

Appendix J

Wildlife Monitoring



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009



APR 20 2011

In Reply Refer To:
ES-61411/WY11CPA0147

Memorandum

To: Field Manager, Bureau of Land Management, Rawlins Field Office, Rawlins, Wyoming

From: Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming

Subject: Avian Protection Plan Concurrence for the Sierra Madre-Chokecherry Wind Energy Project

Thank you for your letter of December 9, 2011, regarding the proposed Power Company of Wyoming's (PCW) Sierra Madre-Chokecherry Wind Energy Project (Project). The proposed Project is located south/southwest of the city of Rawlins, Carbon County, Wyoming. The Project is a proposed 2,000-MW electrical generating facility consisting of up to 1,000 2-MW wind turbines.

You have requested that the U.S. Fish and Wildlife Service (Service) determine if an Avian Protection Plan (APP) is appropriate for this Project to minimize the potential "take" of eagles. Our response to your request is based on the two-step process identified in the Bureau of Land Management's (Bureau) Instruction Memorandum No. 2010-156 (IM-2010-156), which is:

- 1) The Service determines that developing an APP is an appropriate option for this Project to avoid and minimize the potential for golden eagle take; therefore, the Bureau's Authorized Officer may issue a Record of Decision approving the project; and
- 2) The Bureau's Authorized Officer shall not authorize a Notice to Proceed for this Project until the Service has evaluated the APP and determines that it is adequate.

Following the two-step process, we have determined that developing an APP is an appropriate option to avoid and minimize the potential take of eagles (based on the Bureau's IM-2010-156), and migratory birds and bats based on PCW's commitment to meeting the following criteria:

- a) Three years of surveys evaluating eagle, migratory bird and bat use of the Project area, as per Service guidance, conducted prior to Project construction; and



- b) Turbine numbers and layout are adjusted to provide effective buffers for eagle and other raptor nest sites as well as areas with high bird and bat utilization, as evidenced by the survey data.

To avoid and minimize impacts to migratory bird species protected by the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703, as well as eagles protected under the Bald and Golden Eagle Protection Act (Eagle Act), 16 U.S.C. 668, the APP will need to address all migratory bird species. The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be killed even if all reasonable measures to protect them are used. 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 minimize their impacts on migratory birds, and by encouraging others to enact such programs. It is not possible to absolve individuals, companies, or agencies from liability even if they implement avian mortality avoidance or similar conservation measures. However, the OLE focuses its resources on investigating individuals and companies that take migratory birds without regard for their actions or without following an agreement to avoid take.

We advise the Bureau's Authorized Officer to not authorize a "Notice to Proceed" until the completed APP is delivered to the Service for evaluation and the Service determines the APP is adequate as documented in formal correspondence. The Service's determination as to the adequacy of the APP will depend upon the quality of the survey results used to develop the APP, how survey information was used to design a project layout that minimizes impacts, and how conservation measures will be applied during construction and operation.

We suggest that a programmatic APP, containing conservative conservation measures (e.g., no turbines within 4 miles of a golden eagle nest), be developed initially to provide guidance in lieu of area-specific information. This APP should be incorporated into the Project's Environmental Impact Statement (EIS). Any subsequent Project phases that rely upon an Environmental Assessment, which tiers to the EIS, will also form the basis for an individual Plan of Development (POD) APP. We expect that site-specific PODs will have higher levels of information about bird use, and their APP can be tailored to each specific area. We caution that it may not be reasonable to expect that the entire Project area can be developed (e.g., some Project areas may not be suitable for construction and should remain undeveloped).

The Service appreciates the Bureau's efforts to conserve golden eagles, other migratory birds, and bats in Wyoming. If you have questions regarding this letter or the MBTA and the Eagle Act, please contact Travis Sanderson of my staff at the letterhead address or phone (307) 328-4333.

cc: BLM, High Desert District Manager, Rock Springs, WY (J. Ruhs)
BLM, RECO Wildlife Biologist, Rawlins, WY (C. Morton)
BLM, Project Manager, Rawlins, WY (P. Murdoch)
BLM, RECO Project Manager, Cheyenne, WY (T. Engles)
BLM, State RECO Manager, Cheyenne, WY (M. Valle)
USFWS, Regional Energy Coordinator, Lakewood, CO (T. Modde)
USFWS, Branch Chief Energy, Water, Climate, Lakewood, CO (P. Repp)
USFWS, Chief, Branch of Conservation Planning Assistance, Washington, D.C (L. Bright)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (M. Flanderka)