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**Section C (Pages 38-39)**

It appears that the primary justification for the "Overhead 500kV ABDSP within existing right of way" alternative is one of regulatory feasibility; it would not require the alteration of State Wilderness boundaries by the SPRC. See Public Resources Code section 5093.33. The alternative, however, does not eliminate the need for action by the SPRC to amend the General Plan because the alternative would still extend outside the existing right of way into the Backcountry Zone (east of Tamarisk Grove option) and, as the Proposed Project does, still result in too great an overall conflict with the Goals and Guidelines of the ABDSP General Plan to render the alternative consistent with the plan.

The alternative may also suffer problems of technological feasibility. The alternative assumes 100' of right of way. The typical towers proposed for ABDSP, though, are 105' wide. See Draft EIR Figures B-15 and B-19. It is also unclear if all pull sites could be accommodated within any existing right of way.

The alternative also suffers from the same legal feasibility concern as the Proposed Project. As noted above in the comments to page B-13, SDG&E does not have a recorded 100' right of way throughout ABDSP. Moreover, without an additional grant of right of way, irrespective of the existing width, a project of the size proposed may impermissibly overburden the right of way in several areas of the park. An expansion from a 69kV monopole line to a 500kV truss-style line (with the accompanying increases in the size and footprint of the towers) would unduly burden the underlying estate and unreasonably interfere with the rights of the owner. While the law does allow the owner of the easement to make it "as usable as possible for the purpose of the right owned," this ability is limited by the qualification that the owner cannot "increase the burden on the servient tenement or unreasonably interfere with the rights of the owner thereof." (*White v Walsh* (1951) 105 Cal. App.2d 831). This means that SDG&E is allowed to make the right of way as usable as possible for the purpose of power transmission, but can only do so to the extent that it does not increase the burden on the underlying estate or unreasonably interfere with State Parks' legal rights.

In the present case, SDG&E seeks to significantly and substantially expand the size of a power line running through the State Park and substantially expand associated infrastructure. Even if the larger truss-style supports for the 500kV line are wholly within the right of way, their installation and maintenance will result in the impermissible overburden on the underlying estate. The Proposed Project will also result in a larger physical footprint on the surface of the land itself, which may also be considered an overburden.

**Section C.4.10.1 (Page C-70)**

Part of the New In-Area Renewable Generation Alternative requires an upgrade to a portion of an existing 69kV transmission line in ABDSP. The ABDSP General Plan

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does provide a modest amount of flexibility with respect to upgrading transmission facilities. State Parks does not have sufficient information, though, to be able to determine whether this particular upgrade could be found consistent with the ABDSP General Plan. We do note, though, that the line to the Narrows would cross less than two miles of ABDSP versus twenty three for the Proposed Project, and it would not encroach into State Wilderness.

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**Section D.2 (Biologic Resources)**

General Comments

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The Department will be looking for biological mitigation that will preserve the overall ecosystem functionality of ABDSP habitats. This is expressed in both a principal goal of the ABDSP General Plan which is to “[p]rotect the natural processes associated with the Park and allow them to function in a manner that supports the region’s native biodiversity.” and one of its supporting guidelines which is to “[a]llow adequate space and time for organisms to respond in an adaptive manner to changes in habitat, climate, the human element, and other environmental variables.” (See ABDSP General Plan at p. 3-27, Biological Process Goal 1/Guideline 1a).

DPR believes that some of the proposed biological mitigation will not be sufficient to uphold this guideline and its underlying goal. Two issues are of particular concern.

The first is that for some species, the mitigation measures allow pre-construction surveys, the results of which show absence, to reduce the impact acreage of occupied habitat and the corresponding mitigation. This methodology seems to ignore the concept that natural populations fluctuate over time and, as such, not all suitable habitat will be occupied at any given time. These habitats are not only necessary for recovery of severely depleted populations; they are also needed to accommodate the periodic natural increases that help maintain stable populations. Therefore, all suitable habitat for sensitive species, regardless of current visible signs of occupation, should be mitigated at the same ratios as those that are currently occupied.

The other primary concern is that the ratios do not distinguish between impacts and mitigation for preserved and managed park lands, and unpreserved, unprotected lands outside of the park. ABDSP encompasses a highly diverse range of habitat types, and because of its size at over 600,000 acres, it serves as a highly significant core for the protection of regional biological diversity. Activities within ABDSP are regulated and this, along with habitat management actions, ensures that the ecosystem will continue to function over the long-term. This is recognized in its designation as both a National Natural Landmark, and its membership in the International Biosphere Reserve Program. In contrast, lands outside the park boundaries are subject to a variety of uncontrolled

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activities and disturbances that will continue to greatly diminish ecosystem functions over time.

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DPR believes that because of this distinction, all mitigation ratios for impacts within ABDSP must be increased by at least an additional 1:1. The determination of appropriate mitigation for biological impacts on park lands must also consider the preservation of ecosystem functioning as a whole. DPR will be looking for a total mitigation package that retains overall regional ecosystem functions, not just maintaining the populations of specific species.

**Page D.2-72 (Standard Applicant Proposed Measures Specific to Biological Resources (BIO-APMs))**

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Twenty-nine BIO-APMs are listed in Table D.2-5. The paragraph that precedes the table indicates that "...the assessment of potential project-related impacts and levels of significance is discussed in the context of these APMs being included as part of the project..." It further clarifies that because "...the APMs are based on SDG&E's NCCP which is not applicable to this project ... in some cases the APMs are not appropriate or are not adequate to provide mitigation for the project."

Some of the BIO-APMs are included in Appendix 12 (Full Text of All Mitigation Measures), while others are not. The language in those that are included appears to be the same as the original APMs, including NCCP language, while some of the omitted APMs seem to have general application and should be included for the Proposed Project (such as BIO-APM-11 regarding feeding of wildlife, BIO-APM-12 regarding project personnel bring pets to the work site, and BIO-APM-28 regarding potential roost trees). Since the impact analysis assumed application of the BIO-APMs, it must be clarified which will be applied to this project, and which will not. This should also ensure implementation of all applicable APMs.

**Page D.2-88**

Mitigation Measure ("MM") B-1a. Paragraph one includes the following language regarding restoration of vegetation communities within ABDSP: "Restoration in ABDSP shall be maintained and monitored for a minimum of five years, even if established success criteria are met before the end of five years." Please add the same requirement to all mitigation measures that include restoration, reseeding, relocation, etc. within the park.

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**Page D.2-97**

MM B-3a. Since the introduction and proliferation of weeds can have a significant adverse effect on ecosystems, DPR must have review and approval authority over the weed control plan for any SDG&E right of way within and adjacent to the boundaries of ABDSP, including which weed species will be addressed by the plan.

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In the third bullet of mitigation measure B-3a, the beginning of the second paragraph includes the wording "For the lifespan of the project..." in reference to the length of time that measures will be taken to control the introduction and spread of noxious weeds in the project area. Previous wording in the document at C.4.3.1 on page C-37 refers to the expected life of the project as 50 to 100 years. Although the latter discussion is in regard to a different subject, it would be useful to clarify the meaning of lifespan to ensure that the mitigation measure continues for as long as the project is physically present.

A0001-24 cont.

**Page D.2-103**

MM B-5a. For listed plant species, this mitigation measure requires any compensatory off-site habitat to support the impacted plant at a ratio of 2:1. However, for sensitive but non-listed plants, the measure suggests that MM B-1a (mitigation for vegetation communities) would provide habitat-based mitigation for the impact. Since many sensitive plants are fairly specific in their habitat requirements, all impacted sensitive plants within ABDSP, listed or not, should be mitigated with occupied habitat if at all possible, particularly since reseeding and/or relocation are often unsuccessful over the long term.

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**Pages D.2-103-04**

MM B-5a. In the fourth paragraph, please change "...determined by State Parks" to "...determined in consultation with, and approval of, State Parks."

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**Page D.2-115**

MM B-7c. In the second paragraph, first bullet, this mitigation measure requires that the Proposed Project "fund construction of an overpass or tunnel to facilitate PBS movement across SR78 at a location determined by the USFWS (in coordination with State Parks and CDFG)." To ensure sufficient consideration of both options, please clarify that the tunnel would be for SR78, not the sheep. Depending on the location selected, it may be more effective to utilize the existing topography for the sheep and put SR78 in a tunnel through the hillside. This would limit the habitat changes that are perceived by the sheep by retaining the existing physical characteristics to which they are accustomed. In addition, it would maintain the visual continuity of the area for park visitors.

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**Pages D.2-117-19**

MM B-7d. Mitigation measure B-7g, for desert tortoise, requires (at bullet 9) that pipes, etc. that are stored on-site be checked for tortoises before being moved, buried, or capped. Since burrowing owls are known to take up residence and nest in construction materials, and could occupy areas not accessible to tortoises, the burrowing owl mitigation measure should include a requirement that "All pipes etc. that are stored on-site shall be checked for burrowing owls before being moved, buried, or capped."

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**Pages D.2-143-144**

MM B-9a requires pre-construction surveys for bat nursery colonies and allows the biological monitor "...to halt any construction activity that would cause falling rock, substantial vibration impacts, or any other construction-related impact..." In order to ensure that the potential for night lighting during the summer months is taken into consideration, please add "(including lighting placed for night work)" after "...construction-related impact..."

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**Page D.2-147**

MM B-10a. In the third bullet, the last sentence states that "If the study shows the markers to be ineffective, the applicant shall coordinate with the Wildlife Agencies to develop alternate collision protection measures." Please modify this to include coordination with State Parks regarding any alternative measures in ABDSP.

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**D.3.6 Visual Impacts**

General Comments

The Department agrees that the visual impacts caused by the Proposed Project and what is now referred to as the "Enhanced Northern Route Alternative" are significant and non-mitigable. While the authors of the Draft EIR are to be commended for attempting to quantify and use a consistent approach to evaluating visual and aesthetic impacts of the Proposed Project, we feel that the draft determinations are inadequate and fall far short of the true impacts that would result. Specific areas are described below.

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In addition to visual impacts to wilderness areas, campgrounds, trails, designated scenic highways, and backcountry camping areas, we are concerned about visual impacts of the Proposed Project to three of the four gateways to the northern portion of ABDSP. As demonstrated by Figure D.5-8, but not discussed in the text, the project would mar both western entries—along highway 78 and S22 (Montezuma Grade)—as well as the eastern approach on highway 78. It would also destroy the vista at the Split Mountain Road entryway to the southern portion of the park and three of the four entrances to the park from the town of Borrego Springs. Entryways to parks are particularly important visual resources as they set the tone for the visitor experience and the sense of wilderness and solitude.

Visual impacts that are significant include vistas from numerous areas of the park that are not located specifically along the Proposed Project route. These significant areas include the Pinyon Mountains, Pinyon Ridge, Montezuma Grade, Borrego Mountains, and Font's Point.

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Significant damage will also occur to vistas from the sky. There are two county airports within the area as well as at least one private airstrip. ABDSP has had a designated Sky Trail since at least 1995, with a published brochure and a published pilot's manual. ABDSP is a scenic destination for small airplane pilots throughout southern California and beyond.

A0001-31 cont.

**Pages D.3-22+**

DPR believes that the overall visual sensitivity and overall visual change for key viewpoints (KVPs) 5-12 would be high in all cases. We feel the analysis was overly rated toward persons traveling in motor vehicles. While there are significant numbers of vehicles and viewers along the route of the Proposed Project, and some park users do spend the majority of their time in the park in vehicles, ABDSP is a park. Users include hikers, campers, equestrians, mountain bikers, artists and photographers. Many users do not confine themselves to existing roads or even existing trails. Backcountry ("open") camping is allowed along most areas of the Proposed Project route. Therefore, visual impacts are far more pronounced than simply those experienced by motorists.

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**Page D.3-22**

Omitted from the discussion of the vicinity of KVP 5 are the visual impacts to Ocotillo Wells State Vehicular Recreation Area. The Proposed Project - including the proposed new substation - would be visible from many areas within that park, including Blow Sand Hill, a major recreational feature.

A0001-33

**Pages D.3-22, 76**

Impact V-9 is a case in point where visual impacts are understated. Figure D.3-7A/B illustrates a before and after view, incorporating an existing electrical substation. Why would this one vista - the substation being the only non-natural element viewed from that portion of the roadway for 360 degrees - be considered typical or indicative of the true impacts? If the viewer were to rotate more than 45 degrees in any direction, the view of the substation would disappear, but powerlines and poles would still destroy the view under the Proposed Project.

A0001-34

Further, we believe that the number of viewers experiencing KVP 6 is high, as they include both visitors with the park as a specific destination (i.e. park users) and those who are traversing the park to destinations west or east. The distance zone also extends beyond the foreground. Therefore, overall visual sensitivity should be indicated as high.

**Pages D.3-23-24, 79**

The number of viewers classified in the DEIR is "low" with respect to impact V-10, while DPR feels the number is high for the same reasons stated above in our comments on V-9. We also feel that the typical uses by visitors to the Mine Wash Road area - recreation, camping, and visitation to prominent and popular cultural sites - increase the significance of

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these impacts. Overall visual sensitivity and overall visual change should be determined to be high. Scenic impacts would also occur to the Narrows Earth Trail.

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**Pages D.3-24, 83**

The number of viewers from this point should be classified as high with respect to impact V-11. In addition to those who hike to the Bill Kenyon scenic overlook, large numbers of motorists traverse S3 in both directions to a highly popular road pull-off overlook, and the vista is also experienced by users of Yaqui Pass primitive camping area. Impacts to the Yaqui Pass camping area appear to have been overlooked. Further, the overall visual sensitivity must be classified as high. Scenic overlooks are designated as such for their high scenic character. The Bill Kenyon Overlook and its trail would not be there if it were not for the spectacular views from this vantage point of San Felipe Wash, Mine Wash, Mescal Bajada, and Pinyon Mountains.

A0001-36

**Pages D.3-24, 83**

The text asserts that the project would not be visible from Tamarisk Grove Campground unless trees were removed for construction purposes. We do not find support for this conclusion. The wooden poles that support the existing line in the vicinity of Tamarisk Grove campground are monopoles approximately 50' tall, largely hidden by the tamarisk trees, which are almost as tall. This would change permanently if the monopoles were replaced with steel lattice or "H" towers more than three times the height of the trees. There are also many other reasons trees could be lost from the campground, thus exposing the project to campers. These include drought, disease, fire, or removal due to dangerous limbs or chance of tree failure.

A0001-37

The discussion of this area also omits several park facilities that would be significantly adversely impacted. Severe visual impacts would take place to the Cactus Loop Trail and the Yaqui Well Nature Trail, the latter which features many species of birds and a desert water hole.

**Pages D.3-25, 91**

Overall visual sensitivity should be classified as high with respect to KVP 10 (Impact V-13), as this is a designated primitive campground where visitors expect a nature experience. The overall visual change should therefore also be classified as high.

A0001-38

**Pages D.3-25-26, 95**

The overall visual sensitivity and overall visual change should be classified as high with respect to KVP 11 (Impact V-14). As indicated in the text, Highway 78 is a state designated Scenic Highway. The number of viewers should also be classified as high, for the reasons outlined above under V-9. Further, this area has special visual significance as it is a major gateway to the park.

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