the review process.

Summary

The public has not been given an opportunity to comment on the land use plan amendment or participate in the planning process.

Response

The Amendment to the Eastern San Diego County RMP is not a separate document but incorporated within the larger Sunrise Powerlink Project Final Impact Report/Environmental Impact Statement (EIR/EIS); the amendment relates to the BCD Alternative (Chapter E.2) and the BCD Alternative Revision (Chapter 3.3.2, pg. 3-23) of the Final EIR/EIS.

Notification that the Sunrise Powerlink Project would result in a land use plan amendment has been available for the public to comment upon and review from the earliest project notices. The Notice of Intent to Prepare a Joint Environmental Impact Statement/Report (NOI), Notice of Availability (NOA) of the Draft EIR/EIS, and the Notice of Availability of the Final EIR/EIS all noted that the project would result in a land use plan amendment; which plan(s) would be amended would be determined by which alternative was selected for the preferred alternative. Once the Preferred Alternative route was chosen, it resulted in an amendment to the Eastern San Diego County RMP. See the Federal Register Volume 71, Number 169 (August 31, 2006, pp. 51848-51849) for the NOI, the Federal Register Volume 73, Number 8 (January 11, 2008, pp. 2062-2063) for the Draft EIR/EIS NOA, the Federal Register Volume 73, Number 205 (October 22, 2008, pp. 63012-63013) for the Final EIR/EIS NOA. The BLM received comments on the Draft EIR/EIS about the need to amend plans (federal, state, and local planning documents) to address any inconsistencies as a result of the proposed transmission line. Additionally, by protesting the proposed amendment to allow the placement of Sunrise Powerlink outside the RMP established corridor, the public has had an opportunity to participate in the planning process.