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10.437.01

November 9, 2010

***VIA FACSIMILE AND U.S. POST***

Fax: 760 431-9618

Jim Bartel, Field Supervisor  
United States Fish & Wildlife Service  
6010 Hidden Valley Road, Suite 101  
Carlsbad, California 92011

Re: Fish and Wildlife Service consultation regarding Sunrise Powerlink and dependent wind power projects including Crestwood Wind Project and Tule Wind Project in McCain Valley area of eastern San Diego County

Dear Mr. Bartel,

We write on behalf of our clients Backcountry Against Dumps, The Protect Our Communities Foundation, East County Community Action Coalition and Donna Tisdale to request that, in consulting on wind power projects, the Fish and Wildlife Service (“FWS”) provide adequate protection of imperiled avian species such as bald and golden eagles. To this end, we ask that FWS require that new wind power projects such as Invenergy’s 160 MW Crestwood Wind Project and Iberdrola Renewables’ 200 MW Tule Wind Project be sited at least six miles from these species’ nesting areas unless adequate on-the-ground surveys and biologists’ evaluations demonstrate that a different buffer zone will fully protect these protected species from harm. We base this request in part on the FWS’ determination, in the attached letter dated September 20, 2010, to the Oregon Department of Energy commenting on the Summit Ridge Wind Project (“Summit”) (“FWS Letter”), that a six-mile buffer zone is needed to protect these species.

Like the multiple wind power projects proposed for the McCain Valley area in San Diego County, including Invenergy’s 160 MW Crestwood Wind Project and Iberdrola Renewables’ 200 MW Tule Wind Project, Summit involved the construction of numerous wind turbines (87) producing similar amounts of electricity (200 MW), along with turbine foundations, access roads, underground and overhead electrical collection systems and other project components. Both Summit and the proposed McCain Valley wind projects impact endangered, threatened and otherwise protected species, including the golden eagle, through the risks of wind turbine and transmission line collision created by the projects.

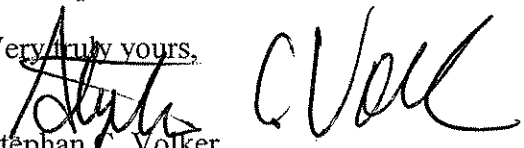
In its comments on Summit, FWS stated that “a radius of a minimum of six miles from a golden eagle nest” to the project should be maintained unless detailed surveys and assessments show that a different buffer is adequate. FWS Letter, pp. 3-4. That six mile calculation was developed based on the best information available to FWS and should be required for the McCain Valley wind projects, such as the Tule Wind Project and Crestwood Wind Project.

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Please take note of the attached FWS comments and ensure that the golden eagle requirements regarding project siting and nest surveys set forth therein are applied to the McCain Valley wind projects and any other future wind projects proposed to connect to the Sunrise Powerlink or existing Southwest Powerlink transmission lines .

Thank you for your courtesy and cooperation.

Very truly yours,

  
Stephan C. Volker

Attorney for Plaintiffs BACKCOUNTRY AGAINST  
DUMPS, THE PROTECT OUR COMMUNITIES  
FOUNDATION, EAST COUNTY COMMUNITY  
ACTION COALITION, and DONNA TISDALE



# United States Department of the Interior



FISH AND WILDLIFE SERVICE

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Reply To: 6320.0010(10)  
File Name: 2010 EFSC ASC Summit Ridge Cmts 09202010  
TS Number: 10-1494  
TAILS: 13420-2009-FA-0217

September 20, 2010

Sue Oliver  
Energy Facility Siting Officer  
Oregon Department of Energy  
245 Main Street, Suite C  
Hermiston, OR. 97838

Subject: Request for Comments on the Application for Site Certificate for the proposed Summit Ridge Wind project, Wasco County, Oregon

Dear Ms. Oliver:

The Fish and Wildlife Service (Service) has reviewed the August 24, 2010, Application for a Site Certificate (ASC) for the proposed Summit Ridge Wind Project (Project) to be located in Wasco County, Oregon. The proposed Project will include up to 87 wind turbines (2.0 to 3.0 MW each) with a total nominal generating capacity of approximately 200 MW of electricity. The Project will include about 19 miles of new access roads, turbine foundations, underground and overhead electrical collection systems, meteorological towers, and an operations and maintenance building. The Project will also include a communications system, a substation, and interconnection facilities to tie into the transmission line, located to the west of the project. The transmission feeder line will be an overhead 230 kV (kilovolt) line and will be approximately eight miles long.

Much of the project site is agricultural land used for dry land winter wheat production. The proposed facility would be built on land one to four miles west of the Deschutes River Canyon extending from approximately river mile 7 on the north end of the project boundary to river mile 31 on the south end. The Service supports the use of disturbed habitats for the placement of wind energy generation. However, we remain concerned regarding short and long-term Project impacts to migratory birds including bald and golden eagles, and bats.

The Service supports renewable energy and the economic benefits that wind energy generation brings to local communities. We also recognize wind power development has the potential to impact wildlife and habitat resources. The Service provided comments on the Notice of Intent to Apply for an Energy Facility Site Certificate (NOI) for the Project in a letter dated July 13, 2009, and Preliminary ASC in a letter dated November 18, 2009. We appreciate the opportunity to

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provide additional comments, and we look forward to working with you and LotusWorks on this important project.

Our previous comment letters focused on: (1) the potential for project specific mortality to birds and bats, including cumulative impacts of wind energy projects within the Columbia River corridor; and (2) measures to avoid or minimize Project impacts and adequate mitigation to offset unavoidable project impacts to biological resources. The Service subsequently received information in an email on June 24, 2010, from LotusWorks documenting the presence of golden eagles, large stick nests, and bald eagles in the project vicinity. Our comments below will focus on project impacts to bald and golden eagles and other migratory birds. We refer you to our previous two letters referenced above regarding other issues of concern.

### **Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act**

The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, and nests except when specifically permitted by regulations. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be killed during specific wind project operations even if all known reasonable, effective measures to protect birds are implemented. The Service's Office of Law Enforcement (OLE) carries out its mission to protect migratory birds through investigations and enforcement as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the OLE focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take.

Additionally, the Bald and Golden Eagle Protection Act (BGEPA) prohibits the taking of golden and bald eagles except when specifically authorized by the Department of the Interior (16 U.S.C. 668-668d). The Service has new regulations (Federal Register 74:46836-46879; 11 September 2009) (USFWS 2009) that may eventually allow a wind project to receive a permit to take golden or bald eagles under the BGEPA (50 CFR 22.26), for programmatic actions that are consistent with the goal of stable or increasing eagle breeding populations. Therefore, we encourage LotusWorks to work closely with the Service to identify available protective measures and develop an Avian and Bat Protection Plan (ABPP) and implement those measures prior to and during Project construction and operation.

The Service's goal for golden and bald eagles is stable or increasing breeding populations. Data from long-term studies of golden eagle migration, population models, and surveys sponsored by the Service indicate cause to be concerned about population trends for golden eagle (Millsap and Allen 2006, Good et al. 2007, Farmer et al. 2008, Smith et al. 2008, USFWS 2009). The Service was sufficiently concerned regarding the status of golden eagles that we determined, until further data shows golden eagle populations can withstand additional take, we will only consider BGEPA permit issuance of new golden eagle take for safety emergencies and for projects that

result in net benefits to golden eagles. Bald eagle permit issuance criteria would limit permits to only 5% of the Maximum Sustainable Yield.

### **Project Impacts and Service Recommendation**

Golden eagles and other bird species are known to collide with wind turbines and transmission lines. Studies for the Project document the presence of golden eagles (12 detections) and three inactive large stick nests that were likely golden eagle nests, with a fourth nest that may have been built by golden eagles. These nests were located within 1,000 to 10,000 feet from Project wind turbines (Northwest Wildlife Consultants, Inc. 2010). Additionally, adult bald eagles were observed (4 detections) on or in proximity to the Project. The Service is concerned regarding the potential for injury or mortality from a turbine strike, transmission line collision, or other Project-related disturbance to bald and golden eagles. The Project studies and reports provide only a limited eagle impact analysis.

With the expected growth of the wind industry in the western United States, the Service anticipates that the number of golden eagles killed annually will multiply. The Service is concerned that the population trend of golden eagle will drop even more rapidly as a result of collisions with wind turbines, resulting in greater conflicts between renewable energy industry and agencies. Ultimately, fewer golden eagles will exist unless we find solutions to either greatly reduce golden eagle mortalities at wind projects, reduce other sources of mortality to off-set losses of golden eagles from wind farms, or enhance golden eagle populations with habitat or other reforms.

In the absence of clear solutions to address golden eagle mortalities at wind energy projects, to enhance populations through conservation measures, or to off-set losses in other ways, our best efforts should be directed at avoidance of mortalities by siting wind turbines well away from areas where resident and migrating eagles are known to concentrate their activities. The Service believes the Project, including all turbines, transmission and roads, and associated facilities has the potential to result in injury and mortality of individual golden eagles and potential loss of nest sites over the life of the Project.

The Service recommends that LotusWorks prepare an Avian and Bat Protection Plan consistent with the Service "white paper" titled *Consideration for Avian and Bat Protection Plans* (FWS 2010) that addresses bald and golden eagles, other migratory bird species of concern, and bats. We recommend that the Oregon Department of Energy defer the approval of the Project site certificate until an Avian and Bat Protection Plan is completed, and available for review. We further recommend the following measures be incorporated into any site certificate approval:

To reduce the likelihood of golden eagle take and to minimize Project impacts, we recommend the following measures be included in the development of the Project:

1. Minimize the potential for resident golden eagle collisions by locating individual Project wind turbines a sufficient distance from golden eagle nest sites. Based on the best information available to us, a radius of a minimum of six miles from a golden eagle nest to the nearest turbine will likely avoid take of adult golden eagles associated with that nest. Any wind turbines proposed closer than six miles to golden eagle nests should not

be constructed until specific golden eagle studies have been implemented that define areas where no golden eagle use occurs (see studies in #2, below). These golden eagle-specific data should then be integrated into a protective turbine location "micrositing" design where turbines within six miles of a golden eagle nest are only sited in areas determined to be golden eagle non-use locations;

2. Conduct site specific studies to help define areas of use and non-use by golden eagles including:
  - Complete nest surveys within six miles of the Project location;
  - Conduct observation-post studies to observe the behavior of the adults (if present) without disturbing nesting behavior. These studies collect information on territory occupancy, productivity, fledging success, foraging and winter habitat and other information per the Interim Golden Eagle Inventory and Monitoring Protocols (Pagel et al. 2010); and
  - Satellite telemetry of nesting golden eagles within six miles of Project location.
3. Develop a Project construction plan that fully integrates avoidance of golden eagle disturbance during construction activities by implementing concurrent protective timing windows and distance buffers during sensitive nesting and fledging activities.
  - Distance and timing: Construction and maintenance activities between January 1 and July 15 should not be conducted within 1 mile of an active golden eagle nest (or ½ mile if not line-of-sight), unless site specific surveys indicate otherwise.

The Service has regulations in place that allow us to issue 'Programmatic Permits' to project applicants whose developments have the potential to incidentally 'take' golden eagles over extended periods of time. The Service is not currently issuing those permits, but is developing conditions that will likely be components of them. Permit conditions will likely include, appropriate Advanced Conservation Practices - measures that represent the best available techniques to reduce take to a level where additional take is unavoidable: and permit conditions will also likely include mitigation measures to offset whatever birds are taken so that the effect of the Project on eagles will be consistent with the Service's goal of stable or increasing breeding populations. It is possible that a programmatic permit issued by the Service when it becomes available, would include as permit conditions many of the recommendations for monitoring, adaptive management and conservation actions described below:

1. Develop and implement a golden eagle monitoring plan (including monitoring of Project-related golden eagle mortality, golden eagle territory occupancy, nest success, and productivity) over the life of the Project to ensure all golden eagles injured or killed by wind turbines or other impacts to golden eagles are immediately identified and reported.
2. Develop and implement an adaptive management plan to address new information that is obtained during operation of the Project, including all turbines, transmission, and roads, and connected wind projects that effectively address any identified problems.

- Utilize turbine feathering and cut-in speeds of 5 m/sec to 6 m/sec at times of low wind speed to reduce bird (and bat) fatalities;
- Lock rotors during daytime and at night during peak migration periods and peak presence of migrating birds and bats;
- Specific commitment to integrate turbine operation curtailment (seasonally or permanently) into Project management to minimize impacts to bald and golden eagles;
- Specific commitment to remove turbines if they are found to cause repeated mortalities of golden or bald eagles;
- Experimental procedures (e.g. blade painting for higher visibility);
- Minimize lighting associated with the Project including:
  - a) FAA visibility lighting of wind turbines should employ only strobed, strobe-like, or blinking incandescent lights, preferably with all lights illuminating simultaneously; and
  - b) Keep lighting at both operation and maintenance facilities and substations located within ½ mile of the turbines to a minimum level by using motion or infrared light sensors and switches to keep lights off when not required; shield operation lights downward, and do not use high intensity, steady burning, bright lights; and
- Commitment to implement future technology when available.

Additionally, specific conservation actions should be collaboratively developed with the Service to meet the conservation goal of stable or increasing breeding populations of golden and bald eagles. The Service cannot permit take of golden eagles; however were we able to, we would look for the types of measures identified below to potentially offset such take in a manner that is consistent with the goal of stable or increasing breeding populations of golden eagles. The local-area eagle population of concern in this case is the area encompassed by a circle 140 miles from the Project boundary, by definition (USFWS 2009). This is the area within which we would expect evaluations of the effects of this Project on eagles would take place. The following should guide any collaborative development of proposed conservation measures:

- Ensure no net loss or an increase in golden eagles in the local-area population via:
  - Land acquisitions or easement purchases;
  - Nest site protection;
  - Habitat enhancement via:
    - Restoration projects (e.g. juniper removal in shrub-steppe systems that will enhance prey base);
    - Grassland restoration efforts with native grasslands;
    - Cheatgrass control programs;
    - Nest platforms;
    - Nest enhancements;
  - Reduce electrocution mortality via partnering with utilities to implement Avian Power Line Interaction Committee standard (APLIC 2006) retrofits of problem distribution lines;
  - Reduce losses to lead poisoning via:
    - Education program on lead poisoning;


- Raptor rehabilitation centers;
- Contribute to regional or population-wide monitoring and research on golden eagles and wind turbines to better inform management across the West.

*Conclusion*

The Service appreciates the opportunity to comment on the ASC for the Summit Ridge Wind Project. We support well-designed wind projects that are carefully sited on habitats that will result in less impacts to Service trust resources. We recommend that the Oregon Department of Energy defer the approval of the Project site certificate until an Avian and Bat Protection Plan is completed, and available for review. We further recommend the measures outlined in this letter be incorporated into any site certificate approval. The Service is available to continue to work with LotusWorks in the review, development, mitigation, and monitoring of the Project.

If you have any questions regarding the Service's comments or desire to meet with us to discuss these issues further, please contact Jerry Cordova or me at (541) 383-7146.

Sincerely,



Nancy Gilbert  
Field Supervisor

cc:

Steve Cherry, Oregon Department of Fish and Wildlife, Heppner, Oregon  
Chris Carey, Oregon Department of Fish and Wildlife, Bend, Oregon  
Mike Green, US Fish and Wildlife Service, Migratory Birds, Portland, Oregon  
Doug Young, US Fish and Wildlife Service, Oregon Fish and Wildlife Office, Portland, Oregon  
Robert Romero, US Fish and Wildlife Service, R1 Law Enforcement, Oregon

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