FACSIMILE TRANSMISSION

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DOCKET
06-OII-1
DATE AUG 24 2007
RECD. AUG 29 2007

To: Mr. Bill Walker, Senior Planner **Date:** 08/24/07

Fax #: 530-245-6468 **Pages:** 11 . Including this cover sheet.

From: Gary Stacey, Regional Manager **Telephone:** 530-225-2360

Subject: RE: PHI Reports for THP 2-07-051-LAS, "Diamond Mountain"

ADDITIONAL INSTRUCTIONS:

Please see attached. Hard copy to follow in mail.

The Mission of the Department of Fish and Game is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

State of California – The Resources Agency ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
Northern Region
601 Locust Street
Redding, California 96001
(530) 225-2300

August 24, 2007

Mr. Bill Walker, Senior Planner
Shasta County Department of Resource Management
1855 Placer Street
Redding, California 96001

Dear Mr. Walker:

Notice of Preparation (NOP) and Related Documents
Hatchet Ridge Wind Farm Draft Environmental Impact Report (EIR)

The Department of Fish and Game (DFG) has reviewed Shasta County's (County) NOP for the subject project. Hatchet Ridge Wind, LLC, proposes the construction of up to 68 three-bladed wind turbines along a 6.5 mile corridor on Hatchet Ridge, extending north from a point approximately 0.5 mile north of State Route 299. The turbine towers would have a maximum height of 262 feet, and the turbine blades would be a maximum of 418 feet high to blade tip. The project would generate a maximum of 102 megawatts of electricity. An overhead transmission line and tower system up to 5 miles in length will be constructed to connect the turbine system to the existing PG&E transmission system. Pursuant to Section 15082(b) of the California Environmental Quality Act (CEQA) Guidelines, the DFG offers the following comments on the project in our roles both as a trustee agency and as a responsible agency.

The DFG has also reviewed the *"Baseline Ecological Studies for the Proposed Hatchet Ridge Wind Project"*, provided to the DFG on May 15, 2007, the *"Peer Review of Baseline Ecological Studies for the Proposed Hatchet Ridge Wind Project"*, provided to the DFG on June 22, 2007, and the *"Draft Biological Assessment Hatchet Ridge Wind Project"* provided to the DFG on June 25, 2007. Due to the reliance of the NOP and the County's environmental analysis on the data and conclusions drawn from these studies, the DFG has incorporated its comments on these studies into this response letter.

Notice of Preparation

The DFG agrees with the County's determination that an EIR should be prepared for this project. The project has the potential for substantial adverse impacts on birds, including migratory species, deer, bats, and may also adversely affect wetlands, streams, and sensitive plant species which may be present.

species along the ridge line access roads, including incense cedar, white fir, Douglas fir, ponderosa pine, lodgepole pine and possibly other conifer species, in a variety of age classes. This diversity of conifer species appears to extend for most of the length of the ridge access roads, and extends an unknown distance up and downslope from the roads. It appears to be primarily volunteer trees but may also include planted stock. The Jones and Stokes representatives accompanying Mr. Webb corroborated these observations. DFG requests that the existing vegetation community within the project area, including but not limited to the forest community along the ridge line where the turbines will be located, be accurately described by maps in the EIR. This information must be used to complete the analysis of the potential for short and long term, direct and indirect effects on wildlife, rather than relying on the assumed ponderosa pine monoculture as the primary available habitat within the planned turbine corridor.

Project plans call for construction of a new overhead power transmission line extending approximately 1.25 miles along an existing power line route parallel to the ridge, and continuing in a new alignment up to an additional 3.5 miles to a new substation site (based on power line mapping plans provided by J. and S.). The new transmission line will collect generated turbine power and deliver it to existing Pacific Gas and Electric transmission lines located near SR299. DFG understands the alignment and length of the new transmission line have not been finalized. Construction of the new transmission line, and its long term operation, could cause injury and mortality to avian species. The potential direct and indirect effects on birds and bats of power line conductors, towers and guy wires must be examined by the EIR, and mitigation measures for any identified potentially significant impacts should be designed and described. Options for design mitigation may include wire spacing and tower and guy wire design, and additional mitigation could include the use of flight diverter devices installed on the conductors and guy wires to prevent bird collisions.

The California State Energy Commission (Commission), in cooperation with DFG, has prepared draft ***"California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development"*** (Guidelines). The Guidelines are intended to provide recommended methods to assess bird and bat activity at proposed wind energy sites, design pre- and post-construction monitoring and adaptive management plans, and develop and implement impact avoidance, minimization and mitigation measures. The Guidelines have been in final draft form and posted on the Commission's website since April 4, 2007, and have been circulated for comment and refinement to many cooperating agencies and experts in the wind energy field. A final citable version of the Guidelines dated July 2007 has been posted on the Commission's website on July 17, 2007, and is now intended for use by lead agencies and project planners. DFG recommends that the EIR include a comparative analysis of the bird and bat survey protocol recommendations in the Guidelines with those that have been conducted by the applicant to date, or are proposed to be conducted prior to construction. The EIR should disclose those survey activities conducted to date which are consistent in design

Compliance w/ draft guidelines

and scope with recommendations of the Guidelines, and should provide justification for omitting surveys which may be recommended by the Guidelines based on project specific criteria. The EIR should also discuss the potential applicability to the project of the Guideline's recommended adaptive management strategy options.

Please note that when filing a Notice of Determination in conformance with Public Resources Code Section 21152, environmental filing fees will be payable pursuant to Fish and Game Code Section 711.4 because the project will have an effect on fish and wildlife resources due to habitat alterations from turbine, road and power line construction, and turbine operation.

As noted above, the applicant has forwarded three additional documents which discuss potential impacts to birds and bats from operation of the turbines. DFG provides the following comments on these documents to assist the applicant and the County in determining their adequacy in supporting the necessary analysis of impacts to birds and bats from the turbine operations.

The Baseline Ecological Studies

The ***"Baseline Ecological Studies for the Proposed Hatchet Ridge Wind Project"*** dated March 2007 has been prepared by WEST, Inc. (WEST) at the request of the applicant. The report presents the results of a one year long bird and bat survey on Hatchet Ridge, commencing November 2005 and concluding November 2006. Point surveys were conducted at six (6) fixed locations. Observations were conducted once per week for 30 minutes at varying daytime hours. Observations were recorded, and an attempt was made to record vectors of flight paths when discernible. No nocturnal bird surveys were conducted. The day time surveys revealed the presence of a number of bird species, including a diversity of migratory birds and raptors.

DFG notes that during the one year of point survey observations only one owl sighting was recorded. Since owls are active typically only at night, it is inconclusive whether the surveys indicate the Hatchet Ridge area is unusually sparsely populated by owls, or they were simply not detected because the surveys were not conducted during periods when most owls are active. Owl species that may be present in the vicinity of Hatchet Ridge include saw-whet, flammulated, great horned, long-eared, western screech and as noted above, northern spotted. DFG recommends that nocturnal surveys for owls be conducted using standard recorded-call auditory techniques. DFG believes that these surveys should be commenced as soon as appropriate for the survey methodology, but can be undertaken independently of release of the EIR, provided the survey need and intended survey protocol is described in the EIR, the and recommended mitigation are

options for mitigation strategies are fully disclosed by the EIR and the survey results incorporated into the Final EIR and project design. DFG welcomes the opportunity to assist the applicant and the County to design an auditory survey effort for owls.

DFG notes that surveys conducted to date have provided incomplete information on potential flight patterns of migratory birds, and did not attempt to survey for night time migration using radar. However, DFG notes that many of the bird and bat species using the project area are migratory. Hatchet Ridge is uniquely located between the Sacramento Valley and the Modoc Plateau, suggesting that migration is likely across or in the vicinity of Hatchet Ridge. Additionally, data collected by WEST on flight paths of observed migratory species across Hatchet Ridge are consistent with migration. In order to determine if observed flight vectors represent prevalent migratory behavior, DFG recommends that additional studies be undertaken, including night time radar migration observations, to determine if existing migration corridors may place migrating species at risk of turbine collisions. These surveys should be commenced as soon as possible, but can be undertaken independently of release of the EIR, provided the survey need and intended survey protocol is described in the EIR, the options for mitigation strategies are fully disclosed by the EIR and the survey results and recommended mitigation are incorporated into the Final EIR and project design. DFG welcomes the opportunity to assist the applicant and the County to design a radar survey effort during night time hours for migratory birds.

The Peer Review of Baseline Ecological Studies

The ***"Peer Review of: Baseline Ecological Studies for the Proposed Hatchet Ridge Wind Project"*** (Peer Review) was prepared by J. and S., and is intended to provide a second professional opinion on the survey and other biological documentation prepared to date by the applicant. DFG has reviewed the document and concurs with all of its recommendations. The Peer Review's recommendations of particular relevance to those made elsewhere in this letter are the recommendation to conduct auditory nocturnal surveys for owls, and the recommendation to develop additional information to determine if migration corridors of various migratory species may pass over the project area.

The Draft Biological Assessment

The ***"Draft Biological Assessment Hatchet Ridge Wind Project"*** dated June 2007, was prepared by WEST at the request of the applicant. It was prepared to provide an analysis of whether the project may adversely affect species listed as threatened or endangered by the Federal Endangered Species Act (ESA). Although no apparent nexus with a permitting federal agency has been identified, the applicant chose to prepare the BA to analyze potential effects on species listed by the ESA.

The BA states that the bald eagle is federally listed and may be affected by the project. It should be noted that the bald eagle has been de-listed by the U.S. Fish and Wildlife Service; it is State listed as endangered, and is fully protected pursuant to Fish and Game Code (Code) Section 3511. As such, no take permit pursuant to the California Endangered Species Act (CESA) may be issued for bald eagle. The bald eagle also remains protected by the Federal Bald and Golden Eagle Protection Act. Two alternate bald eagle nest sites, representing one nest territory, are known to be recently active on and near Lake Margaret, approximately 1.75 miles and 1 mile east from the project site boundary, respectively. The BA also notes that during fixed point bird count surveys, 11 bald eagle sightings were made within the project area. Based on ratios of total raptor use, and mortality ratios from other similar wind farms currently in operation, the BA concludes that one bald eagle every 2-3 years may be killed by the turbines. The BA concludes that this is an insignificant number of fatalities, because it is immeasurable and is unlikely to occur. This conclusion is not adequately explained and does not appear to be supported by the data presented. Furthermore, one bald eagle fatality every 2-3 years could have a significant adverse impact balanced against the reproductive success of the local nest territory, and would be a violation both of the Bald and Golden Eagle Protection Act and CESA.

Thank you for the opportunity to comment on this project. If you have any questions regarding this information, please contact Staff Environmental Scientist Bruce Webb at (530) 225-2675.

Sincerely,

for GARY B. STACEY
Regional Manager

cc: See Page Eight

cc: Ms. Amy Fesnock
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Mr. Bruce Webb and Dr. Richard Lis
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Docket Optical System - Additional CalWEA Comments for Docket No. 06-OII-1 (Committee Draft Wind Guidelines)

From: "Nancy Rader"
To: "'Tim Tutt'" , "'Suzanne Korosec'" , "Rick York" , "Susan Sanders"
Date: 8/29/2007 11:32 AM
Subject: Additional CalWEA Comments for Docket No. 06-OII-1 (Committee Draft Wind Guidelines)
CC: "DOCKETS (DOCKETS)"
Attachments: "DOCKETS (DOCKETS)"

Dear CEC Staff,

I would like to docket a recent letter that was submitted by CDFG to Shasta County regarding a proposed project of one of our members, Renewable Energy Systems Americas (RES). This letter documents the concerns stated in our August 22, 2007, comments that the guidelines, even in their draft form, are being retroactively applied and that CDFG will apply the guidelines to all projects uniformly regardless of local circumstances.

Some background: In 2005, prior to RES commencing any studies, CDFG approved RES's proposed avian study protocols. RES commenced the studies in November of 2005 and has now completed them. Several months ago, the county issued a Notice of Preparation (NOP) on the project. The NOP is a public notice that an EIR will be prepared. The review period for the NOP is 30 days. Attached is the CDFG letter received by the county 130 days after issuance of the NOP. The CDFG letter requests that the county require RES to demonstrate compliance with the Committee Draft Guidelines or justify any deviations. (Note that several pages of irrelevant material were removed from the attachment.)
The letter states:

"The Guidelines have been in draft form and posted on the Commission's website since April 4, 2007, and have been circulated for comment and refinement to many cooperating agencies and experts in the wind energy field. A final citable version of the Guidelines dated July 2007 has been posted on the Commissions website on July 17, 2007, and is now intended for use by lead agencies and project planners. DFG recommends that the EIR include a comparative analysis of the bird and bat survey protocol recommendations in the Guidelines with those that have been conducted by the applicant to date, or are proposed to be conducted prior to construction. The EIR should disclose those survey activities conducted to date which are consistent in design and scope with recommendations in the Guidelines, and should provide justification for omitting surveys which may be recommended by the Guidelines based on project specific criteria. The EIR should also discuss the potential applicability to the project of the Guideline's recommended adaptive management strategy options."

RES had planned to construct this project in 2009. If RES must now justify deviations from the guidelines, or is forced to conduct additional studies that were not deemed necessary by CDFG in 2005, the project will incur significant additional cost and be delayed by months or years.

Retroactive application of the Guidelines is inappropriate and unfair. Moreover, application of guidelines that are not yet adopted or in final form is contrary to law and policy. (See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931 [lead agency should not rely on unadopted general plan for CEQA purposes].) In its August 22 comments, CalWEA proposed actions by the Committee that will help to address the many problems reflected here: uniform application of the guidelines regardless of local circumstances, retroactive application of the Guidelines, and application of the Guidelines in non-final form. Further, the Guidelines should not be applied to projects that have already commenced studies.

We appreciate your attention to these concerns.

Nancy

Nancy Rader
Executive Director
California Wind Energy Association
(510) 845-5077
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The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.