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VIA FACSIMILE, EMAIL AND U.S. MAIL

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Cliff Harvey, Environmental Scientist
Water Quality Certification Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments of The Protect Our Communities Foundation, East County Community Action Coalition, Backcountry Against Dumps, and Donna Tisdale Requesting Denial of San Diego Gas & Electric Company's Application for Federal Clean Water Act, Section 401, Water Quality Certification for Activities Related to the Sunrise Powerlink Transmission Project.

Dear Mr. Harvey:

On behalf of The Protect Our Communities Foundation ("POC"), East County Community Action Coalition ("ECCAC"), Backcountry Against Dumps ("BAD"), and Donna Tisdale, we respectfully **oppose** San Diego Gas & Electric Company's ("SDG&E's") application requesting Federal Clean Water Act ("CWA"), section 401, Water Quality Certification for activities related to the Sunrise Powerlink project ("project"). This application is premised on a deficient Environmental Impact Statement/ Environmental Impact Report ("EIS/EIR"), and an inadequate discussion of impacts on stormwater runoff. Further, the application is internally inconsistent and in conflict with the Biological Opinion. Finally, the maps are incomplete. For these reasons and others as discussed below, we ask you to **disapprove** SDG&E's application requesting section 401 certification.

1. **SWRCB should delay any decision on certification until after resolution of all lawsuits.**

SDG&E's Sunrise Powerlink Project poses complex resource conflicts extending over 120 miles across desert and mountain terrain, numerous waterways, and sensitive habitat for endangered species. The complexities involved in this project are being adjudicated in many different forums and before numerous decision makers. Any decision by SWRCB is premature until the adequacy of the project's EIS/EIR has been determined.

Currently, the commentors have an appeal pending before the IBLA, in which the Project's failure to comply with the National Environmental Policy Act ("NEPA"), the Federal Land Policy and Management Act ("FLPMA"), the Endangered Species Act ("ESA"), and the National Historic Preservation Act ("NHPA") is addressed. See Commentor's Statement of Reasons and Reply in Support of Statement of Reasons attached hereto as Exhibit 1. The IBLA is reviewing the inadequacies of the EIS/EIR under federal law, including its failure to establish a need for the project, to clearly and adequately describe the project, to address the impacts of the project and to consider a reasonable range of alternatives. The IBLA, as the administrative body designed to review the EIS/EIR under federal law, should complete its examination – subject to federal court review – prior to any SWRCB decision on certification under section 401 of the CWA.

The EIR's adequacy under state law is currently under review by the California courts. The SWRCB should stay its review until the California courts have ruled. Additionally, commentors also protested SDG&E's related application to the California Public Utilities Commission ("CPUC") for approval of the East County Substation associated with the Project, attached hereto as Exhibit 2. That application was deficient in its analysis of the risk of fire hazard, aesthetic impacts, biological and cultural impacts, and the potential for growth induced by the project.

The SWRCB should defer any decision on the project's 401 certification until after resolution of the above proceedings not only to assure that that adequate environmental review is conducted, but also to assure that all less-impactful alternatives, such as the New In-Area Renewable Generation alternative that would eliminate all impacts to the waterways of the United States, are fully considered. Until such issues are resolved within the EIS/EIR, it is premature for SWRCB to make a decision on 401 certification.

SWRCB's governing regulations require that all pertinent information be provided to assure a complete application. California Code of Regulations, Title 23, section 3856. A "full, technically accurate [Project] description" is required, as are complete copies all license, permit, and environmentally related documents. 23 CCR §§ 3856(b), (c), (d), (e) and (f). Contrary to this mandate, essential documents were missing from SDG&E's application to SWRCB. Attachment 9 to SDG&E's application included the *Hydrologic and Hydraulic Modeling Methodology*. That document is repeatedly referenced an "Appendix A," yet was omitted from the documents submitted to the SWRCB. *Hydrologic and Hydraulic Modeling Methodology*, pp. 1, 2, 4, and 5. That Appendix is necessary for a complete understanding of the documents submitted by SDG&E and without it, SWRCB cannot make an informed decision.

Furthermore, SWRCB was not aware of the omitted document as of the morning of December 14, 2009. See email attached hereto as Exhibit 3. The deadline to submit comments on this issue also falls on December 14, 2009, the same day that SWRCB admitted that it did not yet have the full application. Further, SWRCB had not realized that omission until that late date. This omission must be rectified, and the public and SWRCB deserve ample time to review and comment on a full application prior to SWRCB making any decision regarding SDG&E's application for Water Quality certification.

2. **There are major concerns regarding stormwater runoff that are not adequately addressed in the application.**

SDG&E's application for 401 Water Quality certification ignores watershed impacts from this project that will permanently alter the waterways of the area and will negatively affect the flora and fauna that rely on them.

In its discussion of permanent access and spur roads, SDG&E fails to include any discussion of the impact of such roads on the slope stability of the surrounding land. SDG&E Application, Attachment 1, p. 3. Those roads will cut deeply into the slopes, potentially rendering them unstable, causing erosion and movement of sediment into watercourses. Such debris will eventually move down slope and end up in the rivers, washes, streams and wetlands of the area. Without a discussion of this impact, SWRCB does not have a clear picture of the impacts the project will have on water quality.

SDG&E's plan to build some roads with culverts or dip crossings, and others without, is inadequately described and presents many risks that were not adequately addressed in the application. SDG&E Application, Attachment 1, p. 3. For example, there is no analysis of the impact of such changes in water flow on erosion and the

movement of sediment into waterways. The grading and installation of culverts could cause bottlenecks or overflow in streams that will now be crossed by roads that previously did not exist. The creation of easily eroded cut and fill slopes, and dirt roads on steep slopes, threatens to unleash sediment to watercourses with each rainfall. Even where new roads may be paved, the project will concentrate and accelerate the overland flows that traverse these lands. With an increase in volume and velocity, runoff will increase erosion, adding more and more sediment to the waterways.

SDG&E also fails to address the impact that its devegetation activities will have on soil stability and subsequently, water quality. SDG&E Application, Attachment 1, pp. 4, 5, 8, and 9. Plant life stabilizes steep slopes. Where it is removed, the slopes may fail, and erosion will increase. Revegetation is extremely difficult in the steep, arid and largely infertile soils common throughout this project's route.

SDG&E plans to lay down a temporary layer of rock to provide an all weather surface for fly yards and staging areas. SDG&E Application, Attachment 1, p. 5. It states that the "rock will be removed from any 'waters of the US' following construction and those areas restored to their preconstruction condition where applicable." *Id.* This view is simplistic in light of the major impacts such actions will have on the waters of the U.S. Secondly, the introduction of rocks into waterways will concentrate and redirect flow, increasing sediment and impairing the water quality and quantity of waterways. Such impacts cannot be ignored.

SDG&E's installation of a steel frame bridge over an existing bridge is also not adequately examined. SDG&E Application, Attachment 1, p. 6. This construction, which was largely ignored in the EIS/EIR, has the potential to severely impact the stream below.

Finally, SDG&E's discussion of maintenance of the Powerline underestimates and ignores many of the impacts to stormwater runoff and subsequently to the waters of the United States. The maintenance activities described by SDG&E include inspection and repair or by crews using multiple vehicles, insulator washing, vegetation removal via machines and herbicides, and fire prevention activities such as the moistening of the ground. However, SDG&E fails to discuss what impact the addition of water, in such high volumes and distributed using such high pressure, will have on erosion and stormwater runoff in the area. Further, there is no discussion of soil stability and subsequent runoff due to the use of heavy trucks and machines, the removal of vegetation, and the addition of water. Herbicides will also have a significant impact on water quality, an issue that is completely ignored. SDG&E cannot ignore these impacts, nor can SWRCB approve a permit without first specifically addressing these issues.

While SDG&E fails to recognize these major impacts to waterways in the area, it does claim in its application that compensatory mitigation is proposed, presumably to offset the impacts that would concern SWRCB in its decision regarding 401 certification. However, in Attachment 1 to its application, SDG&E redacts all information pertaining to these mitigations. This compensatory mitigation information should be included for review prior to any decision regarding 401 certification.

3. **The discussion of permanent pull sites is inadequate.**

Any application for section 401 water quality certification must provide all of the information necessary for SWRCB to make an informed decision regarding water quality impacts. SDG&E's application fails to present adequate information regarding its proposed permanent pull sites, and also presents information that is inconsistent with the Biological Opinion for the project.

A. **Permanent Pull Sites Do Not Appear on Any Maps**

SDG&E's application asserts that nine pulling and tensioning sites will be permanent along the ROW. SDG&E Application, Attachment 1, p. 4. In Imperial Valley County there will be permanent pull sites that should be depicted on maps MS-07 and MS-21 in Attachment 2. *Id.* In San Diego County, there will be more permanent pull sites that also should be depicted on maps MS-29, MS-66, and MS-67. *Id.* However, those maps do not show any permanent pull sites. There are temporary pull sites depicted on those maps, which will have a different impact than will permanent sites. If those temporary sites are the sites SDG&E wishes to make permanent, it should depict exactly that on its maps.

B. **The Discussion of Permanent Pull Sites is Inconsistent With the Biological Opinion**

The application's discussion of permanent pull sites is inconsistent with the U.S. Fish and Wildlife Service's Biological Opinion for the Project. SDG&E claims that there will be nine permanent pull sites. SDG&E Application, Attachment 1, p. 4. However, the Biological Opinion states that there will be only one permanent pull site. Biological Opinion, p. 7. In light of this inconsistency, SWRCB cannot be expected to make an informed decision. These inconsistencies must be rectified before SWRCB can evaluate the Project's impacts to water quality.

4. **The description of temporary construction and maintenance pads is not sufficient.**

The temporary construction and maintenance pads proposed by SDG&E are designed to provide work crews with a temporary workspace and if necessary, an area for construction and erection of the transmission tower. SDG&E Application, Attachment 1, p. 4. These areas are designated for those sites where construction will be done without helicopters. *Id.* These 200 foot by 400 foot temporary workspaces did not appear on the maps that supplement SDG&E's application. See SDG&E Application, Attachment 2. All features of the project that could impact water quality should be clearly set forth on those maps so that SWRCB can assess those impacts.

5. **The application is inconsistent with the Biological Opinion.**

As noted above, SWRCB cannot make an informed decision while inconsistencies between project documents exist. The information presented to SWRCB must be consistent with that presented to other agencies, including the information presented in the Biological Opinion. Such inconsistencies reveal confusion about the Project and a need for further research and discussion to correct these discrepancies.

A. **The Discussion of New Roads in the Application is Inconsistent with the Discussion of Roads in the Biological Opinion**

SDG&E states in its application that there will be “[f]ifty-five miles of new access roads” to be constructed in addition to approximately ninety miles of existing road that will be upgraded. SDG&E Application, Attachment 1, p. 2. However, SDG&E also claims that there will be 84.17 miles of new road developed under this Project. Biological Opinion, Table 1, p. 7. This inconsistency must be resolved. SWRCB, and other decision making agencies, must have all the applicable facts before them prior to making any decisions to approve permits, certifications, or the project itself. Without such information, an informed decision about the impacts of a project can never be reached.

B. **The Discussion of Permanent Tower Structure Pads in the Application is Inconsistent with the Discussion of Permanent Tower Structure Pads in the Biological Opinion**

Like its discussion of new roads associated with the Project, the application's discussion of permanent tower structure pads is inconsistent with the Biological Opinion. The different facts and figures set forth in those documents make it impossible to

understand the impacts of the project on water quality, and on dependent biological and aesthetic resources.

In its application, SDG&E asserts that permanent tower structure pads will be approximately 40 feet by 40 feet. SDG&E Application, Attachment 1, p. 3. These areas will be cleared of vegetation for transmission tower pads and maintained to allow equipment access and tower repair and maintenance. *Id.* However, the Biological Opinion asserts that these permanent tower structure pads will be 100 feet by 100 feet. Biological Opinion, p. 8. The difference between the pad sizes stated in the Biological Opinion and in SDG&E's application is significant and will surely affect the impact that such a pad would have on the surrounding environment. In particular, the size of the pads will significantly affect soil stability and erosion rates, directly affecting water quality in the area. This discrepancy in the size of permanent tower structure pads must be resolved for SWRCB to evaluate the project's water quality impacts.

6. **The Past and Future Projects Map is incomplete.**

SDG&E presents a map entitled "Location of Past and Future Projects Relative to HUC 12 Watersheds and Receiving Water Bodies." SDG&E Application, Attachment 14. That map is supposed to list all projects "carried out in the last 5 years or planned for implementation in the next 5 years," as required by California Code of Regulations, Title 23, section 3856(h)(8). However, the map is missing numerous related projects including Iberdrola's Tule wind project, Invenergy's Crestwood wind project, and Sempra's increased importation of fossil fuels from offshore sources. Furthermore, the projects that are included are cryptically described. The map shows six projects, each identified as a number, with no key explaining what project corresponds with what number, leaving the reader to guess what those projects might be.

The impact of the Project, as it relates to water quality, cannot be adequately analyzed without consideration of its cumulative impact in conjunction with other related projects.

7. **SDG&E's Discussion of Impacts to Endangered Species is Inadequate**

SDG&E's discussion of endangered and threatened species is deficient. SDG&E Application, Attachment 1, pp. 17-18. Although the potentially affected species are listed, not much more information is provided. *Id.* The application fails to provide a basis for informed evaluation of the project's impacts on endangered and threatened species.

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8. **Conclusion**

SDG&E's application for Clean Water Act section 401 water quality certification is deficient for the reasons stated above and in the accompanying Evaluation by Professor Robert Curry.

Very truly yours,

/s/ Stephan C. Volker

Stephan C. Volker
Attorney for The Protect Our Communities
Foundation, East County Community Action
Coalition, Backcountry Against Dumps, and
Donna Tisdale