



*Shaping the future for birds*

September 12, 2011

Attention: Jim Bartel, Field Supervisor  
Carlsbad Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
6010 Hidden Valley Road, Suite 101  
Carlsbad, CA 92011  
[FW8DRECP@fws.gov](mailto:FW8DRECP@fws.gov)  
(760) 431-5902 fax

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*Sent via email and facsimile*

**Subject: Scoping Comments on the Environmental Impact Statement for the Desert Renewable Energy Conservation Plan and Associated Documents**

Dear Mr. Bartel:

Thank you for the opportunity to provide scoping comments on the Environmental Impact Statement for the Desert Renewable Energy Conservation Plan and associated documents. American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization dedicated to the conservation of native birds and their habitats throughout the Americas.

Although wind power could be an important part of the solution to global climate change, wind development can impact birds -- including eagles, songbirds, sage grouse, and endangered species -- through collisions with turbines and associated power lines, and through loss of habitat. By 2030, there are expected to be more than 100,000 wind turbines in the United States, and these are expected to kill at least one million birds each year -- possibly significantly more. Terrestrial wind farms are also expected to impact almost 20,000 square miles of bird habitat, some of it critical to threatened species.

ABC believes that birds and wind power can co-exist if wind projects conform to bird-smart principles. Bird-smart wind power employs careful siting, operation and construction mitigation, bird monitoring, and compensation to reduce and redress any unavoidable bird mortality and habitat loss.

Regarding the Desert Renewable Energy Conservation Plan, ABC offers the following comments and questions:

### **General Comments:**

It is important that Incidental Take Permits (ITPs) not be offered for all of the areas in the plan area because some are inappropriate for wind energy development. These include areas identified as important in state wildlife action plans and by ABC as Globally [Important Bird Areas](#). (See *The American Bird Conservancy Guide to the 500 Most Important Bird Areas in the United States*, Random House Publ.)

Areas known to be migration bottlenecks for birds that are protected under the Migratory Bird Treaty Act (MBTA) should also be noted in the EIS and on the plan area maps. Wind projects that kill MBTA-protected birds violate federal law whether they kill one bird or 10,000. By noting areas that are obviously important for MBTA-protected birds, the participating agencies can help wind developers avoid violating federal law. The same should be done for areas that are known to have high concentrations of Bald or Golden Eagles, again with the purpose of helping wind developers avoid violating federal law.

There is a substantial problem in the United States with access to bird mortality data from wind energy projects. Not only do many projects not collect mortality data at all, those that do collect the data often refuse access to it. This problem makes it difficult for the federal government, charged with upholding the law and protecting species, as well as conservation organizations like ABC to fully measure the impact of wind energy projects on birds.

If wind energy is to be built out in an environmentally friendly fashion, much more mortality data need to be accessible to researchers, developers, federal and state agencies, NGOs, and the general public. Thus, as a precondition for receiving Incidental Take Permits associated with the Desert Renewable Energy Conservation Plan, mortality data should be both collected under approved post-construction mortality study protocols *and* made readily available to the public.

If take permits are offered for long periods such as 30 years, how will compliance with permit requirements be ensured? There is precedence to believe this could be a problem. At the Kaheawa Wind facility on Maui, which received Incidental Take Permits for four threatened and endangered species, basic requirements that were to have been implemented during the first year of operation remained unfulfilled after four and a half years. As a result, ABC urges that take permits be limited to five years of that if permits are longer that there be automatic five-year reviews built in from the start and that that the EIS details the mechanism that will provide adequate funding for agency staff to make those reviews.

### **Species Comments:**

Below are ABC's comments on the bird species that were identified in the Federal Register notice for the EIS, plus an additional species that was listed in the Desert Renewable Energy Conservation Plan's draft Baseline Biology Report but not in the Federal Register notice.

American Peregrine Falcon:

The American Peregrine Falcon is listed in the Federal Register notice for the DRECP's EIS but not analyzed in the draft Baseline Biology Report. If the falcon is not going to be included in the Baseline Biology Report, why was it in the Federal Register notice?

Bald Eagle:

The Federal Register notice for the DRECP's EIS states that Bald Eagles are a non-federally listed species that will be covered in the DRECP. However, take of Bald Eagles by wind farms is currently subject to the eagle take rule published in 2009 (50 CFR Parts 13 and 22) and the draft Eagle Conservation Plan Guidance. Given that existing rule for conservation of eagles in regard to wind development, please explain what is meant by having Bald Eagles be a "covered species" for the DRECP. Are changes in Bald Eagle management intended?

Burrowing Owl:

The EIS should address ways that wind energy construction can avoid inadvertently creating suitable nesting habitat for Burrowing Owls where there currently is none. The history of Altamont Pass shows that wind turbines can be very dangerous for Burrowing Owls. Two studies have analyzed mortality data and extrapolated for the entire Altamont Pass Wind Area, and found as many as 737-1488 Burrowing Owls are killed annually (See Smallwood, K. S., and C. G. Thelander. 2008. "Bird Mortality in the Altamont Pass Wind Resource Area, California." *Journal of Wildlife Management*. 72:215-223. See also Smallwood, K.S.; Karas, B. 2009. "Avian and bat fatality rates at old-generation and repowered wind turbines in California." *Journal of Wildlife Management*. 73: 1062–1071. )

California Condor:

The draft Baseline Biology Report indicates that endangered California Condors use the far western edges of the plan area. As condor numbers have increased in recent years, the use of foraging habitats in the Eastern Sierras has increased dramatically (See Johnson, M.; Kern, J., and Haig, S.M. 2010. "Analysis of California Condor (*Gymnogyps californianus*) use of six management units using location data from global positioning system transmitters, southern California, 2004–09." *Initial report: U.S. Geological Survey Open-File Report*. 1287.)

GPS locations of individual condors demonstrate an expansion into the Tehachapi wind area in 2009, and should be included in the HCP analysis. In 2009, 51,036 locations of Condors were recorded for 14 condors equipped with GPS transmitters. Twelve of the 14 condors ventured northeast of the Tejon Ranch into the Tehachapi wind area. In 2008 only three of 13 condors ventured to the northeast of the Tejon Ranch border. As the condor population expands, and new birds begin to explore into the historic range of condors, these curious birds almost certainly will be attracted to wind turbines, just as condors have explored communications towers and oil production installations. In addition, a California Condor from the reintroduction effort in Mexico has already crossed into San Diego County near planned wind energy facilities, and it is reasonable to expect that more will do the same. It is important to point out that both juvenile and adult condors have participated in this range expansion, with older birds leading the return to historic areas.

The EIS should consider the cumulative effects of reasonably foreseeable wind energy and power line development not just in the seven counties of the plan area but in Baja California as well. Hundreds of wind turbines are proposed in the Sierra Juarez area, which will have a cumulative impact when added to the wind projects proposed in eastern San Diego County (e.g., Tule Wind and Ocotillo Express). In addition, the Energia Sierra Juarez transmission line that would link to those Baja wind turbines is currently undergoing permitting and the nearby Sunrise Powerlink transmission line in eastern San Diego County is already under construction.

ABC is concerned that lethal take of condors by wind projects may be authorized without adequate measures to ensure that the condor population will not be jeopardized. The goal of an HCP for ITPs for California Condors must be at a minimum NO NET LOSS of condors, and preferably, a NET BENEFIT for the species. Captive rearing can replace lost individuals, but cannot replace the complex behavioral interactions and knowledge of the ecosystem retained by adult condors and taught to juveniles in the wild. Incidental take of condors should be avoided to the greatest extent possible, including operational mitigation through curtailment, if necessary. If authorized lethal incidental take is going to be contemplated by FWS, it should only be after all other practicable options are exhausted. Wind project developers should be required as a condition of the ITP to contribute proportionally to the infrastructure and continued maintenance of the condor captive breeding and reintroduction program. The contributions should enable the reintroduction of at least 4 condors for every lethal take, to compensate for juvenile mortality and delayed breeding of captive reared birds.

In addition, if FWS considers granting ITPs for condors that include lethal take, how will FWS ensure that permit conditions are properly carried out over time and recoup the public's substantial investment in the conservation of condors? ABC's experience with ITPs for wind projects suggests that monitoring of permit implementation is challenging for government agencies. Any compensatory mitigation funding as part of an HCP should include adequate funding for permit implementation monitoring.

Lead poisoning is a major cause of condor debilitation and mortality, and comes from ammunition fragments in hunter-shot game. Mitigation measures for the condor should move far beyond chelation therapy and research and take concrete steps towards removing lead from the condors' environment, such as programs for hunters to exchange lead ammunition for non-lead ammunition. Under no circumstances should research be considered appropriate mitigation for lethal take of condors; only measures that directly result in population increase should be considered.

ABC recommends that state-of-the-art measures be taken to protect condors. All captive-reared condors carry multiple radio transmitters, and many are now fitted with GPS units. Information from transmitters such as these could be utilized by wind energy companies to provide warnings of approaching condors, and the sophisticated electronic controllers at wind installations should be programmed to curtail power generation if a condor approaches. This could be done for individual turbines, as has been accomplished in Europe. (See Davenport, J. et al. 2011. "Implementation of Avian Radar-SCADA Interface to Mitigate Avian Mortality at Windfarms." *Norwegian Institute for Nature Research Proceedings Conference on Wind Energy and Wildlife Impacts 2-5 May 2011, Trondheim, Norway.*)

Wind projects putting Condors at risk should be required to assist with telemetry costs as well as implementation of operational mitigation as part of their HCP and ITP. While no wind developer likes the idea of turbine curtailment that may lower revenue power production revenue, according to the draft Baseline Biology Report, more than \$20 million dollars has been spent on condor conservation since WWII, an estimate that is probably low. That financial investment needs to be protected.

#### Golden Eagle:

The Federal Register notice for the DRECP's EIS states that Golden Eagles are a non-federally listed species that will be covered in the DRECP. However, take of Golden Eagles by wind farms is currently subject to the eagle take rule published in 2009 (50 CFR Parts 13 and 22) and the draft Eagle Conservation Plan Guidance. Given the existing rule and guidance for conservation of eagles in regard to wind development, please explain what is meant by having Golden Eagles be a "covered species" for the DRECP. Are changes in Golden Eagle management intended?

ABC understands that preconstruction studies for some wind facilities have not accurately predicted the mortality risk to Golden Eagles, for instance at the Pine Tree wind facility near Mojave, California. If mitigation measures for Golden Eagles are included in the EIS, it should describe how they will be adjusted if Golden Eagle mortality at wind facilities in the plan area is greater than anticipated.

More recent Golden Eagle population data than that in the Baseline Biology Report needs to be included in the EIS. For instance, the Baseline Biology Report's assertion that in the plan area, the Golden Eagle population is "apparently stable" cites a 1978 source even though there has been significant added development and human disturbance in the plan area since 1978. (See, for example, Kochert, M. and Steenhof, K. 2002. "Golden Eagles in the U.S. and Canada: Status, Trends, and Conservation Challenges" Available at [http://fresc.usgs.gov/products/papers/1092\\_Kochert.pdf](http://fresc.usgs.gov/products/papers/1092_Kochert.pdf).)

In addition, how will the DRECP be adapted if Golden Eagles were to be listed as threatened or endangered during the life of the Plan period? The draft Baseline Biology Report states that Golden Eagles are not expected to undergo listing status change during the permit period, but since the Report is relying on a 1978 source to state that the Golden Eagle population is stable, the expectation of no Golden Eagle federal listing over the life of the Plan may be incorrect.

#### Greater Sandhill Crane:

The Greater Sandhill Crane is listed in the Federal Register notice for the DRECP but not analyzed in the draft Baseline Biology Report. Why was the Greater Sandhill Crane included in the Federal Register notice?

#### Southwestern Willow Flycatcher

The Southwestern Willow Flycatcher is analyzed in the draft Baseline Biology Report but was not included in the Federal Register notice. Please clarify whether the EIS will include the flycatcher.

Swainson's Hawk:

The Baseline Biology Report discusses Swainson's Hawk breeding in the Antelope Valley, Owens Valley, Central Valley, and Mojave National Reserve. Because Swainson's Hawks have been killed by wind turbines, in addition to considering breeding locations, the EIS should address use of other parts of the plan area by Swainson's Hawk, such as the migration corridors across the Tehachapi Mountains and throughout southern California (e.g., Borrego Valley area).

In closing, thank you for this opportunity to comment. Please add ABC to the notification list for this process, using the name and address below.

Sincerely yours,

Kelly Fuller  
Wind Campaign Coordinator  
American Bird Conservancy  
1731 Connecticut Ave NW, Third Floor  
Washington, DC 20009  
(202) 234-1781, ext. 212  
kfuller@abcbirds.org