

INTERIOR BOARD OF LAND APPEALS

Paul Herman, et al.

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PAUL HERMAN ET AL.

IBLA 96-286, 96-297, 96-298,  
96-299, and 96-300

Decided October 16, 1998

Appeals from a decision issued by the Area Manager, Eagle Lake Resource Area, Bureau of Land Management, approving right-of-way CACA-31406.

Affirmed.

1. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements

NEPA is primarily a procedural statute designed to insure a fully informed and well-considered decision. It requires that an agency take a "hard look" at the environmental effects of any major Federal action. NEPA does not mandate particular results, but simply prescribes the necessary process. If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.

2. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements

Factors considered relevant on Judicial or Board review of an EIS include whether the EIS examines the five subjects explicitly listed in NEPA, whether the EIS constitutes a good faith compliance with NEPA, and whether the discussion of the five NEPA subjects is reasonable. The data and methodology underlying the EIS may be examined to ensure that the document is a good faith, objective, and reasonable explanation of environmental consequences that responds to NEPA's concern.

3. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements

Under NEPA, Federal agencies are required to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, explore and objectively evaluate all reasonable alternatives, and for alternatives eliminated from detailed study, briefly discuss the reasons for their elimination. The requirement to discuss alternatives is subject to a construction of reasonableness, and alternatives that would not satisfy the purposes of the proposed action or are remote and speculative need not be discussed.

4. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements

An EIS contains evaluations that are subjective and judgmental, and if a reviewable record reflecting consideration of the factors relevant to its decision has been developed, the Board will give considerable deference to decisions reached by the EIS process, even if reasonable people could differ over the conclusions drawn.

5. Federal Land Policy and Management Act of 1976: Rights-of-Way–Rights-of-Way: Federal Land Policy and Management Act of 1976

Section 503 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1763 (1994), authorizes issuance of rights-of-way such as roads and overhead transmission lines and the designation of right-of-way corridors. However, the designation of corridors does not preclude the granting of separate rights-of-way over, upon, through, or under the public lands if the authorized officer determines that confinement to a designated corridor is not appropriate.

APPEARANCES: Paul Herman, Doyle, California, pro se; Diana Langs, Sun Valley, California, for Sun Valley General Improvement District; Frank E. and H. Gail Braze, Central Point, Oregon, pro sese; Lorraine Burke, Reno, Nevada, for Friends of Peavine; Dr. Thomas F. Krauel, Alturas, California, for Neighbors Opposed to Power Encroachment; Ed Haste, State Director, California State Office, Bureau of Land Management and Linda D. Hansen, Area Manager, Eagle Lake Resource Area, Bureau of Land Management, for the Bureau of Land Management; Kathleen M. Drakulich, Esq., Reno, Nevada, for Sierra Pacific Power Company.

## OPINION BY ADMINISTRATIVE JUDGE MULLEN

Six parties have appealed a February 9, 1996, Decision by the Area Manager, Eagle Lake Resource Area, Bureau of Land Management (BLM or Bureau), Susanville, California. <sup>1/</sup> The Area Manager's Decision, approved a record of decision (ROD) granting right-of-way CACA-31406 to SPPCo. The grant was "for the purposes of construction, operation, maintenance and termination of one 345 kV power transmission line on public lands managed by BLM between Alturas, California and Reno, Nevada." (ROD at 3.) For ease of reference the construction, operation, and maintenance of the Alturas-Reno power line will be referred to as "the Project."

The Project

The planned 164-mile long transmission line will traverse 70.4 miles of public land managed by BLM, 8 miles of public land in the Toiyabe National Forest, 2 miles of public land in the Modoc National Forest, and 0.6 miles of Federal land managed by the Department of Defense. (ROD at 2.) Approximately 72 miles of the right-of-way is on private land and 10.6 miles of the line crosses land owned by the State of California. The route lies in California (138 miles) and Nevada (26 miles). The width of the right-of-way is 160 feet along the main transmission line, with additional acreage granted for substations, and temporary rights-of-way provided for use during construction.

The Environmental Impact Statement

During the preparation for the grant of the right-of-way it was determined that the grant would be considered major Federal action, and that an environmental impact statement was necessary. <sup>2/</sup> The Bureau was designated as the lead Federal agency for the preparation of a Draft Environmental Impact Statement (Draft EIS) and the Final Environmental Impact Statement (FEIS), and the California Public Utilities Commission (CPUC) served as the lead state agency.

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<sup>1/</sup> The Appellants are:

<u>Name of Appellant</u>	<u>Docket No.</u>
PAUL HERMAN	IBLA 96-286
SUN VALLEY GENERAL IMPROVEMENT DISTRICT (SVGID)	IBLA 96-297
FRANK E. AND H. GAIL BRAZE (the Brazes)	IBLA 96-298
FRIENDS OF PEAVINE (Friends)	IBLA 96-299
NEIGHBORS OPPOSED TO POWER ENCROACHMENT (NOPE)	IBLA 96-300

Answers to Statements of Reasons (SOR) have also been filed by Sierra Pacific Power Company (SPPCo) who qualifies as and has appeared as an intervenor.

<sup>2/</sup> The need for and requirements of environmental impact statements are discussed in detail below.

The Decision contains a discussion of the scoping process and the alternatives considered during the preliminary environmental study leading to the Draft EIS and FEIS. A total of 50 alternatives, including transmission alternatives, generation alternatives, system enhancement alternatives, and alternative transmission techniques, were identified during the scoping process. <sup>3/</sup> A screening process was then undertaken. The descriptions of the identified alternatives were first clarified to allow comparative evaluation. Each alternative was then evaluated to determine if it had potential for an environmental advantage, to ascertain its technical and regulatory feasibility, and to weigh the extent to which it would achieve the Project and public policy objectives. Alternatives that could replace the proposed Project as a whole were also considered.

Following preliminary screening, each of the identified alternatives was examined to determine its suitability for full analysis as an alternative in the environmental impact study. This screening process reduced the alternatives to those deemed to represent realistic alternatives to the Project as initially proposed. Three alternatives, including the no action alternative, survived the screening process. Mitigating measures were considered and the Draft EIS was prepared and circulated to the public and interested parties. At the end of the comment period the comments were considered and the FEIS was drafted. A description of the comments and the responses to the comments were made a part of the FEIS.

### The Decision

The Decision was issued on February 9, 1996. Following a statement of the background, the Area Manager approved issuance of a right-of-way grant to SPPCo for construction and maintenance of the power line.

A number of reasons for rejecting the no action alternative were outlined in the Decision. The estimated population growth in the area was deemed sufficient to project the need for a major transmission line in the Reno/Sparks/Tahoe area in the foreseeable future. Therefore, as it was expected that a major transmission line would be critically necessary in the foreseeable future, it was deemed that any no action determination would merely postpone the environmental impact of building a transmission facility, and result in the loss of system reliability in a large region, forfeiture of wheeling benefits flowing to smaller utilities, and higher costs to users. The primary reason for rejecting the no action alternative was that no action would eventually result in the construction of the same, or a very similar facility with environmental impacts similar to those of

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<sup>3/</sup> The alternatives considered, but rejected included 14 route alternatives, 3 substation location alternatives, 5 generation alternatives, 3 system enhancement alternatives, 4 alternative transmission technologies, and 2 transmission alternatives that did not satisfy project objectives. (Decision at 7.)

the Project as proposed by SPPCo. It was believed that the recognized short term solutions were insufficient to meet the needs of the projected growth, and would not provide additional access to power generated in the Northwestern United States.

It was noted that the Project, and each of the proposed alternatives, would have a significant adverse environmental impact. Therefore, mitigating measures, monitoring, reporting, and compliance standards were examined. The benefits of the Project (and the alternatives) tended to be diffuse and regional, and the adverse environmental impacts tended to be more local. The Project was deemed to be in compliance with the existing BLM management plan, and judged to have no adverse effect on listed species, requiring no further action under the Endangered Species Act. The California Department of Fish and Game also found that the Project would not be likely to jeopardize any State listed rare, endangered, or threatened species if the conservation measures scheduled to be adopted by BLM as right-of-way requirements were undertaken.

The Decision noted that the CPUC had approved SPPCo's application for a certificate of Public Convenience and Necessity in California. However, CPUC did not approve a portion of the right-of-way referred to as "Segment S and U" because the S and U alignment would increase several significant environmental effects on biological resources, cultural resources, energy and utilities, geology, soils, and paleontology, and transportation and traffic, when compared to Segment T, and would still result in a significant environmental effect on other views that cannot be avoided. In its Decision, BLM stated its conclusion that the impacts of Segment T on the visual and recreational resources of the Lassen Red Rocks Scenic Area were not less significant than the impacts associated with Segments S and U.

The Bureau had previously established the Lassen Red Rocks Scenic Area to protect and enhance the scenic qualities of that area while allowing appropriate recreational use. The lands in and immediately surrounding the Scenic Area were assigned a Class II Visual Rating, which requires that management retain the existing character of the landscape, and that activities in the area cannot be evident or attract attention. After its environmental analysis BLM concluded that the visual impacts associated with Segment T were significant and unmitigatable. The Decision recognized that construction of the power transmission facilities in Segments S and U would result in adverse visual impacts on those Segments as well, but that these impacts would occur in an area designated as Class III, and would be consistent with the Class III objective to partially retain the existing character of the landscape. Segments S and U included an existing transmission right-of-way, transmission line, gravel roads, and railway.

The Decision further noted that the biological impacts giving concern were identified in the FEIS as potential future impacts that could be mitigated, if necessary. Similarly, the potential cultural impacts in Segments

S and U were deemed to be mitigated by avoidance, recordation, and recovery. The impacts on transportation and traffic, energy and utilities, and geology were deemed to be insignificant. The Decision approved the right-of-way across Segments S and U and denied a right-of-way across Segment T.

The Decision also addressed two letters commenting on the FEIS. The first, from the Environmental Protection Agency (EPA) stated that, generally, the FEIS "satisfactorily addresses [EPA's] concerns," and asked BLM to respond to questions submitted to the EPA, concerning whether the Project will substantially increase current flowing through lines in close proximity to residential areas. The second letter, written by Lori Burke <sup>4/</sup> raised the same questions referred to in the EPA letter, and several additional questions regarding the operational aspects of the Project, and its impact on an existing 345 kV line that connects SPPCo's facility at Tracy, Nevada, with the existing North Valley substation (Tracy 345 kV line). Burke specifically expressed concern that the Project would result in a major increase in the amount of power carried on that line.

The response to the questions raised by EPA and Burke begins with a discussion of the environmental review conducted by BLM prior to constructing the Tracy 345 kV line, for which BLM granted a right-of-way in 1983. It was noted that an additional environmental review was conducted by the Nevada Public Service Commission (NPSC), and NPSC concluded that minimal environmental impact would result from the construction and operation of the 345 kV line. The Bureau asked SPPCo for assistance responding to the balance of the questions posed by Ms. Burke, and the SPPCo response was outlined and accepted in the Decision. After a description of the existing current flow patterns and volume, SPPCo explained the anticipated use of the Tracy 345 kV line, noting that with the Project lines in use, it anticipated that the load on the 345 kV line would be reduced. It also explained why it anticipated little change in the electromagnetic field (EMF) produced by the Tracy 345 kV line, and why the anticipated change would probably be a drop in the EMF. SPPCo noted that the EMF emanating from the Tracy 345 kV line exceeded 1.2 milligauss at the closest residential property in the Sun Valley segment of the line, but that the line met all State and Federal standards that were in existence in 1984 when the line was constructed, and that the emanations from the Tracy 345 kV line would decrease when the Project was completed. It was also noted that the emanations from Project lines would be substantially lower than magnitudes set out in the standards/guidelines. In summary, it was determined that the Project would not result in a significant increase in the electrical current carried in the Tracy 345 kV line or the EMF emanations.

As noted previously, CPUC had approved SPPCo's application for a certificate of Public Convenience and Necessity in California, and had approved the Project, except for the portion of the right-of-way referred

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<sup>4/</sup> Ms. Burke prepared the SOR submitted on behalf of Friends of Peavine.

to as "Segment S and U." The State of Nevada had approved the Project as part of its approval of SPPCo's 1993-2011 electric resource plan. When the Decision was issued approval of the route of the power line was pending before NPSC.

Specifically addressing the route of the Project in the State of Nevada, the Decision noted that there had been requests that the Project be routed in existing utility corridors, and that there was a great deal of interest in having the Nevada portion be within the utility corridor used by the Los Angeles Department of Water Power for its 1000 kV transmission line (referred to as the Nevada Alternate). The Decision noted that this alternative was addressed in the FEIS, but that this alternative had not been selected as one of the three alternatives subjected to intensive on the ground inventory for the reasons stated in the FEIS. In summary, the Decision noted that none of the variations of the Nevada alternative provided a clear environmental advantage over the proposed Project; the Nevada alternative would increase the length of the power line by up to 60 miles; and the Nevada Alternative would preclude the opportunity to improve system reliability for the Lassen Municipal Utility District.

The Decision also addressed the use of existing utility corridors (also addressed in the FEIS in Part E.3.3.3.3). Noting that there are two types of utility corridors; a "designated right-of-way corridor" (43 C.F.R. § 2800.0-5(1)), and a "transportation and utility corridor" (43 C.F.R. § 2800.0-5(n)), the Decision stated that most of the selected route was along transportation and utility corridors, following existing rights-of-way for a highway, railroads, telephone and power lines, and county roads. Noting the BLM policy that use of designated right-of-way corridors was encouraged, but that this policy did not preclude the grant of a right-of-way outside a designated corridor when appropriate. (BLM Manual at 2801.11.A.)

Noting that a simultaneous loss of both the SPPCo and Los Angeles Department of Water and Power transmission lines could result in catastrophic, system wide failure, BLM determined that the grant of the proposed right-of-way was appropriate because the proposed route would lower the probability of destruction of two major power lines by one natural disaster, such as an earthquake, and increase the reliability of power delivery to the area. In response to concerns expressed by the public, the Decision specifically provided that a stipulation would be added to the right-of-way grant document providing that the grant did not constitute BLM designation of a right-of-way corridor or imply that it would be designated as a right-of-way corridor in the future.

The Decision stated that the

project will result in significant adverse environmental impacts, some of which cannot be mitigated. These impacts generally result from degradation of scenic, recreational, and residential

quality caused by visual intrusion of large above ground structures and wires necessary for a major power transmission line.

(Decision at 21.) Noting the ongoing conflict between the need for widespread and reliable distribution of electrical power and the local impact of power distribution facilities, the Decision outlined the scope of the benefit, and the nature of the local impact, concluding that "[o]verall, the Proposed Project will provide long-term regional public benefits which will outweigh the more immediate or local adverse impact. Approval of this right-of-way will best promote the public interest" (Decision at 22.)

The Decision next addressed mitigating measures, monitoring, and reporting requirements developed during the environmental study. Mitigation measures were considered for each environmental impact assessed in the FEIS. The Decision noted that many of the measures adopted would require a mitigation plan which had to be prepared, and submitted, and approved prior to plan implementation or construction. After noting that the mitigation measures set out in the FEIS were being incorporated into the right-of-way document, the Decision set out the language of additional stipulations calling for mitigation measures and monitoring requirements. These measures were not specifically addressed in the FEIS, but were also being incorporated as a part of the right-of-way document. (Decision at 23-26.)

Following issuance of the Decision, six parties appealed to this Board. The appeal filed by Charles Parotto, docketed as IBLA 96-301 has been dismissed. The five remaining appeals have been consolidated for review. Four of the Appellants petitioned for a stay of the implementation of the Decision pending appeal. By order dated June 3, 1996, this Board denied Appellants' petitions for a stay, thus giving effect to BLM's February 9, 1996, Decision. A right-of-way was issued effective August 7, 1997.

#### Arguments on Appeal

##### I.A. Statement of Reasons submitted by Herman.

Herman argues that the FEIS did not examine and consider a complete range of alternatives. According to Herman, all of the alternatives considered were merely variations of one alignment. Herman contends that there was no substantive consideration of real alternatives "such as the Pacific DC Intertie Tap Alternative or the Nevada Alternative." (Herman SOR at 1.) He also states that the FEIS should contain site specific routing information, and that the preliminary studies were not adequate. Herman urges reversal of the Decision because "[g]ranteeing the easement would cause significant and unmitigatable damage to the entire length of the easement, particularly to private property values." (Herman SOR at 2.) He also argues that BLM should have used designated right-of-way corridors to the fullest extent possible and that the environmental consequence of the Nevada option would be much less severe than the route selected.

1.B. BLM Answer to Herman Statement of Reasons.

In response, BLM notes that the arguments presented by Herman are similar in many ways to those presented by the Friends and NOPE (set out below), and its responses to those Appellants are applicable to Herman. In addition, BLM notes that the FEIS devoted more than 200 pages to its discussion of the reasons for eliminating most of the 50 alternatives it considered, and that the issue of the adequacy of the screening process was addressed in the February 9, 1996, Decision. Further, BLM notes that the FEIS was reviewed by the EPA and that agency found that the FEIS satisfactorily addressed its concerns. See EPA letter of Jan. 8, 1996.

In response to Herman's urging reversal because of the unmitigatable damage, BLM refers to the provision of the FEIS documenting those impacts and its determination that the public benefit outweighs the local impacts. Referring to its Answer to the Friends SOR, BLM restates its conclusion that the policy statements regarding the use of right-of-way corridors do not preclude going outside those corridors when confining the right-of-way to the corridor is not warranted.

2.A. Statement of Reasons Submitted by the Sun Valley General Improvement District.

The SVGID is a quasi-municipal corporation providing water, sewer, and garbage collection to customers within the boundaries of the district. The 345 kV transmission line will pass through the area served by SVGID. According to SVGID, the Project will result in long term environmental impacts not identified or addressed in the FEIS.

After giving a generalized statement of the purpose and scope of the Project, SVGID states that the FEIS did not contain information describing the incorporation of the existing segment of the transmission line between the North Valley Substation and Tracy as a part of the Project. The SVGID also asserts that the proposed Project will change the export capacity of the SPPCo transmission system, allowing transportation of power for sale to other systems, and change the way power is delivered across the system, resulting in the Project being a "superhighway" for transportation of power in and out of the SPPCo system.

According to SVGID this superhighway will carry wheeling loads which would fill the lines to capacity as power passes through the line from a non-SPPCo supplier to a non-SPPCo user at the other end of the line. It argues that this wheeling will result in the lines carrying a much larger quantity of power and this increased power load will have an adverse impact upon residents of Sun Valley and Sparks that has not been considered in the FEIS.

Recognizing that the Decision addressed this line load issue, SVGID alleges that BLM did not give an adequate full response to its concerns

when it concluded that the Project would actually reduce the load on existing lines based upon statements by a proponent of the Project because the scenario presented in the Decision is contradicted by earlier testimony.

The basis for this alleged failure is the fact that other scenarios are possible, and the one described by the company spokesman did not include wheeling loads. SVGID claims error because the FEIS did not consider a full range of operating scenarios when considering the impact of the power lines. Specifically, it alleges that the expansion of and variety of operating capacities will result in an "intensification of the electromagnetic field (EMF) produced." (SVGID SOR at 5.) It states that, as a result of this increased EMF, property and people in the vicinity of a line will be exposed to higher level emissions on a regular basis, and notes that the Sun Valley segment of the line has the highest population density in the path of the Project. According to SVGID, the greatest impact will be upon those living and working in structures along a line that was built in 1986, when setback requirements were less stringent. It argues that mitigating measures must be considered for the connecting lines not directly a part of the Project, and that without consideration of these measures, the FEIS is incomplete.

The concern expressed by SVGID goes to the cumulative effects of the Project based upon its conclusion that the addition of the line will change the way other lines in the area, constructed before the Project, will be utilized.

## 2.B. BLM Answer to the Sun Valley General Improvement District Statement of Reasons.

According to BLM, the SVGID appeal is a result of SVGID's basic misunderstanding of the nature of wheeling in an electric transmission system and a typographical error in the FEIS. It explains that wheeling does not involve the delivery of a specific "bundle of power" (BLM term) to the wheeling utility on one side of a system, transporting that bundle of power across the system and delivering it to the utility which then transports the same bundle to its users. It explains that wheeling power is like a bank dealing with money orders. When a party buys a money order and sends it to another and the receiving party goes to the bank and cashes the money order, the party cashing the money order does not get the same dollar bills that the party buying the money order gave to the bank. Giving a specific example, BLM states that:

If Bonneville Power Administration (BPA) sends 100 megawatts (mw) of power into the western side of the SPPCo system via the Alturas project for the benefit of Hamey Electric on the east side of the SPPCo system, SPPCo would not transmit that specific 100 mw across the existing Sun Valley line and into east Nevada for use by Hamey electric. Instead, SPPCo would (a) use BPA's 100 mw at the North Valley Road substation to serve the load on the western side of the system (Reno/Sparks/Tahoe); (b) reduce the amount of power flowing from the east side of the system

across the existing Sun Valley 345 kV line by 100 mw; and (c) provide Hamey Electric with 100 mw of power now available from sources on the eastern side of the SPPCo system (such as the Valmy power plant or the Idaho intertie).

(BLM Answer at 2.) It is further noted that this wheeling process was discussed in the FEIS at A-21, A-22, A-28, A-32, A-33 and in Parts E-5 through E-9 and had been addressed in detail in BLM's Decision in response to a letter Friends had sent to EPA. Reference is made to the EPA conclusion that the FEIS had satisfactorily addressed this issue.

Several references are made in the SVGID SOR to support its conclusion that the Project will result in a major transport of power to the Tracy facility. These statements are addressed and challenged in the Answer. The Answer explains that the studies SVGID relies on discuss the need for a power source independent of the Tracy facility, not a means of transporting power from that facility. Addressing testimony of the Chairman of the CPUC that SVGID cites in support of its allegation that the Project will cause additional power to flow through existing power lines in Sun Valley, BLM notes that nothing in this testimony supports a conclusion that there will be additional flow of power as a result of the Project. It notes that the existing 345 kV line was designed and built to carry 300 kV of power, and that SPPCo has no intent to increase the load on that line.

The typographical error in the FEIS can be found on page A-24 in the title of the second "bullet" narrative. This sentence reads: "Improved Reliability and Security to Customers East of the Tracy Substation." The intended language was: "Improved Reliability and Security to Customers West of the Tracy Substation."

In response to the allegation that a number of scenarios are possible, BLM notes that with any scenario the maximum capacity of the existing 345 kV line is 300 kV, and that by choosing a scenario that used 300 kV, it met the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1994), when preparing the FEIS.

In the "Additional Information" section of its Answer, BLM notes that the NPSC had approved the Project, and that a Compliance Order issued by that Commission on June 3, 1996, expresses no concern over the future operation of the existing Sun Valley 345 kV power lines, and finds the chosen alignment of the Project power line to be ecologically superior.

## 2.C. Sierra Pacific Power Company Answer to the Sun Valley General Improvement District Statement of Reasons.

In its Answer, SPPCo explains that the Project would clearly improve the reliability and security to electric power customers east of the Tracy substation, by providing a strong system source on the western side of the system and into the Reno/Lake Tahoe area, relieving the stressed condition.

Without the delivery capability of the Project, all of the power consumed in the Reno/Lake Tahoe area is delivered through the Tracy substation. Adding this second source to the Tracy substation would increase the security and reliability of power delivery in the area served by that substation. Responding to the concerns about increased flow, SPPCo states that there will be no increase in the operating voltage of the Tracy/North Valley Road 345 kV line, and the east to west flow in this line is expected to be reduced as a result of the interconnect at the North Valley substation.

Responding to the allegation that the line was over-designed to allow excess capacity for wheeling, SPPCo states that the capacity was designed to carry bulk transmission loads into its load center at Reno. It states that with completion of the Project, stress will be taken off of the present system and, except in system emergencies and until the demand grows, the power flows on the existing 345 kV lines will be less than before completion of the Project.

Disagreeing with the allegations that it ignored the question of exposure to radiation from the power lines, SPPCo states that the impacts of the line between Tracy and Valley Road on existing, planned, and future land use and populations were thoroughly studied. The proximity of existing residences was addressed in the FEIS, and this was one of the major reasons for rejecting the Nevada alternative.

#### 2.D. Sun Valley General Improvement District Reply to the Sierra Pacific Power Company Answer.

Again the SVGID repeats its concerns regarding the use of the proposed lines to wheel electrical energy to users outside the area. It questions the basis for the BLM and SPPCo projection of increased demand in the area. It also claims that certain of the environmental consequences are not addressed in the FEIS but are found only in the Decision document. After addressing issues set out in its pleadings, SVGID argues that fuller disclosure of the full range of impacts is necessary in order to allow the public to make a reasoned choice.

#### 3.A. Statement of Reasons Submitted by the Brazes.

The Brazes' SOR repeats allegations about alleged irregularities in proceedings before the CPUC and eminent domain proceedings by which the Tuscarora Gas Transmission Company (Tuscarora) obtained an easement for a natural gas pipeline and SPPCo was authorized to conduct environmental studies and make appraisals. The Brazes believe that the present case is related because Tuscarora is more than 50 percent owned by SPPCo's parent company, Sierra Pacific Resources. The Brazes do not claim that BLM participated in the asserted irregularities, but believe that BLM's role as lead agency in preparing the FEIS imposed an obligation to assure that the proceedings were conducted in accordance with state and Federal law.

The Brazes assert further that BLM somehow gave SPPCo authorization to go on their property. We will not consider these allegations. The Brazes fail to recognize that BLM's role as lead agency did not give BLM legal authority to control SPPCo's action on private property, or judicial or state administrative proceedings. See 40 C.F.R. § 1501.5. Even if we were to accept the asserted relation between BLM's Decision and the earlier proceedings, we have no authority to conduct an evidentiary hearing concerning the proceedings or grant relief.

The Brazes also argue that the Project should not go forward until it can be assured that the BPA can provide hydroelectric power. (SOR at 13.) They contend that the FEIS states SPPCo does not have a "firm commitment" from BPA and that it justifies the transmission line by stating that power could be provided from coal, gas, oil, or nuclear generation facilities constructed in the Pacific Northwest. (SOR at 14.) They state their opinion that the Project is speculative and that SPPCo's power needs could be met until definite sources of energy are identified by upgrades to its system (SOR at 14) and criticize SPPCo for attempting to defer or delay the upgrades. The Brazes argue that private landowners should not be affected and public lands burdened if power is to be generated from coal, gas, oil, or nuclear sources because it is financially and environmentally preferable to construct such plants near where the power will be used. (SOR at 14.)

The Brazes allege that the BLM conclusion that the proposed route is less susceptible to a natural occurrence that would destroy multiple power sources misrepresents the facts because, according to the Brazes, the Project route will cause the power lines to parallel a natural gas pipeline for 37 miles. They assert that if BLM wanted to it could design a route in the area of the Nevada option which would not run close to the Tracy generating plant or place two utility lines in close proximity. (SOR at 14.) Addressing the statement that construction of the power transmission facilities along the preferred route would cause less damage to archeological sites, the Brazes state that the FEIS has absolutely no documentation supporting that conclusion. (SOR at 17-18.)

3.B. BLM Answer to the Statement of Reasons Submitted by the Brazes.

In response to the Brazes' allegation that the Nevada option would be just as safe as the Project route, BLM admits that while the Project route parallels the natural gas pipeline for 37 miles, the Nevada option would result in having two major electric power lines running parallel for a total of 175 miles. Reference is also made to B-94 and B-95 of the FEIS where the reliability of the two routes are described and compared. Responding to the Brazes' contention that there is no support for the conclusion that construction and maintenance of the power transmission facilities along the preferred route would cause less damage to archeological sites, BLM notes that a 660-foot wide Class III cultural resource survey was conducted along the corridor and that the FEIS addressed the findings and impacts in Part C.4. (Answer at 2.)

#### 4.A. Statement of Reasons Submitted by Friends of Peavine.

In its SOR on appeal, the Friends of Peavine presents a number of arguments that fall under three general headings. The first group of arguments can be stated, generally, as its contention that the FEIS was inadequate because it did not develop an adequate base of information to allow an appropriate analysis of a reasonable range of alternatives. The second general heading is that BLM was not sufficiently responsive to comments submitted regarding its draft environmental assessment concerning review and analysis of alternative points of interconnection into SPPCo's system in the Reno-Sparks area. The third general heading is its contention that the assessment of mitigating measures to reduce the level of impact in areas of conflicting land use was inadequate.

Friends states its belief that the FEIS is inadequate because the text does not address what it considers to be an adequate range of alternatives, or a balanced assessment of the issues. It is especially critical of the manner in which the Nevada alternative was addressed, expressing the opinion that the information stated in the FEIS was insufficient to form the basis for rejecting that alternative. Friends argues that statements made at meetings held in August 1994 were the basis for rejecting this alternative, but that the comments made in those meetings did not form a sufficient basis for rejecting that alternative.

Noting that the FEIS sets out negative impacts of the Nevada route, Friends criticizes the FEIS for what it considers a lack of comment regarding what Friends considers to be lesser land use and visual impact. After recognizing that there would be a greater impact on residences in the town of Alturas if the Nevada route was chosen, Friends states its opinion that the cumulative impact on residences near the preferred route will be greater than the cumulative impact of the Nevada route because there is a greater impact on private property in Sierra, Lassen, and Washoe Counties. Friends is critical of the discussion of the impact on wildlife and hydrological resources, claiming that the Nevada route, which it prefers, will have a lower impact. Friends considers the cultural and historic impacts of the two routes to be comparable, thus conceding that the Nevada route cannot be eliminated on this basis.

The next area addressed in the Friends SOR is its contention that the discussion of the utility corridor from Valmy to Reno is inadequate. Pointing to the comment in the FEIS that the utility corridor in this area was established before NEPA, Friends contends that if the Nevada option was adopted, this corridor would materially reduce the adverse visual impact while meeting BLM's guidelines encouraging the use of utility corridors.

Friends next addresses the need to connect the Proposed Project to existing power lines at the North Valley substation. Friends states that connecting with the Tracy to Silver Lake power transmission line is a viable alternative to the use of the North Valley substation.

Friends deems the response to comments on the Draft EIS to be inadequate regarding the connection with the Mira Loma substation. It notes that both the Mira Loma and the North Valley substation are west of Tracy and that the FEIS considered only the Tracy and Fort Churchill substations as possible terminus points. It argues that terminating the line at the Mira Loma substation would achieve the same goals and avoid the urban environment.

Addressing the contention that the application of mitigation measures was not adequate, Friends contends that the impact of the transmission facilities would be greatly reduced if power lines were buried, especially in the area of the Peavine mountains. The primary benefits of buried power lines are the reduction of adverse visual impacts and reduction of EMF exposure. Friends alleges that the discussion in the FEIS of the three methods for burying underground 345 kV cables was inadequate. Friends states that there is ample information from more experienced and more credible sources regarding the viability of underground power lines. Admitting that the cost of construction for underground cables was 3 to 12 times that for overhead cables, Friends urges that the much cheaper underground 120 kV line should have been considered. It further argues that there was no discussion of the flexibility in route selection that would result from usage of underground cables, or other benefits of underground lines, such as more reliable operation in the winter, increased safety by avoiding collisions with aircraft, and smaller setbacks for residential construction.

4.B. BLM Answer to the Statement of Reasons Submitted by Friends of Peavine.

In response, BLM first outlines its alternative selection process, which we have also briefly outlined above. Noting that the FEIS devotes approximately 200 pages to a discussion of the 50 alternatives initially considered (FEIS, Part B.3), BLM states that it was not intended that the same effort would be afforded each of the 50 alternatives. The initial cut was based upon a comparison of the 50 alternatives to reduce that number to a more workable number, applying the criteria that the alternatives must "at least offer the potential for providing some environmental benefit over the Proposed Project," with full field surveys and detailed analysis being undertaken on the alternatives that survived that cut.

The BLM Answer states that when comparing the Nevada option and the selected route one must keep in mind the methodology for selecting the alternatives to be subjected to detailed field examination and analysis. It states that when Friends compares the selected route to the Nevada option, and criticizes BLM for not having made the detailed analysis of the Nevada option, Friends takes the discussion of the Nevada option out of context. According to BLM, the Nevada option did not survive the initial cut because the power line would be 165 miles long in the selected option, the Nevada option would have an adverse impact on an additional 60 miles.

of private and public land, and that option would have a material adverse impact on fully developed residential neighborhoods near its North Valley Road substation terminus. (Answer at 3.) The Answer points to the adverse impacts of the Nevada option identified in early meetings with other agencies and the concerned public as ample evidence that the Nevada option had no potential to provide any environmental advantage over the proposed Project.

In response to the arguments regarding the use of existing utility corridors, BLM iterates the comments made in its Decision with respect to its policy regarding use of utility corridors and notes that Friends points to the existence of a power line in a portion of the Nevada option route, but ignores the existence of a number of other physical disturbances along the proposed route, including power lines, roads, and railroads. It concludes that the cumulative effects along these two sections are comparable.

Responding to the Friends contention that it is not necessary to tie the power line to the North Valley substation, BLM notes that the tie suggested by Friends would not meet one of the primary stated reasons for undertaking the proposed Project; i.e., to improve system security for users in the northwest section of Reno, Nevada, and provide a power intertie to the Lassen Municipal Utility District power system, thereby increasing the reliability of that system.

In response to the allegations regarding the use of the Mira Loma substation, BLM notes that the two main electric power sources for the Reno/ Sparks/Tahoe area are located on the eastern side of the system. Both follow the same general westerly path, and they have suffered simultaneous outages during winter storms. Noting that, while the proposed terminus is close to the Mira Loma on an east-west axis, the Mira Loma substation lies well to the south of the West Valley substation. For this reason BLM concludes that running the line to the Mira Loma substation would not achieve the Project objectives of improving system security for users in the northwest section of Reno and providing a power intertie to the Lassen Municipal Utility District power system, thereby increasing the reliability of that system. Additionally, BLM notes that if the projected population growth in the northerly side of Reno and Sparks is correct, the West Valley substation will be an important source for power supplied to the new residential areas. On the other hand, if the purposed Project terminated at the Mira Loma substation, an additional line would have to be built through existing residential areas to serve the new residential areas.

In response to Friends suggested underground construction, BLM argues that it considered underground construction, and that its discussion of underground construction can be found in the discussion of the Project as a whole. According to BLM, that discussion was applied to the Project as a whole because the visual and other impacts in the areas of concern that the Friends focused upon can be found throughout the full length of the power line. It points to the discussion of underground lines and the

conclusion that "[b]ecause of the potential complications and costs, and because of the adverse impacts of undergrounding, an underground project was not considered a viable alternative and was eliminated from further consideration." (FEIS at B-86.)

Responding to Friends' contention that BLM should have used more credible and experienced sources for its determination, BLM notes that Friends has submitted nothing to support this opinion.

4.C. Friends of Peavine Response to BLM Answer.

After stating that it had participated in every venue afforded the public and amassed a large volume of documents, Friends addresses the issue of the reliability of the system. Friends separates the issue of reliability into two subcategories. The first is system reliability and the second is the reliability of specific facilities.

Friends notes that one of the occurrences cited by BLM in support of the chosen route was a simultaneous outage of two parallel lines during winter storms. Friends explains that, following that outage in 1990, the system was upgraded, and the problem was not mentioned in a hearing held in 1993. On the other hand, Friends refers to a July 2, 1996, reliability problem that effected 14 states as a result of interstate transmission grid failure. A number of other sources of energy available to the area are noted and Friends concludes that there is an adequate ability to seek outside energy in cases of emergency without the Project.

Friends correctly notes that benefits such as the ability to import power from another source and reliability must be weighed against the benefits that may be realized from other factors, such as the advantages of building new facilities in existing corridors. It argues, however, that there is nothing in either the FEIS or the Decision that indicates that use of the corridors would not be acceptable, and that past practice in the industry would lead to the opposite conclusion. In addition, it argues that the examples of catastrophic occurrences used to support the BLM conclusion are very unlikely, with the exception of winter storms, which have been recognized and minimized without requiring the Project. Friends states its opinion that to be consistent with BLM's stated land use policy that corridors should be used whenever possible, there must be more documentation of the need for variance than has been presented in the record of this case. Friends argues that to vary from the policy, BLM must show technological reasons that would prohibit the use of an existing corridor.

Friends urges a finding that the FEIS is not sufficient because a more site specific examination of the Nevada option is needed, and that once the power line is constructed the right-of-way will be a utility corridor.

Friends next directs its arguments to the issue of buried power lines. It states that BLM rejected the use of buried power lines on a

Project wide basis, but should have addressed this issue in the FEIS and the Decision on a site specific basis as well, and that its failure to do so renders the determination conclusory. It specifically argues that the Rancho San Raphael Regional Park area will sustain unmitigatable damages if the power line is not underground in that area. Citing articles stating that going underground is becoming cheaper, and more practical, Friends urges a finding that the FEIS failed to adequately address this issue.

4.D. BLM Reply to the Response Submitted by Friends of Peavine.

In response to the Friends arguments BLM states that the primary parties responsible for making determinations regarding electrical need, supply, and reliability are the various State public utility regulatory authorities, and in cases like the one before us, BLM relies on those agencies to address supply, demand, and reliability issues. It explains that CPUC was the lead State agency in the preparation of the FEIS, and that agency has approved the Project. Noting that NPSC is the similar State agency having jurisdiction in Nevada, BLM states that the adequacy of the FEIS and Decision and the issues raised by Friends had been considered by that Commission. On June 13, 1996, the NPSC issued a Compliance Order finding that a need for the Project existed, that the Project is in the public interest, that none of the Nevada alternatives are superior to the Project, and that the Project should terminate at the North Valley Road substation.

Turning to the corridor issue, BLM states its disagreement with the Friends interpretation of the BLM policy statement regarding use of corridors, noting that, although the use of corridors is encouraged, the choice of the location is discretionary. It states its opinion that the Decision adequately set out the reason that confining the route to existing utility corridors was not appropriate in this case. It also takes exception to the Friends argument that the construction of the power transmission lines will, in and of itself, create an utility corridor, citing the provisions of 43 C.F.R. §§ 2806.1 and 2802.4(d) as supporting its conclusion.

In response to the Friends contention that BLM did not adequately consider the site specific use of underground lines to mitigate the impact of the Project, BLM quotes the statement in the NPSC Compliance Order that "underground construction is not economically feasible and would generate offsetting adverse environmental impacts." (NPSC Compliance Order at 14 (Finding 46).) It urges that this finding indicates the reasonableness of the BLM finding on this issue.

4.E. Further Responding Submittal by Friends of Peavine.

Friends has filed a further pleading in response to arguments made by BLM. It first notes that NPSC did not issue a permit because no determination has been made that the line will conform with all state and

local laws. Friends contends that the BLM conclusion that the NPSC Compliance Order supported BLM's conclusion is incorrect because Friends did not appear before NPSC and present its case to that Commission, and NPSC is not required to rigorously examine alternatives.

Friends concedes that BLM designation of a corridor is a discretionary determination, but insists that BLM has not undertaken the in depth study of the feasibility of placing the power line in an existing corridor necessary for BLM to carry out BLM's stated corridor policy. Commenting further on the advantages of network interties, Friends states its opinion that, considering the problems it alleges regarding network failures, having an intertie with the SPPCo system may be a disadvantage, rather than an advantage.

Commenting further on the underground mitigation issues, Friends states that the Truckee Meadows Regional Planning Agency staff has concluded that the lines must be placed underground to conform with regional planning laws and goals if routed as proposed.

#### 4.F. BLM Response to the Friends of Peavine Further Responding Submittal.

In response, BLM states that it stands by its analysis and disagrees with the Friends response. It repeats its belief that the FEIS is adequate and acceptable. Noting Friends' comments regarding the actions by other agencies, BLM states that the issues raised before those agencies may be addressed by those agencies without overturning the BLM Decision or rendering the FEIS inadequate for its intended purpose.

#### 5.A. Statement of Reasons Submitted by Neighbors Opposed to Power Encroachment.

NOPE contends that BLM did not properly study, address, or mitigate the impact on BLM recreational areas. Specifically it contends that three BLM mountain bike trails were not properly addressed, in spite of public concern and comment. Noting that the three bike trails were briefly mentioned in the FEIS, NOPE states that the FEIS did not address the impact on those trails at all.

Pointing to the discussion of the adverse effect of the proposed Project on Daggert Canyon found at C.8-35 of the FEIS, NOPE argues that BLM took no steps to mitigate the adverse environmental effect of the proposed Project in Daggert Canyon, like those adopted for the Hallelujah Junction area. Noting that the box canyon at the western head of Daggert canyon is the terminus for BLM's Daggert Canyon mountain bike trail, NOPE objects to BLM's failure to study a slightly more northerly route, which, according to NOPE, would greatly reduce or eliminate the Project from the view shed of the box canyon. It objects to BLM's dismissal of the proposed more northerly route because a similar visual impact would occur at that location. It is NOPE's opinion that BLM's route choice in this area reflects BLM's

disregard of public input and lack of motivation to study alternatives. According to NOPE, the northerly alignment would reduce the visual impact and impacts in a "primary recreation area" and on raptors and other birds. It also believes that the FEIS merely examines mitigation of the impacts resulting from running the line along the right-of-way chosen by SPPCo, and does not examine mitigation that would result from running the line along routes other than the route chosen by SPPCo.

NOPE contends that in some areas the mitigation measures are not yet in place, and the FEIS is therefore premature. It specifically points to what it considers to be BLM acceptance of the impacts on the Infernal Caverns area without having any mitigating measures in place. It argues that mitigation in the form of avoidance or off site compensation were not considered.

It claims error based upon BLM's having adopted mitigating measures in the Lassen Red Rock area that could have been adopted in the Alturas area, stating the opinion that the negative environmental impact upon the citizens of the Alturas area far outweighs the benefit anyone in that area will receive. It specifically recommends that BLM create an endowment fund to fund a youth park in Alturas to compensate the youth of that area "who will never be able to enjoy the open views which constitute the very reason why so many of us are here today." (SOR at 3.)

NOPE argues that BLM erred because the FEIS did not address the cumulative effects of the proposed Project and a police firearms practice area south of the Alturas substation proposed just before the FEIS was issued. It argues that the benefits that BLM sets out in the FEIS are benefits to the power company and not benefits to the public.

After quoting the conclusion that the Project is in the public interest, NOPE states its opinion that the public is overwhelmingly opposed to the Project. It argues that the BLM's statement that avoidance of the loss of two lines in a single major occurrence was justification for the Project is not a valid argument because the two existing lines BLM refers to serve two different areas, and the probability of this occurring is extremely remote.

NOPE considers the BLM statement that the construction of the power line will not constitute a designation of a utility corridor is meaningless, as BLM has already approved use of the area for a fiber optics line.

5.B. BLM Answer to the Statement of Reasons Submitted by Neighbors Opposed to Power Encroachment.

An Answer to NOPE's SOR was filed by BLM. Responding to NOPE's allegation that BLM did not properly study, address, or mitigate the impact on recreation areas, BLM cites sections of the FEIS addressing the impact on

the mountain bike trails mentioned in NOPE's SOR. It notes that the mountain bike trails are on existing roads, and that although BLM has erected signs marking the trails, it does not consider those trails to be "major BLM recreation resources such as the developed BLM Fort Sage Mountain Off Road Vehicle Area." (BLM Answer at 2.) BLM states that because it did not deem these mountain bike trails to be a major recreation resource, it addressed the impact in its discussion of the impacts on open space recreation (FEIS, Sec. 8) and in the visual impact section (FEIS, C.13). BLM also notes that the Alturas Resource Area Environmental Analysis prepared in conjunction with the establishment of mountain bike trails (EA #CA-027-92-12, Aug. 24, 1994) did not mention the pending SPPCo right-of-way application as being a significant impact on the proposed trails. Referring to that Resource Area Manager's extensive participation in the preparation of both the EA and the FEIS, BLM argues that the power lines were not considered to be a material adverse impact on the mountain bike trails.

Turning to NOPE's contention that the FEIS did not adequately address the impacts on the Daggert Canyon area, BLM states that, contrary to NOPE's allegations, it did respond to NOPE's concerns. It states that, in fact, BLM adopted the route through this area that was suggested by NOPE, and that a second alternate route that would have completely avoided Daggert Canyon was also examined and rejected because that route was not found to be environmentally preferable.

Responding to the allegation that it did not appropriately study alternatives to the proposed Project, BLM states that it has selected a reasonable range of alternatives for full analysis in conformance with the requirements of NEPA and the California Environmental Quality Act. Outlining the scope and method of screening it undertook to reduce the initial 50 alternatives to a more manageable number before doing an in depth examination, BLM states its opinion that the screening process, FEIS, and Decision adequately met all of the requirements of both acts related to consideration of reasonable alternatives.

Addressing NOPE's contention that BLM did not institute any mitigating measures in the Infernal Caverns area, BLM states that NOPE "is in error." It notes that in the Decision BLM specifically incorporated the mitigating measures and enforcement processes developed during the course of the environmental analysis process. It refers to mitigating measure C-7, found on page C.4-38 of the FEIS as being specifically applicable to the Infernal Caverns area.

In response to NOPE's demand that an endowment fund be established to compensate the residents of Modoc county for their loss of open views, BLM recognizes that the loss is both significant and regrettable, and that fact was recognized and stated in the FEIS at Part C.13. It states that the establishment of such a fund for loss of a view is not practical, and with the exception of legally protected areas such as National Parks, the enjoyment of open views is not guaranteed by state or Federal law.

Turning to NOPE's discussion of the cumulative impact of the police firing range and the proposed Project, BLM states that it received no information regarding the County's intent to build the firing range during the comment period, and that the County has not filed any application for the use of Federal lands for that purpose. It reports that the County is now looking at an entirely different location for the firing range, and concludes that BLM is not required to consider hypothetical proposed uses a county organization may desire to undertake when preparing an environmental impact statement. It further notes that if the County were to file an application for use of the land for a firing range, the cumulative impact of the Project and the County use would be considered during the course of the environmental assessment of the consequences of issuing a right-of-way or similar grant to the County.

In response to the allegation that the benefit is to the utility companies and not the public, BLM states that there is no requirement that the benefits to the public be direct. It states that the benefit to the utility system and the utility companies will also inure to the benefit of the public that uses the power delivered by those systems and companies. Referring to the CPUC conclusion that the Project will benefit those served by SPPCo, BLM reiterates the conclusion stated in the FEIS and the Decision that, on balance, the benefit to the public outweighs the adverse impact on those in the general areas of the power lines.

Commenting on NOPE's conclusion that BLM was incorrect when concluding that it was important to place the power lines in a manner to avoid having one occurrence damage two adjacent major power lines, BLM states that simultaneous loss of both the power delivered through the 1,000 kV line and the power delivered by the Project would result in the immediate loss of power in the Reno/Sparks and the Los Angeles metropolitan areas, and would have an immediate and severe negative effect on the entire western power grid. It cites CPUC interim orders, and the documentation of those impacts at pages A-8 through A-30 and A-30 through A-46 of the FEIS in support of this conclusion.

The statement that BLM has already approved a second project, consisting of a fiber optic transmission line to parallel the Project within the right-of-way, rendering the right-of-way a utility corridor is misleading, according to BLM. It explains that, although it is true that there will be a fiber optic line constructed on the same route as the Project, this line will be an interior part of the shield wire for the 345 kV power line, and is intended for SPPCo interior communications, with excess capacity being sold to others. Only one right-of-way would be issued to SPPCo, and the fiber optic line is considered a part of the Project.

5.C. Neighbors Opposed to Power Encroachment Response to the BLM Answer.

In its response to BLM's Answer, NOPE argues that the visual analysis in the FEIS is meaningless and fails to address the bike routes properly.

According to NOPE, the Daggert canyon bike route is a significant public resource, and the failure to mention the impact of the proposed power lines in the EA for the Daggert canyon is not a basis for concluding that the lines will not significantly impact use of the bike route.

The Answer's statement regarding the basis for the realignment of the power line in the north end of Daggert Canyon is questioned, with NOPE arguing that the only reason for that realignment was the Forest Service insistence. It also questions whether the proposed mitigation called for in the Infernal Caverns area can be carried out.

The BLM decision to approve the route for the power line is questioned with NOPE calling BLM's concern regarding the possibility of major power outages if the line was constructed in a utility corridor speculative, unscientific, and erroneous.

Replying to the BLM Answer to NOPE arguments regarding the installation of a fiber optic line, NOPE states that SPPCo had stated its intent to lease its excess fiber optic capacity to telecommunication companies, that the capacity of the line will be several times that needed by SPPCo, and that there are more than one use planned for the route, making it a communication corridor used by many companies.

#### Applicable Law

[1] Many of the Appellants' arguments can be summarized as being contentions that BLM failed to comply with NEPA when preparing the FEIS and that BLM's determination regarding the route the Project would take did not meet NEPA standards because other alternatives would result in less environmental impact.

The courts and this Board have recognized that NEPA is primarily a procedural statute designed "to insure a fully informed and well-considered decision." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). It requires that an agency take a "hard look" at the environmental effects of any major Federal action. Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976); Independent Petroleum Association, et al., 133 IBLA 65 (1995).

In Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350-51 (1989), the court stated:

[I]t is now well settled that NEPA does not mandate particular results, but simply prescribes the necessary process. \* \* \* If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs. \* \* \* Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed—rather than unwise—agency action.

The process typically begins with an environmental assessment in which the Agency considers the proposed action and determines whether that action will have a significant impact on the quality of the human environment. If, after a careful review of environmental problems and identification of areas of environmental concern, the Agency determines that no significant impacts will occur, the action can be undertaken without undertaking further environmental impact analysis. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 6, 12 (1991); G. Jon & Katherine M. Roush, 112 IBLA 293, 297 (1990); Hoosier Environmental Council, 109 IBLA 160, 172-73 (1989); Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 174 (1984). However, if the determination is that the proposed action will have a significant impact on the quality of the human environment, a formal environmental impact statement must be prepared. In this case, it was deemed necessary to prepare a formal environmental impact statement.

[2] Factors considered relevant on Judicial or Board review of an environmental impact statement include whether the environmental impact statement examines the five subjects explicitly listed in NEPA, <sup>5/</sup> whether the environmental impact statement constitutes a good faith compliance with NEPA, and whether the discussion of the five NEPA subjects is reasonable. Johnston v. Davis, 698 F.2d 1088, 1091 (10th Cir. 1983); The Sierra Club et al., 104 IBLA 76, 83 (1988). The data and methodology underlying the environmental impact statement may be examined for the "purpose of ensuring that the document is a good faith, objective, and reasonable explanation of environmental consequences that responds to the five topics of NEPA's concern." Id.

[3] Appellants contend that BLM failed to consider a sufficient range of alternatives. NEPA requires that an environmental impact statement consider "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii) (1994). Council on Environmental Quality regulations provide that Federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Further, agencies shall "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a). See North Slope Borough v. Andrus, 486 F. Supp. 326, 330 (D. D.C. 1979); California v. Berland, 483 F. Supp. 465, 488 (E.D. Cal. 1980).

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<sup>5/</sup> NEPA describes the five subjects as:

- "(i) the environmental impact of the proposed action,
- "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- "(iii) alternatives to the proposed action,
- "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

NEPA, § 102(2)(C), 42 U.S.C. § 4332(2)(C) (1982).

Agencies need not discuss alternatives that would not satisfy the purposes of the proposed action or that are remote and speculative. Headwaters, Inc. v. BLM, Medford District, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. Hunt, 749 F.2d 1457, 1467 (10th Cir. 1984); Roosevelt Campobello International Park Commission v. U.S. Environmental Protection Agency, 684 F.2d 1041, 1047 (1st Cir. 1982). In a leading case on the requirement to discuss alternatives, Judge Leventhal stated that "the alternatives required for discussion are those reasonably available \* \* \*." Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972). "In the last analysis, the requirement as to alternatives is subject to a construction of reasonableness \* \* \*." Id. at 837. In State of Alaska v. Andrus, 580 F.2d 465, 473-74 (D.C. Cir.), vacated in part on other grounds sub nom. Western Oil & Gas Ass'n v. Alaska, 439 U.S. 922 (1978), the court stated that when a responsible decisionmaker weighs the alternatives and decides that, based on available information it is prudent to proceed with a project, "the courts may not substitute their judgment for that of the decisionmaker and insist that the project be delayed while more information is sought" (citing Kleppe v. Sierra Club, 427 U.S. 390 n.21 (1976)).

[4] Recognizing that an environmental impact statement necessarily contains evaluations that are subjective and judgmental, the Board has held that BLM is obligated to develop a reviewable record reflecting consideration of the factors relevant to its decision. The Sierra Club et al., supra, at 84; Cascade Holistic Economic Consultants, 60 IBLA 293, 301 (1981). The Board will give considerable deference to decisions reached by the environmental impact statement process even if reasonable people could differ over the conclusions drawn. Id. Absent compelling reasons for modification or reversal, such a decision will be affirmed. Mere differences of opinion and an attempt to substitute Appellants' judgment for that of the decisionmaker will not suffice to reverse a decision. Id.

[5] Appellants contend that the choice of right-of-way routes violates the requirement under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-82 (1994), that right-of-way corridors must be utilized. Section 503 of FLPMA, 43 U.S.C. § 1763 (1994), the authority for rights-of-way such as roads and overhead transmission lines refers to the designation of right-of-way corridors. Departmental regulation 43 C.F.R. § 2800.0-5(l) defines a "Designated right-of-way corridor" as

a parcel of land either linear or areal in character that has been identified by law, by Secretarial Order, through the land use planning process or by other management decision as being a preferred location for existing and future right-of-way grants and suitable to accommodate more than 1 type of right-of-way or 1 or more rights-of-way which are similar, identical, or compatible.

The provisions of 43 C.F.R. § 2806.1 specifically provide that "[t]he designation of corridors shall not preclude the granting of separate rights-of-way over, upon, through, or under the public lands where the authorized officer determines that confinement to a corridor is not appropriate."

The record supports a finding that the Nevada alternative is not a "practical" alternative, and the conclusion that confinement of the right-of-way now under consideration to the Nevada alternative is not appropriate. The Nevada alternative would require construction of up to an additional 60 miles of 345 kV power line and have an adverse impact on an additional 60 miles of private and public land. The Nevada route would also preclude the opportunity to improve system reliability for the Lassen Municipal Utility District. The proximity of existing residences was one of the major reasons for rejecting the Nevada alternative. The Nevada option would result in having two major electric power lines running parallel for a total of 175 miles. The Decision noted that most of the selected route was along transportation and utility corridors, following existing rights-of-way for a highway, railroads, telephone and power lines, and county roads. <sup>6/</sup> Although the use of corridors is encouraged, the choice of the location is clearly discretionary. Appellants have not shown that the BLM choice of the preferred route was violative of the relevant right-of-way authority under FLPMA.

### Conclusion

We have reviewed the arguments, and for the sake of illustrating the nature of those arguments, we have set them out above in some detail. On analysis, we find them to be statements of a difference of opinion regarding the adequacy of the discussion set out in the FEIS and the choice of right-of-way alignment. There is ample evidence that BLM has compiled a reviewable record setting out the reasonably anticipated environmental impact of the Project, has adequately set out and analyzed the adverse environmental effects which cannot be avoided should the Project be implemented, has considered and reasonably analyzed reasonable alternatives to the proposed Project, has adequately addressed the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and has set out and analyzed irreversible and irretrievable commitments of resources which would be involved if the Project is implemented. We therefore conclude that Appellants have failed to establish that either the FEIS or BLM's Decision to approve the right-of-way violates NEPA. Further, as noted above, we find that the selection of the route described in the Decision was within the discretionary authority of the Secretary granted by FLPMA.

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<sup>6/</sup> 43 C.F.R. § 2800.0-5(n) defines "Transportation and utility corridor" as "a parcel of land, without fixed limits or boundaries, that is being used as the location for 1 or more transportation or utility right-of-way [sic]."

Without further belaboring this Decision with additional references to and discussion of the parties' contentions regarding errors of fact and law, except to the extent they have been expressly or impliedly addressed in this Decision, they are rejected on the ground that they are, in whole or in part, contrary to the facts and law or are immaterial. National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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R.W. Mullen  
Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge