



March 11, 2024

Mr. Shawn Sartorius
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U.S. Fish and Wildlife Service
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Subject: Apparent SunZia reversal of commitments per Migratory Bird Treaty Act and BO

Dear Mr. Sartorius:

SunZia Transmission Project (SunZia) construction activities in the San Pedro Valley, including low-elevation helicopter flights directly adjacent to riparian gallery forest, are occurring without appropriate protection for migratory birds. Formally designated as one of the world's Important Birding Areas (IBAs), the San Pedro Valley hosts one of the U.S. Southwest's last free-flowing rivers and is internationally known as a refuge and travel corridor for 282 species of birds (Waldt 2020). The San Pedro Valley includes designated critical habitat for Yellow-billed cuckoos and Southwestern willow flycatchers.

SunZia committed to suspend construction activities during the avian nesting season (March 1 through September 30) in riparian areas¹ and project-wide² (Biological Opinion 2023, Conservation Measures WF-2, YC-2, and 13; Plan of Development 2023, p. B1-32). However, Pattern Energy, the SunZia developer, seems to have reneged on these commitments: construction is ongoing in the San Pedro Valley, including along sensitive tributary canyons. Construction-related auditory, vibratory, olfactory, air quality, and visual impacts are likely discouraging and redirecting nesting and foraging activities by migratory birds and other species.

On March 4, 2024, a helicopter was documented flying low across the Paige Canyon area, and construction equipment was observed grading tower pads adjacent to Paige Creek (https://www.youtube.com/watch?v=4RrF5pn_SUo). Paige Creek has been recently flowing at

¹ The Biological Opinion (2023) includes conservation measures YC-2 and WF-2, which state that "Construction and maintenance in riparian woodlands would take place between September 30 and March 1 to avoid disturbance of nesting or fledging [Yellow-billed cuckoos or Southwestern willow flycatchers]."

² The Biological Opinion (2023) includes conservation measure 13 to protect all migratory birds, which states that "Construction activities and maintenance clearing activities are not planned to occur between March 1 and September 30 during any year to avoid disturbance to flycatchers, cuckoos, and other nesting birds protected under the MBTA."

the SunZia crossing as well as further downstream, and is perennial upstream of the SunZia crossing. This section of Paige Creek hosts Arizona sycamore/Fremont cottonwood forest (Figure 1). Grey hawks often nest in this section of the canyon (Figure 2). Yellow-billed cuckoos and Southwestern willow flycatchers also visit, and may nest, along sections of Paige Creek where surveys have not been conducted (to our knowledge). Nesting birds normally return in March or April to Paige Canyon. Continued helicopter and construction activity in and near Paige Canyon is likely to discourage new nesting and the abandonment of existing nests.

Helicopters have also been frequently flying over the San Pedro River gallery forest, presenting threats and disturbances to migratory birds and wildlife. Other canyons throughout this critical portion of the San Pedro Valley are also part of the foraging range and nesting habitat for migratory birds. Construction suspension is especially important over and along the perennial streams that create desert oases for migratory birds and other wildlife, including Paige Canyon, Buehman Canyon and Edgar Canyon.

Please oblige Pattern Energy to honor commitments to suspend construction activities during the nesting season. We ask U.S. Fish and Wildlife Service to promptly enact all of the following measures to protect migratory birds and other wildlife species:

- Suspend construction along known and likely migratory bird foraging and nesting zones, including all portions of the route between the San Pedro River crossing (at the south) to Peppersauce Road (at the north) from March 1 to September 30, as per the migratory bird protection commitment in the 2023 Biological Opinion. Especially sensitive portions include Paige Canyon, Buehman Canyon, and Edgar Canyon, where there are perennial streams and riparian habitat adjacent to construction areas (Figure 3).
- Define helicopter flight rules, including (a) prohibitions on the sort of low-altitude contour flight observed on March 4, 2024 and (b) exclusion areas for active nests (“helicopter buffers...should be adjusted correspondingly when/where needed” - POD 2023, pp. B3-9). Approximately eight miles of the SunZia project in the San Pedro Valley requires access by helicopter (Figure 4).
- Take additional measures required to limit the intrusive and unmitigated auditory and vibratory disturbances throughout the valley on current workdays.

Please let us know what steps the USFWS will take to insist on compliance with SunZia’s commitment in the 2023 Biological Opinion. Because construction is taking place during the season the parties agreed to reserve for migratory bird nesting, we request a prompt response.

Sincerely,



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Figure 1. Arizona sycamores in Paige Canyon near the SunZia Transmission Line crossing.



Figure 2. Grey hawk observed nesting in the same section of Paige Canyon in 2016.

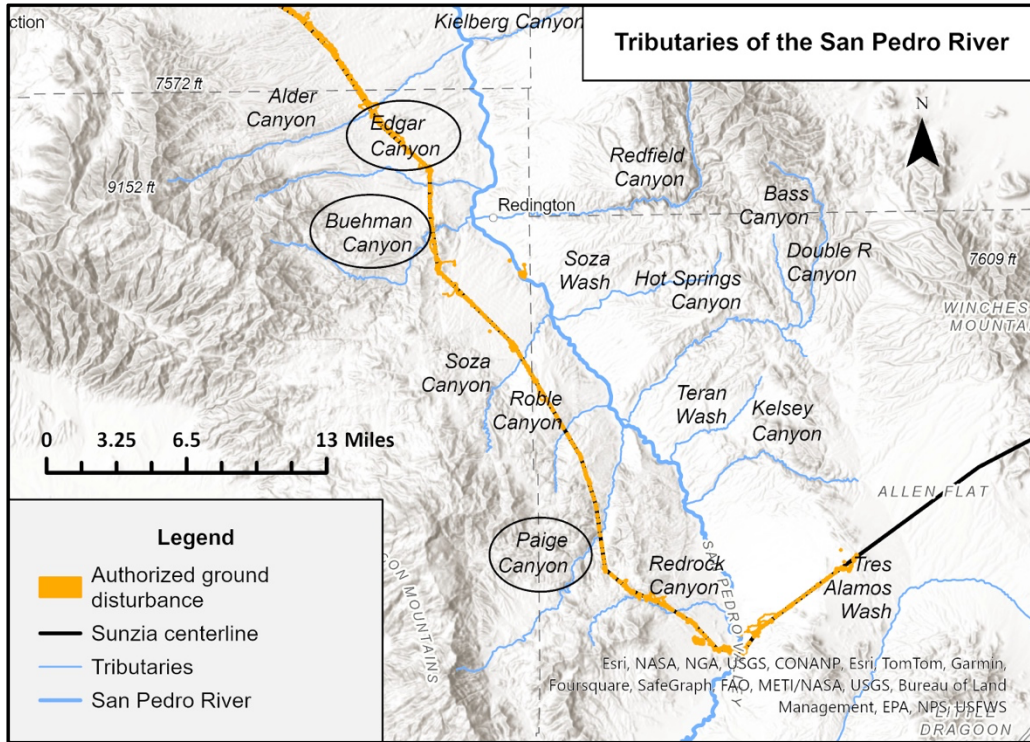


Figure 3. Tributaries of the San Pedro River, including Paige Canyon, Buehman Canyon, and Edgar Canyon.

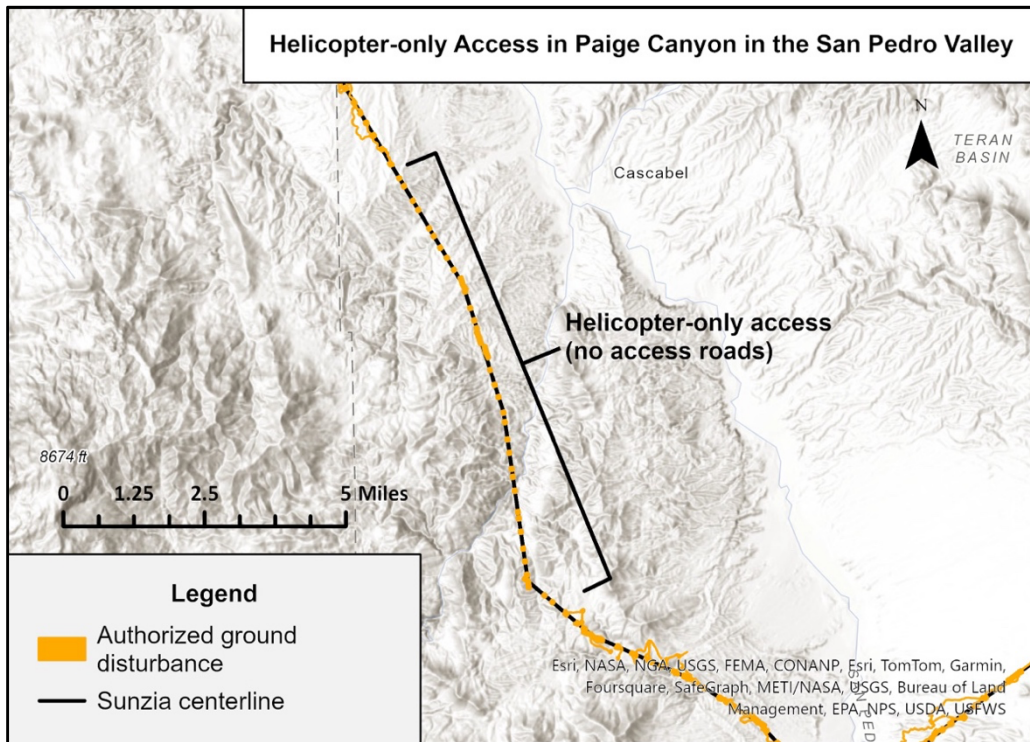


Figure 4. Helicopter-only access in Paige Canyon in the San Pedro Valley. No new roads are allowed to be constructed in this roughly 8-mile section of the SunZia right-of-way.

References:

POWER Engineers, Inc. (2023, June). *SunZia Southwest Transmission Project Plan of Development*.

Waldt, R. (2020). *The Life of the San Pedro River: A Naturalist's Account of an Iconic Desert River and its Watershed*. Cascabel Books.

USFWS (2012, June). *Biological Opinion for SunZia Southwest Transmission Line Project*.

cc:

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