

H. Mitigation Monitoring and Reporting

This EIR/EIS includes a proposed Mitigation Monitoring, Compliance, and Reporting Program (MMCRP) for the mitigation measures proposed herein for the Devers–Palo Verde No. 2 Transmission Line Project (DPV2). An MMCRP table for the Proposed Project and the alternatives is provided at the end of each issue area's environmental analysis in Section D (D.2 through D.14). This section herein provides the recommended framework for the implementation of the MMCRP by the CEQA Lead Agency, the California Public Utilities Commission (CPUC), and the NEPA Lead Agency, the Bureau of Land Management (BLM), and describes the roles and responsibilities of government agencies in implementing and enforcing adopted mitigation.

H.1 Authority for the Mitigation Monitoring, Compliance, and Reporting Program

H.1.1 California Public Utilities Commission

The California Public Utilities Code in numerous places confers authority upon the CPUC to regulate the terms of service and the safety, practices and equipment of utilities subject to its jurisdiction. It is the standard practice of the CPUC, pursuant to its statutory responsibility to protect the environment, to require that mitigation measures stipulated as conditions of approval be implemented properly, monitored, and reported on. In 1989, this requirement was codified statewide as Section 21081.6 of the Public Resources Code. Section 21081.6 requires a public agency to adopt a Mitigation Monitoring, Compliance, and Reporting Program when it approves a project that is subject to preparation of an EIR and where the EIR for the project identifies significant adverse environmental effects. *CEQA Guidelines* Section 15097 was added in 1999 to further clarify agency requirements for mitigation monitoring or reporting.

The purpose of a MMCRP is to ensure that measures adopted to mitigate or avoid significant impacts of a project are implemented. The CPUC views the MMCRP as a working guide to facilitate not only the implementation of mitigation measures by the project proponent, but also the monitoring, compliance and reporting activities of the CPUC and any monitors it may designate.

The CPUC will address its responsibility under Public Resources Code Section 21081.6 when it takes action on SCE's application for a Certificate of Public Convenience and Necessity. If the Commission approves the application, it will also adopt a Mitigation Monitoring, Compliance, and Reporting Program that includes the mitigation measures ultimately made a condition of approval by the Commission.

H.1.2 Bureau of Land Management and Other Federal Lands

BLM is the federal Lead Agency for the preparation of this EIR/EIS in compliance with NEPA, the Council on Environmental Quality (CEQ) regulation for implementing NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the BLM NEPA guidance handbook (H-1790-1). As the Lead Agency, BLM is also responsible for ensuring that mitigation measures are implemented on its land. BLM intends to work with the CPUC in implementation of mitigation monitoring during construction of the DPV2 project, and will likely use the CPUC's environmental contractor for monitoring on its lands.

For portions of the project on federal lands owned or managed by other federal agencies (e.g., Kofa National Wildlife Refuge or Yuma Proving Grounds), BLM will consult with these agencies to determine whether they would like the same contractors who are monitoring for BLM to monitor construction on these lands.

H.1.3 Non-Federal Land in Arizona

Non-federal land in Arizona is not under the jurisdiction of the CPUC or the BLM and therefore, mitigation measures may not be enforceable in these areas of the project. Mitigation measures for these areas are recommended in this EIR/EIS, in order that Arizona agencies with jurisdiction over the DPV2 project (e.g., the Arizona Corporations Commission (ACC), Arizona counties for road or highway encroachment) may consider requiring implementation of these measures in order to reduce the impacts of the project in Arizona. The CPUC and BLM will not monitor implementation of mitigation measures on non-federal lands in Arizona unless specifically invited by these Arizona agencies. If and when the ACC approves the DPV2 project, the ACC could adopt the mitigation measures recommended in this EIR/EIS and/or it could add new measures of its own.

H.2 Organization of the Final Mitigation Monitoring Plan

If the project or an alternative to the project is approved, the MMCRP should serve as a self-contained general reference for the Mitigation Monitoring Program adopted by the CPUC and BLM for the DPV2 Project. To accomplish this, the Final Mitigation Monitoring Plan should contain seven elements (as indicated below). If and when a project has been approved by the Commission and BLM, the CPUC and BLM will compile the Final Plan from the Mitigation Monitoring Program in the Final EIR/EIS, as adopted. The elements of the Mitigation Monitoring Plan are as follows:

MMCRP Introduction

- Authority and Purpose of the Program
- Program Adoption Process
- Organization of the MMCRP

Roles and Responsibilities

- Monitoring Responsibility
- Enforcement Responsibility
- Mitigation Compliance Responsibility
- Dispute Resolution

General Monitoring Procedures

- Environmental Monitor
- Construction Personnel
- General Reporting Requirements
- Public Access to Records

In the Final MMCRP, this section will contain a concise overview and reference description of the approved project that clearly outlines its physical locations and timetable, including construction spreads. This section will also specify the “master” reference(s) which the monitors and the Applicant will use in carrying out the Program, e.g., the Final EIR/EIS, but also more detailed working maps and plans. The Applicant Proposed Measures, to which SCE has committed to reduce potential impacts, will also be listed in this section.

In the Final Plan, this section will include the list of agencies with jurisdiction over the project (from EIR/EIS Table A-4), and a description of where their respective jurisdictions exist. For example, for a given construction spread, state what region of the California Department of Fish and Game has jurisdiction, provide the name of the regional manager, the address, telephone and fax numbers.

H.3 Roles and Responsibilities

As the lead agencies under CEQA and NEPA, the CPUC and BLM, respectively, are required to monitor this project to ensure that the required mitigation measures and Applicant Proposed Measures are implemented. The CPUC and BLM will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The purpose of the monitoring program is to document that the mitigation measures required by the CPUC and BLM are implemented and that mitigated environmental impacts are reduced to the level identified in the Program.

The CPUC and/or BLM may delegate duties and responsibilities for monitoring to other environmental monitors or consultants as deemed necessary, and some monitoring responsibilities may be assumed by responsible agencies, such as affected jurisdictions and cities. The number of construction monitors assigned to the project will depend on the number of concurrent construction activities and their locations. The CPUC and BLM, however, will ensure that each person delegated any duties or responsibilities is qualified to monitor compliance.

Any mitigation measure study or plan that requires the approval of the CPUC and BLM must allow at least 60 days for adequate review time. When a mitigation measure requires that a mitigation program be developed during the design phase of the project, the Applicant must submit the final program to CPUC and BLM for review and approval for at least 60 days before construction begins. Other agencies and jurisdictions may require additional review time. It is the responsibility of the environmental monitor assigned to each spread to ensure that appropriate agency reviews and approvals are obtained.

The CPUC and BLM along with its environmental monitors will also ensure that any variance process or deviation from the procedures identified under the monitoring program is consistent with CEQA and NEPA requirements; no project variance will be approved by the CPUC and BLM if it creates new significant impacts. As defined in this section, a variance should be strictly limited to minor project changes that will not trigger other permit requirements, that does not increase the severity of an impact or create a new impact, and that clearly and strictly complies with the intent of the mitigation measure. A Proposed Project change that has the potential for creating significant environmental effects will be evaluated to determine whether supplemental CEQA and/or NEPA review is required. Any proposed deviation from the approved project, adopted mitigation measures, and Applicant Proposed Measures, and correction of such deviation, shall be reported immediately to the CPUC, the BLM, and the environmental monitor assigned to the construction spread for their review and approval. In some cases, a variance may also require approval by a CEQA or NEPA responsible agency.

H.4 Enforcement Responsibility

The CPUC and BLM are responsible for enforcing the procedures adopted for monitoring through the environmental monitor assigned to each construction spread. The environmental monitor shall note problems with monitoring, notify appropriate agencies or individuals about any problems, and report the problems to the CPUC and BLM.

The CPUC ~~and~~, BLM, and USFWS (within Kofa NWR and Coachella NWR lands) have the authority to halt any construction, operation, or maintenance activity associated with the Devers–Palo Verde No. 2 Transmission Line Project if the activity is determined to be a deviation from the approved project or adopted mitigation measures. The CPUC and/or BLM may assign this authority to the environmental monitor for each construction spread.

H.5 Mitigation Compliance Responsibility

The Applicant, SCE, is responsible for successfully implementing all the adopted mitigation measures in the MMCRP. The MMCRP will contain criteria that define whether mitigation is successful. Standards for successful mitigation also are implicit in many mitigation measures that include such requirements as obtaining permits or avoiding a specific impact entirely. Other mitigation measures include success criteria that are listed in table at the end of each issue area section. Additional mitigation success thresholds will be established by applicable agencies with jurisdiction through the permit process and through the review and approval of specific plans for the implementation of mitigation measures.

The Applicant shall inform the CPUC, the BLM, and their monitors in writing of any mitigation measures that are not or cannot be successfully implemented. The CPUC and BLM in coordination with their monitors will assess whether alternative mitigation is appropriate and specify to SCE the subsequent actions required.

H.6 Dispute Resolution

It is expected that the Final MMCRP will reduce or eliminate many potential disputes. However, even with the best preparation, disputes may occur. In such event, the following procedure will be observed:

- **Step 1.** Disputes and complaints (including those of the public) should be directed first to the CPUC and/or BLM's designated Project Manager, as appropriate, for resolution. The Project Manager will attempt to resolve the dispute.
- **Step 2.** Should this informal process fail, the CPUC and/or BLM Project Manager may initiate enforcement or compliance action to address deviations from the Proposed Project or adopted Mitigation Monitoring Program.

The following steps apply to the CPUC only:

- **Step 3.** If a dispute or complaint regarding the implementation or evaluation of the Program or the mitigation measures cannot be resolved informally or through enforcement or compliance action by the CPUC, any affected participant in the dispute or complaint may file a written “notice of dispute” with the CPUC's Executive Director. This notice should be filed in order to resolve the dispute in a timely manner, with copies concurrently served on other affected participants. Within 10 days of receipt, the Executive Director or designee(s) shall meet or confer with the filer and other affected

participants for purposes of resolving the dispute. The Executive Director shall issue an Executive Resolution describing his/her decision, and serve it on the filer and other affected participants.

- **Step 4.** If one or more of the affected parties is not satisfied with the decision as described in the Resolution, such party(ies) may appeal it to the Commission via a procedure to be specified by the Commission.

Parties may also seek review by the Commission through existing procedures specified in the Commission's Rules of Practice and Procedure for formal and expedited dispute resolution, although a good faith effort should first be made to use the foregoing procedure.

H.7 General Monitoring Procedures

H.7.1 Environmental Monitor

Many of the monitoring procedures will be conducted during the construction phase of the project. The CPUC, the BLM, and the environmental monitor(s) are responsible for integrating the mitigation monitoring procedures into the construction process in coordination with SCE. To oversee the monitoring procedures and to ensure success, the environmental monitor assigned to each construction spread must be onsite during that portion of construction that has the potential to create a significant environmental impact or other impact for which mitigation is required. The environmental monitor is responsible for ensuring that all procedures specified in the monitoring program are followed.

H.7.2 Construction Personnel

A key feature contributing to the success of mitigation monitoring will be obtaining the full cooperation of construction personnel and supervisors. Many of the mitigation measures require action on the part of the construction supervisors or crews for successful implementation. To ensure success, the following actions, detailed in specific mitigation measures included in the Final Implementation Plan, will be taken:

- Procedures to be followed by construction companies hired to do the work will be written into contracts between SCE and any construction contractors. Procedures to be followed by construction crews will be written into a separate agreement that all construction personnel will be asked to sign, denoting consent to the procedures.
- One or more pre-construction meetings will be held to inform all and train construction personnel about the requirements of the monitoring program (as detailed in the Final Implementation Plan).
- A written summary of mitigation monitoring procedures will be provided to construction supervisors for all mitigation measures requiring their attention.

H.7.3 General Reporting Procedures

Site visits and specified monitoring procedures performed by other individuals will be reported to the environmental monitor assigned to the relevant construction spread. A monitoring record form will be submitted to the environmental monitor by the individual conducting the visit or procedure so that details of the visit can be recorded and progress tracked by the environmental monitor. A checklist will be developed and maintained by the environmental monitor to track all procedures required for each

mitigation measure and to ensure that the timing specified for the procedures is adhered to. The environmental monitor will note any problems that may occur and take appropriate action to rectify the problems. The Applicant shall provide the CPUC ~~and~~, BLM, and USFWS with written quarterly reports of the project, which shall include progress of construction, resulting impacts, mitigation implemented, and all other noteworthy elements of the project. Quarterly reports shall be required as long as mitigation measures are applicable.

H.7.4 Public Access to Records

The public is allowed access to records and reports used to track the monitoring program. Monitoring records and reports will be made available for public inspection by the CPUC and BLM on request. The CPUC, the BLM, and the Applicant will develop a filing and tracking system. For additional information on mitigation monitoring and reporting for the Devers–Palo Verde No. 2 Transmission Line Project, the Energy Division of the CPUC will maintain an Internet website, accessible at the CPUC website at <http://www.cpuc.ca.gov/environment/info/aspen/dpv2/dpv2.htm> and at the BLM website at http://www.ca.blm.gov/palmsprings/devers_paloverde.html. In order to facilitate the public's awareness, the CPUC will make weekly reports available on the website.

H.8 Condition Effectiveness Review

As required by CEQA, the CPUC must evaluate the effectiveness of the mitigation measures that are implemented. In order to fulfill its statutory mandates to mitigate or avoid significant effects on the environment and to design a Mitigation Monitoring Program to ensure compliance during project implementation (CEQA 21081.6):

- The CPUC may conduct a comprehensive review of conditions which are not effectively mitigating impacts at any time it deems appropriate, including as a result of the Dispute Resolution procedure outlined in H.6; and
- If in either review, the Commission determines that any conditions are not adequately mitigating significant environmental impacts caused by the project, or that recent proven technological advances could provide more effective mitigation, then the Commission may impose additional reasonable conditions to effectively mitigate these impacts.

These reviews will be conducted in a manner consistent with the Commission's rules and practices.

H.9 Mitigation Monitoring Program Tables

Mitigation Monitoring Program tables are presented at the end of each issue area section (Sections D.2 through D.14). These tables, along with the full text of the mitigation measures themselves, will form the basis for implementation of the Mitigation Monitoring Program.