June 28, 2010

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

The Honorable Jeff Bingaman
United States Senate
703 Hart Senate Office Building
Washington, DC 20510-3102

Dear Senator Bingaman:

As Chairman of the U.S. Senate Committee on Energy and Natural Resources, the Middle Rio Grande Conservancy District ("District") Board wanted to bring to your attention the District's significant concerns with two proposed corridors for the Sun Zia Southwest Transmission Project in Arizona and New Mexico ("Project"). It is our hope that you will lend your support for one of the alternate corridors proposed along White Sands Missile Range ("WSMR").

We are very concerned that the corridors proposed for the project near San Antonio and Belen would have a deleterious effect on District operations, its customers, and the wildlife along the Rio Grande. A copy of the District's full comments on the Project prepared as part of the "scoping" process for the preparation of the Environmental Impact Statement ("EIS") on the proposed rights-of-way for the Project near San Antonio is attached hereto as Exhibit "A". Below is summary of the District concerns. Since the San Antonio right of way was proposed, the Project proponents have proposed a corridor near Belen which, from the District's perspective, is also great cause for concern.

The District provides irrigation water to nearly 12,000 constituents – from the outflow of Cochiti Reservoir to the north boundary of Bosque del Apache National Wildlife Refuge ("Bosque del Apache"). The District spans approximately 150 river miles and all three New Mexico Congressional Districts. As you are well aware, critical habitat for two endangered species is located within the District boundaries– the Rio Grande Silvery Minnow and the Southwestern willow flycatcher. The District is also an important fly zone for numerous migratory bird species, including the Sandhill Cranes, Snow Geese, Ross Geese, Bald Eagles, Golden Eagles, Great Blue Herons, and many other species. Many of these birds rest on private property and the many wildlife sanctuaries along the Rio Grande including Bosque del Apache, Sevilleta National Wildlife Refuge, Ladd S. Gordon Waterfowl Complex (Belen WFMA, Bernardo WFMA, Casa Colorada WFMA, and La Joya WFMA), and Whitfield Wildlife Conservation Area.

The Project proponents have proposed two primary grants of right-of-way for the Project that are of great concern to the District. The first would require a power line easement 1,000 feet wide in the San Antonio area, immediately north of Bosque del Apache and the other would be near Belen. The District is concerned that either of these rights-of-way would disrupt agricultural production and private property ownership within the 1,000-foot right-of-way by bisecting the bosque, potentially damage the very sensitive endangered species' habitat, and disturb the migration of the numerous species traveling along the Rio Grande fly zone. As I'm sure you are aware, the Belen and San Antonio regions are economically depressed and taking more land out of production would further add to the economic hardships facing these communities. Furthermore, a host of evidence on the subject has created the perception that the Electric and Magnetic Fields ("EMFs") produced by power lines may contribute to various health problems including childhood leukemia, adult

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leukemia, brain cancer, miscarriage, and ALS. Because of this perception, exposing individuals along the Rio Grande to these potential health hazards will lower value of property in proximity to these power lines.

In order to avoid the host of problems associated with the San Antonio and Belen corridors proposed for the Project, the District is urging the consideration of one of several alternate routes, and respectfully requests that you join the District in this undertaking. The first alternate route would avoid bisecting District lands by crossing the Rio Grande near Derry, New Mexico, which is located south of Elephant Butte Reservoir and travelling east to near the western boundary of WSMR and then due north along the western boundary of WSMR and ending in Bingham, NM. Another alternate route travels through the extended area of the WSMR, which already has alternative public uses beyond national defense. We believe that either of these routes are by far the most preferable among the available alternatives.

It is in our constituents' best interests for public lands such as the WSMR to be used for the public purpose of transmitting electricity for the benefit of the public at large. This natural synergy should be exercised in this case. The principle that public property be used to advance a public purpose is particularly true where, as here, the less attractive alternative would result in placing a public power line over the private property of individuals who receive no corresponding benefit.

We know you promote the principle of protection of private property and share our concern with avoiding any negative socioeconomic, environmental, and human health effects that may result from the proposed rights-of-way for the project where public land is available to serve that same purpose. Thank you in advance for your consideration of this request and we look forward to your response.

Sincerely,

Janet Jarratt
Chair
MRGCD Board of Directors

JJ/eb
Enclosure

COMMENTS

OF THE

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

Scoping Comments on SunZia Southwest Transmission Project in Arizona and New Mexico

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Bureau of Land Management
&
SunZia Southwest Transmission Project

August 28, 2009

Middle Rio Grande Conservancy District
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To: Bureau of Land Management
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SunZia Transmission Line Project
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Santa Fe, NM 87502-0115
505-438-7424
NMSunZiaProject@blm.gov

To: SunZia Southwest Transmission Project
Attn: Cindy Bailey
c/o EPG, Inc.
4141 North 32nd Street, Suite 102
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602-808-2004
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RE: Scoping Comments on SunZia Southwest Transmission Project in Arizona and New Mexico

Following are Comments of the Board of Directors of the Middle Rio Grande Conservancy District ("MRGCD") to the Bureau of Land Management during the "scoping" process for the preparation of an Environmental Impact Statement on the proposed grant of a right-of-way for the SunZia Southwest Transmission Project in Arizona and New Mexico.

The MRGCD Board of Directors appreciates the extended opportunity afforded by the Bureau of Land Management ("BLM") to offer input during the NEPA scoping process to help identify issues and alternatives that need to be addressed in its Environmental Impact Statement ("EIS") for the proposed SunZia Southwest Transmission Project in Arizona and New Mexico ("SunZia Transmission Project"). Our comments include potential environmental, natural resource, public health and socioeconomic impacts that can be anticipated to affect MRGCD lands and irrigation works, and District constituents and irrigators. The Middle Rio Grande Conservancy District ("MRGCD" or "District") is a political subdivision of the State of New Mexico, charged by statutory mandate with promoting agriculture within its boundaries, which extend along the Rio Grande from Cochiti Dam in the north to near Elephant Butte Reservoir in the south.

The MRGCD runs from north to south approximately 160 river miles with the Rio Grande at its center. The farmland extends between the mesas on each side. Adjacent to the river is one of the largest un-broken cottonwood and willow forests in the United States. Within this bosque are found wildlife and bird and fish species more specifically described below. It is the contiguity of that bosque forest that forms the central core of the ecosystem. The MRGCD also contains within its boundaries numerous Spanish and Mexican land grants and ancient acequia systems dating back hundreds of years. A particularly historic and unique area is the San Antonio area, where farmers have irrigated for centuries—a unique agricultural oasis south of the town of Socorro—literally a place of hope and water in a vast high mesa desert. The proposed parallel powerline easement discussed below will have an effective width of 1000 feet, when one considers there is no realistic possibility of any functional value between the two sets of lines. It is of great concern to the MRGCD that this easement would carve a 1000-foot wide strip and bisect the bosque forest, the agricultural productive lands and the cultural center of this region. These facts raise the question of whether in this time of re-thinking our methods for generation and distribution of energy, it would be useful to compare the value of localized energy production using clean technologies and smaller interlocking grids with the traditional methods of massive energy production with substantial localized

impacts and multiple miles of transmission lines affecting thousands of acres. For this reason, initially the Board would request that you consider this global issue first in making this review.

As noted above, the current Proposed Route location of the SunZia Transmission Project, as it appears on the BLM's "Land Ownership and Jurisdiction" map for the Project, would traverse MRGCD lands near San Antonio, New Mexico. The attendant consequences are described generally above, and more specifically below. This map also shows Alternate Routes for the Project, one of which avoids MRGCD lands by crossing the Rio Grande near Derry, south of Elephant Butte Reservoir, and proceeding east to near the western boundary of White Sands Missile Range ("WSMR"), then due north outside this western boundary. Another Alternate Route travels through the extended area of the WSMR, which has already incorporated alternative uses beyond national defense. These comments suggest that an Alternative Route should be followed to avoid the substantial impacts on the San Antonio area.

Siting and Eminent Domain Authority

The MRGCD is concerned that the right-of-way granted to SunZia Transmission, LLC could entail the exercise of federal eminent domain power, so that title to MRGCD or its constituents' lands or easements could be effectively condemned or otherwise taken by the federal government or the right-of-way grantee for this project. In the SunZia Transmission Project description in its public notice (74 Fed. Reg. 25,764), we could not find any reference to a potential designation of the Project's proposed route as a National Interest Electric Transmission Corridor, under Section 216 of the Federal Power Act and Section 1221 of the Energy Policy Act of 2005, nor to the potential invocation of Section 1221 to preempt state siting and eminent domain authorities by federal authority. The prospect for preemptive federal action vis-à-vis non-federal lands and private lands should be thoroughly discussed, as this could determine the assurances offered to MRGCD constituents as to the preservation of their private property rights, and could affect regional property values. This discussion should also include the anticipated need for and scope of condemnation and easements for transmission line construction and maintenance, and the prospects for expansion of the currently proposed Project that would entail additional encroachments on private lands.

Also necessary are the BLM and Federal Energy Regulatory Commission's ("FERC") current stances as to the implications of the Fourth Circuit Court of Appeals' decision in *Piedmont Environmental Council v. FERC*, Case Nos. 07-1651, et al. (Feb. 18, 2009) (see http://pacer.ca4.uscourts.gov/opinion.pdf/071651.P.pdf), which held that Section 216 did not confer the authority claimed by FERC to override state siting authority, and that FERC's regulations in this area had been promulgated without the necessary environmental review. It is important for the BLM to consider how and by whom individual siting decisions will be made, in order to evaluate potential environmental, natural resource and socioeconomic impacts of the Project.

Wildlife Impacts

The San Antonio region, in which the Proposed Route would cross the Rio Grande and the adjacent bosque (cottonwood forest) is one of the Southwest's premier migratory bird habitats, situated just north of the Bosque del Apache National Wildlife Refuge, which provides a critical refuge for Sandhill Cranes and thousands of Snow Geese and Ross Geese, as well as Bald Eagles, Golden Eagles, Great Blue Herons, and many other species. The EIS obviously needs to provide a detailed analysis of anticipated migratory bird habitat impacts, including bird deaths due to collisions with the transmission lines, based on the types of mitigation measures that will be required to address this problem in the San Antonio region. Could the presence of the transmission lines have any localized or even regional effect on these birds' migratory patterns, which might entail changes in how the Fish and Wildlife Service or other agencies manage their populations?

The Middle Rio Grande is also designated critical habitat for a bird species, the Southwestern willow flycatcher, and a fish species, the Rio Grande silvery minnow, listed under the Endangered Species Act. Both species are presumed to thrive in certain selective conditions, and it appears to be important for the silvery minnow in particular, to facilitate spawning and recruitment of young, to have available certain conditions, such as lateral floodplain habitat produced by overbanking. The EIS for the SunZia Transmission Project obviously needs to provide a detailed analysis of anticipated willow flycatcher deaths, as it will for the migratory species, due to collisions with the transmission lines based on the types of mitigation measures that will be required to address the bird impact problem in the San Antonio region. It will also need to address willow flycatcher habitat impacts in the immediate region. For the silvery minnow, the EIS needs to go beyond a cursory discounting of whatever the temporary construction impacts might be, to address how the structures and surrounding infrastructure for the SunZia Transmission Project may subtly modify the river habitat in the area, which could affect minnow population dynamics over a wider area.

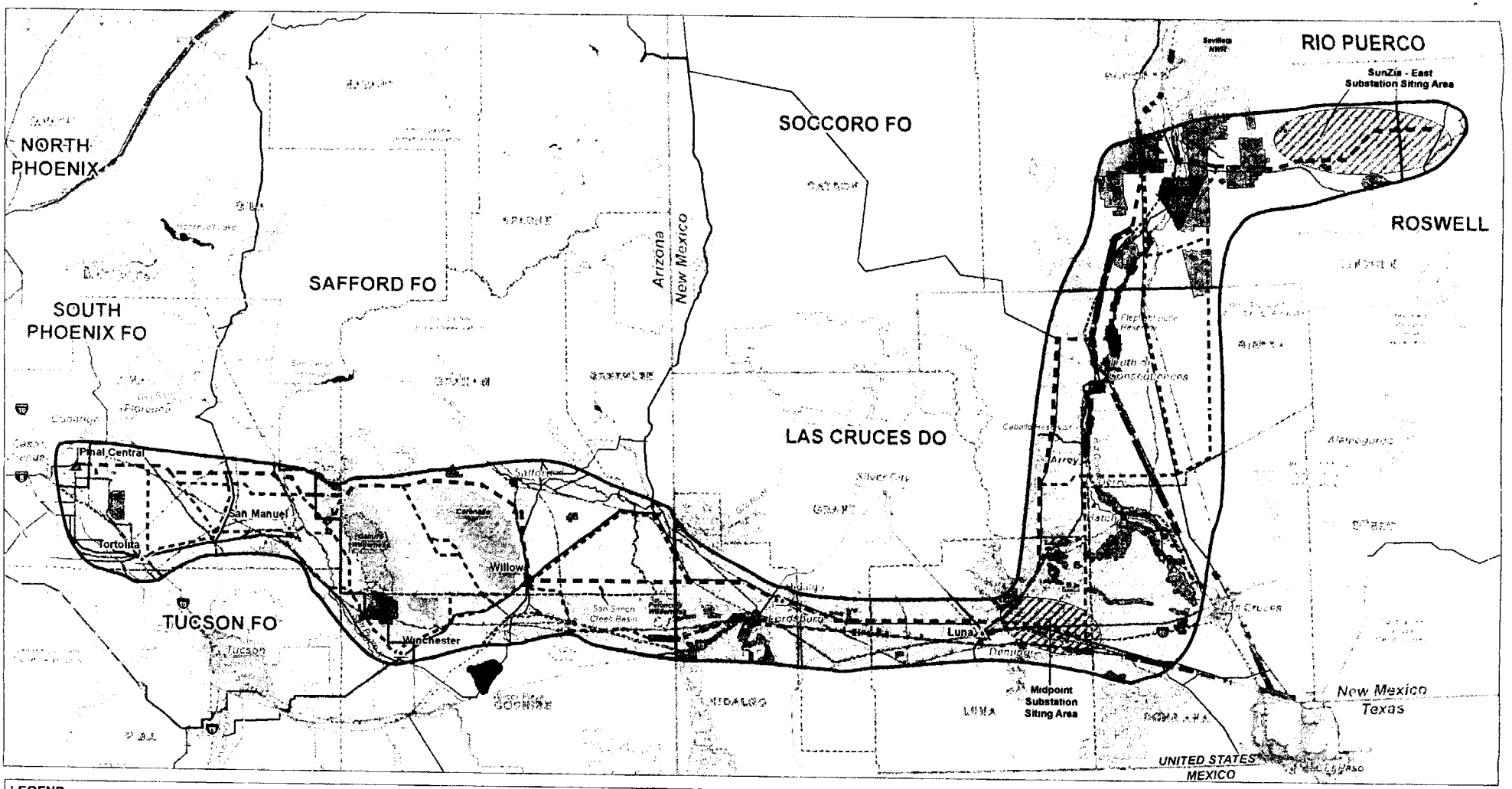
Collateral Health and Resource Effects

We are aware that studies on the health effects of Electric and Magnetic Fields (EMFs), such as from transmission lines, have produced inconsistent conclusions. But at least some studies have suggested correlations between EMF exposures and higher incidences of childhood leukemia, adult leukemia, brain cancer, miscarriage, and ALS or Lou Gehrig's disease. *See, e.g.*, State of California's study, *An Evaluation of the Possible Risks From Electric and Magnetic Fields (EMFs) From Power Lines, Internal Wiring, Electrical Occupations and Appliances* (2002), at http://www.ehib.org/emf/RiskEvaluation/riskeval.html. We expect the EIS for the SunZia Transmission Project to address these possible health effects of transmission line siting near populated farming areas, including effects on residents and

workers, farm animals and farm products, to quantify these risks as accurately as possible considering the various studies conducted, and to evaluate the potential risks avoided by alternate siting locations.

Preferable Alternative Route Available

Clearly, many of the complications of bisecting the historic village of San Antonio and the extensive cottonwood bosque through the MRGCD's boundaries, and the large expanses of private property and endangered species' critical habitat, could be avoided by selecting the indicated Alternate Route crossing the Northwest Quadrant of the extended area of WSMR, which is already the site of existing uses beyond national defense. Certainly, this discussion could be facilitated by involving the Department of Defense as a cooperating agency in the development of the federal analysis. The preferred route is reflected on the attached map as the eastern-most Alternate Route. All other relevant considerations among alternatives being roughly equal, it is incumbent on the agency conducting an EIS analysis to "[r]igorously explore and objectively evaluate all reasonable alternatives," 40 C.F.R. § 1502.14(a) and to "evaluate their comparative merits," 40 C.F.R. § 1502.14(b); that is, in order to further NEPA's substantive purposes, to select the alternative that is the least intrusive in terms of impacts on the natural and human environment. It appears clear that without any counterbalancing downside, this Alternate Route, which stays south and east of the Middle Rio Grande, would be preferable in avoiding significant potential environmental, natural resource, public health and socioeconomic impacts that can be anticipated to affect MRGCD lands and irrigation works, and District constituents and irrigators.



LEGEND

Preliminary SunZia Project Features
- Proposed Substation Interconnections
- Proposed Route
- Alternative Routes
- Substation Siting Area
- Study Area

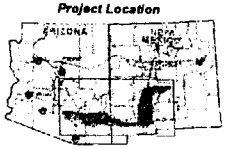
Avoidance/Exclusion Areas
- Avoidance Area/ACEC
- Exclusion Area/WSA

Land Ownership
- Bureau of Land Management
- Indian Reservation
- U.S. Forest Service
- National Park Service
- Department of Defense
- U.S. Fish & Wildlife Service
- StateTrust Land
- Private/Other

Utilities
- Existing Substation
- 500 kV Transmission Line
- 345 kV Transmission Line
- 230 kV Transmission Line
- 115/138 kV Transmission Line
- Pipeline (6" Diameter and Above)

Reference Features
- State Highway/Major Road
- River/Stream
- Railroad
- County Boundary
- Interstate
- State Boundary
- DOE Proposed Corridor
- Wilderness/Conservation Area
- Lake/Reservoir
- Urban Area

Project Location



0 10 20 30 Miles

Note - Substation and transmission line locations are schematic and do not represent precise locations

SunZia Southwest Transmission Project
Preliminary Study Corridors

March 5, 2009

Sources: StreetMapUSA 2007; BLM 2008; USGS, EPG, Inc. 2008

SunZia