



desert conservation PROGRAM

July 1, 2010

Monisha Gangopadhyay
EIR Project Manager
Eldorado-Ivanpah Transmission Project
130 Battery Street, 4th Floor
San Francisco, CA 94111

Re: Draft Environmental Impact Report/Environmental Impact Statement for the Eldorado-Ivanpah Transmission Project, California Public Utility Commission application #A.09-05-027

Dear Ms. Gangopadhyay:

Thank you for the opportunity to comment on the subject document. Clark County has reviewed the document and offers the following comments. Please don't hesitate to contact me if further clarification is needed.

Position on the Project

Clark County has no opposition to the proposed project provided all applicable rules, regulations and requirements are met in good faith by Southern California Edison.

Description of Multiple Species Habitat Conservation Plan (MSHCP)

The Clark County MSHCP is one of the earliest landscape-scale multiple species habitat conservation plans (HCPs) for which a Section 10 (a)(1)(B) Incidental Take Permit was approved, and it has an unusual mitigation strategy. As such, it is sometimes difficult to summarize the MSHCP for documents such as the subject DEIS. Clark County noted several incorrect statements in the DEIS, and offers the following corrections to assist in your analysis. Page 3.4-64, lines 38-40 contain the following incorrect statement: "Under the MCHSP, tree removal is allowed only for insect and disease control or in emergencies, and tree improvement activities may not impair wilderness values (Clark County 2000)." The MSHCP does not regulate tree removal, and this statement should be removed.

Page 3.4-64, lines 42-50 are incorrect. The MSHCP is a mitigation plan. For projects that occur on non-federal lands, property owners/developers pay a one-time mitigation and land disturbance fee of \$550.00 per acre fee at the time a grading permit issued, regardless of the location of the non-federal lands being developed. This fee is then used to implement the mitigation strategy described in the MSHCP. In exchange for take of habitat on non-federal lands, the permit holders mitigate by funding a wide variety of mitigation activities on both federal and non-federal lands. The MSHCP conservation reserve is categorized based upon the underlying land management designations, and those categories (Intensively Managed Areas, Less Intensively Managed Areas, Multiple Use Management Areas and Unmanaged Areas) convey no binding management regulation upon the land owners. Thus, the MSHCP does not

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regulate or govern the land uses within much of conservation reserve design and land owners, such as the Bureau of Land Management (BLM), retain that authority.

Page 3.4-65, lines 2-4 are incorrect. Implementation of MSHCP and prior Habitat Conservation Plan (HCP) mitigation actions has occurred over much of the project site described in the subject document. For example, to implement the Desert Conservation Plan, Short-Term Habitat Conservation Plan and MSHCP, Clark County has funded 1) acquisition and relinquishment of grazing allotments on BLM lands, including the Jean Lake and McCullough Mountains Grazing Allotments, 2) research projects focusing on the white margined penstemon found in the Ivanpah Valley, 3) restoration projects in the Eldorado and Piute Valleys, including restoration activities within the Piute Eldorado Area of Critical Environmental Concern (ACEC), 4) provision of law enforcement funding for both the Piute Eldorado ACEC and on the Boulder City Conservation Easement and 5) other mitigation activities in the project area. Thus, the project as proposed impacts both potential take areas as well as areas within the MSHCP's conservation reserve.

Description of Boulder City Conservation Easement (BCCE) & Relation to MSHCP

Page 3.4-65, lines 7-8 are incorrect. Clark County purchased the BCCE from the City of Boulder City in July 1995. The goal of the BCCE is maintenance of natural resource values for desert tortoise and other native species. Much of the BCCE is designated as critical habitat for the desert tortoise by the U.S. Fish and Wildlife Service (USFWS), and Clark County considers all parts of the BCCE to be equal in importance to the formally designated critical habitat.

The maintenance of the BCCE is part of Clark County's obligation under the BCCE agreement, and the USFWS monitors both parties' compliance with the terms of the BCCE agreement. In addition, the MSHCP includes the BCCE as part of the reserve design and mitigation strategy for the current Section 10(a)(1)(B) Incidental Take Permit. Thus, the BCCE has land use restrictions described in the easement agreement, and the MSHCP relies upon that area as part of the mitigation and reserve design, but the MSHCP does not regulate the BCCE area, nor does the MSHCP document supersede the BCCE agreement. This correction should also be made to the text on page 3.4-64, lines 42-50.

Section 7 versus Section 10 of the Endangered Species Act (ESA)

The proposed project seeks ESA compliance through Section 7 of the Act. Thus, the document needs to be clear that it will achieve its compliance with the ESA through the Section 7 consultation process and not through the Clark County MSHCP and Section 10(a)(1)(B) incidental take permit. Therefore, it is not necessary for this project to pay the Section 10 mitigation and land disturbance fee of \$550 per acre if it will be achieving ESA compliance through Section 7 and can demonstrate that compliance through payment of Section 7 mitigation fees. Table 2.1 should be updated to reflect this fact.

Impacts of proposed project and alternatives on BCCE

As you are aware, the project applicant (Southern California Edison: SCE) is in discussions with the City of Boulder City and Clark County to address concerns regarding the BCCE and Clark County's ability to concur with such a special use permit and/or new Rights of Way (ROW) within the BCCE. The City of Boulder City and Clark County are actively pursuing an amendment to the BCCE agreement that would clarify the conditions, standards and process that would allow the City of Boulder City to grant new ROW for this purpose. Staff anticipates the Boulder City Council and Board of County Commissioners will review and consider the amendment in July 2010. If this amendment were approved by both board and council, the standards and conditions for a new ROW and/or special use permit within the BCCE would be in addition to those described in the proposed Applicant Proposed Measure and Mitigation Measures in the DEIS. While it is premature to include the proposed standards and conditions prior to adoption by the Council and Board, these can be made available upon Council and Board adoption.

In several places, the document states that the applicant will submit a record of consultation with the County to the California Public Utility Commission (CPUC). Clark County respectfully requests copies of all such documentation and correspondence when they are received by CPUC, and any such documentation of consultation with Clark County already sent by the project applicant and consultants to the CPUC.

Are all proposed "Applicant Proposed Minimization (APM) and Mitigation Measures (MM)" consistent with the BCCE terms and conditions?

According to the BCCE agreement, any use of biocides/herbicides must be approved by USFWS for use within the BCCE. (APM BIO 10 or 11)

Clark County supports USFWS and Nevada Department of Wildlife approved relocation of wildlife found within the BCCE to other suitable portions of the BCCE or adjacent habitat on BLM lands. (APM BIO 7, 11, 13, & 14)

On page 3.4-71 lines 21-22, regarding temporary disturbance areas, the DEIS states: "Impacts to vegetation in these areas would be temporary, as communities would likely re-colonize these areas over time." Leaving temporary disturbance areas to re-colonize with vegetation after crushing and compacting of soil with heavy equipment is not likely to result in restoration of natural habitat structure or function within a decade. In the Eldorado Valley, where the BCCE is located, Clark County strongly suggests a more active approach to restoration, including soil decompaction, vertical mulch and reseeding with native species.

All other APM and MM appear to be consistent with the BCCE agreement.

Additional analysis or clarification needed

Page 3.4-72, lines 6-8. The BCCE should be added to the list of areas that would be impacted by spread of noxious weeds. On page 3.4-24, the DEIS notes that BLM will receive notices of weed concentration areas. DCP requests copies of such notices within Nevada and particularly in areas within or adjacent to the BCCE area and Piute Eldorado ACEC.

Page 3.4-74, lines 14-17. The BCCE should be added to the list of areas that would be impacted by loss and degradation of habitat.

Table 3.4-6 would be more informative if it showed new versus old disturbances in relation to desert tortoise critical habitat. Alternative A would cause more new disturbance in desert tortoise critical habitat than the proposed project route.

On page 3.4-85, lines 30-40, the statement is made that no impacts would occur to the MSHCP or BCCE. Based upon the corrections requested in this letter, this section needs to be reviewed for accuracy, particularly based upon several statements in the DEIS that acknowledge impacts to the MSHCP and BCCE and the need to mitigate those impacts, including but not limited to the following references:

Page 3.4-77 regarding compensation to be made to Clark County for impacts to the MSHCP.

In the analysis of alternative A, page 3.4-86, lines the DEIS states:

"The alternative would result in impacts on the Clark County MSHCP and the BCCE, as the entire alternative lies outside a pre-existing ROW within lands preserved by these plans. Biological resources and species targeted for conservation and protection by these plans, particularly the desert tortoise, would be potentially impacted by the project. However, MM BIO-1 through BIO-16 would significantly reduce biological impacts. Furthermore, the applicant would be required to initiate discussions with Clark County and Boulder City concerning additional fee-based compliance and mitigation measures to ameliorate biological impacts. This compliance would be directly based on the provisions of the MSHCP and the BCCE. Impacts to provisions of the plans would be reduced to less than significant with the incorporation of results from biological mitigation and compliance discussions."

Also, on page 3.4-77 lines 45-46, the statement is made that "... compensation to Clark County for impacts to the MSHCP prior to commencing any construction activities." The DCP is interested in further discussions to determine how the project applicant could mitigate for impacts or loss of MSHCP mitigation actions. It is not clear to us that monetary compensation is the only option available.

Page 3.9-10 describes how the BCCE agreement relates to Land Patent No. 27-95-0022 and Public Law 85-339 as amended. As Clark County has stated in correspondence to BLM, CPUC and SCE, the process and authority by which BLM claims to have designated and then reserved to the United States certain utility corridors in July 1995 is unclear, and Clark County looks forward to its clarification. The fact that Clark County points out this issue is not an indication of any opposition to the project. In anticipation of this clarification, the City of Boulder City and Clark County are actively pursuing an amendment to the BCCE agreement, which as described above would clarify the conditions, standards and process that would allow the City of Boulder City to grant new ROW for this purpose.

In addition, a point of clarification is needed for Page 3.9 -10, line 18 and 21, as the BCCE agreement stipulates how the area is to be managed, while the MSHCP merely describes the terms and conditions found within the BCCE agreement. The BCCE agreement would be a better source to cite for the restrictions and allowable uses of the BCCE, rather than the MSHCP or unnamed County or DCP representatives (line 20).

Page 3.9-18 describes the BCCE agreement and which party has the authority to grant new ROWs. In lines 7, 10 and 12, the roles of the Grantor (Boulder City) and the Grantee (Clark County) are reversed.

Also, in this section (3.9), a discussion should be included which lists the Boulder City ordinances regarding speed limits and acceptable uses of the BCCE area, and how these will apply to portions of this project. These should be included in the Worker Environmental Awareness Program training for the subject project, if approved. Of particular interest to the County is assuring that all project workers and contractors are aware of the road designations, speed limits and restrictions on camping in the BCCE area.

The recreation impact analysis should be clarified on page 3.12-5, line 46, to include that within the BCCE, all vehicular travel is limited to only designated open roads or private utility roads (travel off of roads or on closed roads is prohibited by the easement and Boulder City ordinances). All open and closed roads in the BCCE area have been posted.

Cummulative Impact Analysis

An analysis of the proposed project's impacts to MSHCP covered species, the MSHCP's conservation reserve and prior MSHCP mitigation actions is appropriate and necessary. This could be accomplished by adding the BCCE and other areas where the DCP has funded mitigation activities on federal lands to those areas described as Special Management Areas within the subject document.

The cumulative impact area for the proposed project includes a substantial amount of the MSHCP's mitigation/conservation reserve system. Section 5.3.3.2 should include a summary of

the mitigation activities that have been funded by Clark County as mitigation for the MSHCP and precursor plans and incidental take permits, as described above. Spatial data are available depicting the geographic location of many of these activities. In addition, approximately 65,000 acres of take remain under the current MSHCP, which is not mentioned in this section, nor the section that discusses the additional 215,000 acres of take the permittees seek in the amendment of the MSHCP. A total of approximately 280,000 total acres under the current MSHCP plus the amendment to the MSHCP should be considered in the cumulative impacts analysis.

Impacts to Biological Resources and Comparison of Project Alternatives

We note that Figure 1.2 of the subject document does not depict federal utility corridors or BLM reserved lands within the BCCE area, while several other figures in the subject document do depict these BLM corridors. Clark County continues to seek clarity regarding whether or not the BLM corridors were properly designated and reserved across and through the BCCE. Given this uncertainty, the comments below focus on the biological resources that might be impacted by the proposed action and the alternatives, without regard to legal jurisdictions of the agencies.

In general, further minimization of new temporary and permanent disturbance for the construction, maintenance and operation of the utility line and associated telecommunication lines as proposed in the subject document is recommended. Reduction of the ROW width needed for crossing under or over existing utility lines is also preferable, particularly within the BCCE area, other areas of desert tortoise critical habitat and sensitive species habitat.

Clark County prefers the proposed project route to either Alternative A or Alternative B, due to the substantially fewer impacts to the BCCE, desert tortoise habitat, desert tortoise critical habitat and the reduced acreage of new permanent disturbance in the BCCE area.

In comparing Alternative A and Alternative B, we prefer Alternative A due to lesser impacts to BCCE, desert tortoise habitat, desert tortoise critical habitat and the slightly reduced acreage of new permanent disturbance in the BCCE area. Alternative A would result in less new temporary and permanent disturbance than Alternative B, and thus B is the least preferred.

Finally, to ensure that Clark County and stakeholders understand exactly what activities have been permitted by BLM and the City of Boulder City, Clark County requests a copy of the Nevada portions of the Plan of Development. This will allow Clark County to better monitor actual impacts to the incidental take permit and our obligations to maintain the BCCE, and address any stakeholder questions we may receive.

Monisha Gangopadhyay
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Thank you again for an opportunity to provide comments on the DEIS for the subject project application. I hope the above comments clarify the relationship between the MSHCP and the BCCE, and how the proposed project may impact both. Please do not hesitate to contact me or Sue Wainscott at (702) 455-3859 with any questions or requests for further information.

Sincerely,

A handwritten signature in black ink that reads "Marci Henson". The signature is written in a cursive, flowing style.

Marci Henson
Program Manager

MDH/ree