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California Energy Commission
Dockets Office, MS-4
Docket No. 06-OII-1
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET 06-OII-1	
DATE	AUG 22 2007
RECD.	AUG 22 2007

Re: Committee Draft Report on California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development, CEC-700-2007-008-CTD

Dear Commissioners:

I am writing on behalf of the National Audubon Society's nearly half-million members to express Audubon's support for the July 2007 Draft Guidelines to reduce bird and bat impacts from wind power development in California. While Audubon has some concerns and suggestions on the Committee Draft, summarized below, we believe it is important to adopt these Guidelines and move forward. Adopting the Guidelines at the Commission's September 26 board meeting will help wind power to expand in California with fewer conflicts, more certainty and lower impacts on wildlife.

While Audubon is anxious for the Commission to adopt Guidelines, we urge the following changes to be incorporated in the final draft:

1. Provide More Specific Guidance on Category 1 Projects.

Audubon strongly supports the Guidelines' attempt to create different categories of projects and sites. Doing so should help to prioritize both industry and agency resources, accelerate development and permitting in some locations, and prevent it in locations that are clearly not appropriate.

The brief description provided for Category 1 sites, however, does not provide sufficiently detailed guidance on the types of variation that would warrant lengthier or different studies. In addition, in the summary description on page 8, the Guidelines do not recommend consultation with agency or outside experts to confirm that a site is appropriately considered Category 1.

Audubon would strongly oppose a categorical exemption for Category 1 projects under CEQA. Neither the Commission nor CDFG have authority to create categorical exemptions under CEQA, nor would it be appropriate to do so even if bird and bat impacts are presumed to be less than significant. CEQA addresses a much broader list of issues to be considered than impacts to birds and bats.

Recommendations: Provide more detail about types of information and characteristics that make a Category 1 determination appropriate. (pages 8 and 37) Clarify that “similarity of habitat” should include an assessment of a site’s importance for migratory species. Specify the length of study time likely to be needed to fill in different kinds of data gaps. Include a recommendation that developers consult agency or other wildlife experts in the Step-by-Step Approach section (page 8). Add a reminder to include cumulative impacts analysis for surrounding sites. Do not provide a categorical exemption for Category 1 projects under CEQA.

2. Correct Summary of Fully Protected Species Provisions.

The Fully Protected Species provisions of California’s Fish and Game Code do not allow take of species listed as Fully Protected except for scientific and recovery purposes. Fish and Game Code sections 3511, 4700, 505 and 5515. The Guidelines are generally accurate about their characterization of the Fully Protect Species provisions, but in the section that summarizes applicable wildlife laws, the Guidelines incorrectly state that impacts on these species should be “minimized,” (page 33, line 1182), which is not what the law requires.

Recommendation: Correct summary of Fully Protected Species requirements on page 33. Suggested compliance language could be similar to the Guidelines’ characterization of efforts to comply with federal laws (eg, pages 7-8).

3. Expand Definition of “Risk Zone.”

In several places the Guidelines define the “risk zone” where direct impacts to birds and bats may occur as the rotor-swept area of wind turbines. If the “risk zone” is the area where direct impacts can occur, then the definition should be expanded to include transmission lines, other wires, and other facilities that risk direct impacts.

Recommendation: Expand definition of “risk zone” to include other facilities and structures that may have direct impacts on birds and bats.

4. Do Not Add Disclaimer about “Retroactive Application” of the Guidelines.

At the August 13 Hearing of the Renewables Committee, several industry representatives expressed concern about the “retroactive application” of the Draft Guidelines and urged the Commission to include a provision clarifying that the Guidelines should not be applied retroactively and/or projects currently in development should be “grandfathered.”

These concerns and requests are based on two very serious misconceptions about the Guidelines. Most importantly, the Guidelines are meant to clarify what is expected to comply with *existing laws*. The wildlife and environmental statutes at issue have been law for decades, so any project currently in development should already be complying with these laws. The Guidelines are meant only to clarify what compliance, or at least good faith efforts to comply, entails under different circumstances. In addition, the Guidelines state clearly and repeatedly that they are voluntary and meant to provide guidance only, so retroactive “requirements” that result from the Guidelines do not make sense.

Including a provision in the Guidelines that states that they should not be applied to projects already in development would imply that developers and permitting agencies do not need to comply with existing legal requirements. It would be better for the Guidelines to be silent on this point rather to sanction or imply that avoiding existing legal requirements is acceptable.

Recommendation: Do not address or refer to “retroactive application” of the Guidelines or “grandfathering” of existing projects.

5. Include Date for Review and Revision of the Guidelines.

Most or all stakeholders, as well as state and local agencies, recognize that there are serious gaps in information about the interactions between wind power and birds or bats. The National Academy of Science’s report earlier this year also pointed to the many data gaps that exist. Given the level of uncertainty and the amount of research and monitoring that will occur over the next several years, the Guidelines should be reviewed and updated in three to five years. Including a date by which to conduct the review and modifications would also imply additional flexibility to deviate from the Guidelines’ recommendations where data and trends indicate a different approach than suggested in the Guidelines.

Recommendation: The Guidelines should provide a date by which the Commission and Department of Fish and Game will review and revise as appropriate based on new data, research and experience. We recommend that the review and revision occur no sooner than three years and no longer than five years from the date that the Commission adopts the Guidelines.

With these recommendations, Audubon strongly supports adoption of the Guidelines. The process to develop them has been very open, constructive and flexible to accommodate stakeholders’ concerns and suggestions. Adopting the Guidelines will help to reduce wind power’s impacts on birds and bats while allowing it to expand more smoothly and with greater public support in California.

We look forward to working with the Commission, CDFG, the wind industry and others to successfully implement the Guidelines and secure the public funding and support needed to increase wind power and wildlife protection in California.

Sincerely,

Julia A. Levin
Global Warming Campaign Director