California Wind Energy Association

California Energy Commission
DOCKETED
09-RENEW EO-1
TN # 68479
NOV. 09 2012

November 9, 2012

David Harlow, Director
Desert Renewable Energy Conservation Plan (DRECP)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
(*via email*: david.harlow@energy.ca.gov)

RE: Environmental NGO DRECP Wind Energy Recommendations

Dear David:

The California Wind Energy Association (CalWEA) is writing in response to recommendations submitted August 24th, 2012, on behalf of several environmental non-governmental organizations (eNGOs) involved in the DRECP ("eNGO Recommendations"). We appreciate the efforts of Defenders of Wildlife, Audubon California, Natural Resources Defense Council, Sierra Club, Center for Biological Diversity, The Nature Conservancy and California Native Plant Society to assemble and propose recommendations for wind energy development in the DRECP.

The wind energy industry has and will continue to hold itself to a higher standard than any other industry with regard to studying, avoiding and mitigating its impacts on wildlife, which remain minor compared to other human activities. Consistent with the wind industry's long record of proactive, collaborative efforts on wildlife issues, we welcome the opportunity to respond to the eNGO's thoughtful recommendations. Moreover, we welcome further dialogue on these issues to support the objective of fashioning a DRECP that preserves desert ecosystems while enabling California to shift to a renewable-energy-based economy.

While we find areas of agreement with the eNGO Recommendations, the recommendations generally assume that wind DFAs should not be delineated until more data are collected and compiled and very difficult, broad ecological questions are answered. CalWEA is concerned that such an approach would hold the wind industry to an unrealistic and unachievable standard. More importantly, detailed site-specific studies, as are currently performed and would continue to be performed as necessary under the DRECP, will ensure that projects are carefully developed to avoid and minimize impacts to acceptable levels. Further, given the importance of taking prompt action to address climate change, we are concerned

that this approach would hinder renewable energy development, and therefore harm California's ability to reduce its dependence on conventional energy sources.

CalWEA has strongly encouraged the DRECP to consider the importance of high-quality wind resources in designating DFAs. The eNGO Recommendations neglect to address this critical factor, despite its centrality in the commercial feasibility of wind energy development. Furthermore, higher quality wind resources will require fewer turbines, and thus reduce environmental impacts. For a more detailed discussion, see "Proposed DRECP Scenario for Wind Energy Resources" (CalWEA, April 2012). Along the same lines, we also stress the need for a more holistic approach to conflict identification; conflicts that are assumed now may well prove to be low and largely mitigatable upon further study (such as presumed avian conflicts or incompatibility with ACECs).

We address more specific points from the eNGO Recommendations below.

Information Gaps, Research Needs, and Impact Evaluation

CalWEA agrees that research is needed to address questions regarding population dynamics and movement patterns of covered species (golden eagle in particular) in the plan area affected by wind energy development (p. 2, 9). We therefore support the inclusion of a near-term research program as an integral part of the DRECP, as well as an adaptive management program to respond to research results. While we acknowledge that data gaps exist, some development can be justified at the outset of the DRECP with limited and acceptable risk based on what is known while we seek to close the information gaps.[1]

In January, CalWEA developed and submitted a proposal to the California Energy Commission's Public Interest Energy Research (PIER) program that recognized and would have addressed eagle-population data gaps that, unfortunately, went unfunded. We agree that an option to fund research initiatives may include directing a percentage of an applicant's development fee towards a plan-wide avian

[1] Neither the NCCP Act nor the ESA require perfect information. Instead, both acts require use of the best currently available information. *See, e.g., National Wildlife Federation v. Babbitt*, 128 F.Supp.2d 1274, 1300 (E.D. Cal. 2000) (On its face, § 7(a)(2)'s requirement that the Service use the "best available" data does not require perfect data. The most reasonable reading of the statute permits the Service to take action based on imperfect data, so long as the data is the best available."); Fish and Game Code § 2820(a)(6) (in approving an NCCP, the Department of Fish and Game must find that the plan contains "specific conservation measures that meet the biological needs of covered species and that are *based upon the best available scientific information regarding the status of covered species and the impacts of permitted activities on those species*")(emphasis added); Fish and Game Code § 2820(f)(1)(C) (when providing assurances to NCCP plan participants, must consider "the use of best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques."); *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018 ("A public agency can make reasonable assumptions based on substantial evidence about future conditions without guaranteeing that those assumptions will remain true.")

and bat research fund. This fund can be used to address information gaps that exist for these species, as most of the questions that need to be understood are at a larger scale than is appropriate for a single project to address. We should not lose sight, however, of other, far greater, documented risks to wildlife populations, such as lead, which is a leading cause of mortality for both California condors and eagles. These threats suggest that emphasis be placed on developing compensatory mitigation programs that can effectively address these other sources of mortality.

We agree that "constraints to terrestrial development are not always applicable to wind development" and appreciate that the eNGO Recommendations request additional consideration be given to identify DFAs specifically for wind energy (p. 3). In the DRECP process, CalWEA has emphasized the need to consider the specific impacts of wind energy development, including the potential compatibility of wind development with specific biological goals, such as habitat preservation (given wind's limited land-disturbance footprint), and the development of wildlife corridors. CalWEA would welcome an early evaluation of wind energy's impacts regarding compatibility with desert species and habitats as part of a DRECP research agenda to support adaptive management for prospective projects, as few studies have been dedicated to understanding the effects of habitat fragmentation specific to wind energy development.[2]

Siting Criteria and Spatial Analyses

CalWEA is concerned that the siting criteria discussed in the eNGO Recommendations (p. 4) would preclude wind energy development from a large portion, if not all, of the DRECP's best wind resource areas. Utilizing these high-quality wind resource areas will require fewer turbines to obtain the same energy output as compared with lower-quality wind resource areas, thus lowering impacts. Moreover, utilizing high-quality wind resources is crucial to cost-competitive wind energy development and necessary to promote market competition for cost-effective achievement of the state's greenhouse-gas reduction goals. The eNGO Recommendations fail to explain the rationale behind several proffered siting criteria and exclusion areas (i.e., five-mile exclusion zones), and the recommendations conclude incompatibility based on overbroad assumptions. We would appreciate the opportunity to discuss these criteria, exclusion areas, and assumptions with the eNGOs, with the hope of arriving at a more reasonable, defensible set of wind siting criteria.

Regarding the suggestion to use geospatial analyses in the development of siting criteria for identifying wind DFAs (p. 3 and 5), we are not aware of any available spatial models, including those created by the DRECP, that have addressed the

[2] Some relevant studies have been completed. For example, a USGS-led study of the desert tortoise, a flagship species in the DRECP planning effort, showed few differences in demographic and growth parameters between a population at a Palm Springs, California, wind facility and populations living in less disturbed areas.

specific impacts of wind energy development (e.g., potential compatibility with terrestrial species) and could therefore meaningfully guide the delineation of wind DFAs. Additionally, models, though useful and important as planning tools, should always be informed and supplemented by as much ground-truthing and field data collection as is feasible. We believe that limited available resources would be more effectively invested in specific study efforts aimed at discrete questions (such as determining the compatibility of wind facilities with covered terrestrial species), rather than in producing modeled outputs.

Project-Specific Guidelines

As indicated in CalWEA's April 2012 proposal, we agree with the eNGOs that state and federal project-specific wind guidelines be followed by wind developers within and outside of DFAs (p. 6). In May, the American Wind Energy Association (AWEA) and 40 of its member companies expressed support for the use of the USFWS Wind Energy Guidelines and committed to using them.

As noted by AWEA, the publication of the Guidelines on March 23rd was the culmination of over five years of a painstaking, but collaborative, process between representatives of the wind energy industry, conservation community, USFWS, states, and tribes through a fair and transparent process. The Guidelines hold the wind industry to a higher standard than is legally required and to a higher standard than any other energy industry in the country.

Given the high standard that the Guidelines establish, we do not agree that further guidelines are necessary. For example, suggesting that preliminary site evaluations, such as pre-construction monitoring, be initiated at the same time that meteorological data collection begins is unreasonable. For every project that is ultimately built, developers may pursue at least 10 or more. Developers must direct limited resources to projects after they have been sufficiently investigated to warrant further investment.

However, we agree that, as our predictive tools improve and, particularly, after DRECP-specific research is conducted and experience gained, it would be useful to tailor the federal Guidelines to this region, and to harmonize the federal Guidelines with the state guidance document (pp. 6, 10).

Other Comments

The eNGO Recommendations assert that wind facilities operating in the DRECP area are not seeking permit coverage under the Bald and Golden Eagle Protection Act (BGEPA), the Migratory Bird Treaty Act (MBTA), or the Endangered Species Act (ESA) (p. 3). Currently, no such take permit exists under MBTA, and, while BGEPA take permits are theoretically available, it is widely understood that the 2009 Eagle

Permit Rule is confusing, not well developed, and virtually without precedent.[3] Given this state of affairs, it will likely be some time before the Rule can be effectively relied upon by industry and non-industry stakeholders alike. Ironically, the permitting process under the ESA is far more predictable and workable than for other special-status, but non-threatened or endangered species. Wind project developers in the DRECP area routinely seek ESA permits when endangered species are likely to be affected by their projects.

Finally, we agree that conducting a cumulative impacts analysis (p. 8) would benefit the DRECP. However, the level of information available about each of the topics detailed in this recommendation is often minimal or speculative at best, so performing such a detailed cumulative impacts analysis would be very challenging and resource-intensive.

We appreciate the eNGOs' careful consideration of the unique challenges and opportunities for conservation that are specific to wind energy siting, development, and operation. This dialogue represents an important step forward in industry and the environmental community working together to meet our state's energy policy goals, conservation of important species and habitats, and DRECP objectives.

Sincerely,

Ashley R. Richmond
Director of Siting Policy

cc: Stephanie Dashiell, Defenders of Wildlife
Garry George, Audubon California
Noah Long, Natural Resources Defense Council
Sarah Friedman, Sierra Club
Ileene Anderson, Center for Biological Diversity
Laura Crane, The Nature Conservancy
Greg Suba, California Native Plant Society

[3] See, e.g., August 22, 2012, letter to Department of Interior Secretary Ken Salazar regarding the eagle permit process, signed by eight major environmental NGOs and eight organizations dedicated, in whole or part, to wind energy development.