

CONTRA COSTA TIMES

JULY 29, 2005

Planned strict wildlife protections don't hush wind industry's critics

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Altamont wind-power companies say they will be stretched to the breaking point by laws requiring them to spend millions to protect birds killed by spinning turbines.

But that isn't stopping critics of the renewable energy operation who are pressing for more concessions.

Still reeling from an Alameda County decision to require winter windmill shutdowns and a complete overhaul of their facilities over the next 13 years -- moves that will cost hundreds of millions of dollars -- the Altamont's 10 wind-energy businesses find themselves under further attack in court.

Wildlife groups are asking a judge for millions more in industry payments to compensate for the hundreds of annual deaths of protected species such as golden eagles, red-tailed hawks and burrowing owls within the 60-square-mile Altamont operation.

And prosecutors from the offices of the state Attorney General and Alameda County District Attorney last month filed blunt court declarations saying they're exploring possible legal action against the companies because as many as 1,300 birds cut down by the spinning turbines each year are protected by federal and state wildlife laws.

"It's in our blood not to like violations of criminal law," said Chris Car-

penter, an assistant Alameda County district attorney who sent a June 3 letter to the judge in the civil case.

Wind-power companies are asking a judge to dismiss the wildlife groups' lawsuit over the bird deaths, which was filed two years ago and is headed for a court showdown next month. William Berland, a Berkeley attorney who represents one of the Altamont's largest companies, said the pending county requirements to protect birds make it unnecessary to battle in court.

"Nobody wants to see measures taken that are so draconian they force the entire wind-power operation to close down," he said.

Carpenter agreed that prosecutors must balance concerns about the ongoing carnage with the clean-energy benefits Californians enjoy from the 5,400-windmill Altamont operation, the oldest and largest wind-energy project in the United States.

"There's a dilemma," he said. "There are ongoing violations of the law, but we also want clean electric power to be available ... We're trying not to get involved if we can help it - and if they can minimize the mortality of birds."

Wildlife advocates, however, are pursuing legal claims that the wind-power industry has all but disregarded wildlife protection laws for decades and should act swiftly to reverse the bird mortality problem.

A California Energy Commission study last year said that as many as

4,721 birds are killed each year by Altamont windmills. The fatal collisions involve as many as 116 golden eagles, 300 red-tailed hawks, 333 American kestrels and 380 burrowing owls, the study says.

Wildlife advocates say each of these raptor deaths violates at least one of seven state and federal laws designed to protect birds of prey.

The eagles alone are protected under two federal statutes, violations of which can result in fines of up to \$5,000 each and six-month jail terms.

But with sweeping new bird-protection measures on the table, the possibility of immediate action by prosecutors appears to be remote.

Carpenter said any action his office might take is on hold, at least until September, when county supervisors are set to finalize new permit conditions for wind-power companies. Those conditions include immediate shutdowns of several hundred windmills deemed by scientists to be especially lethal to birds, as well as a shutdown of the remaining wind turbines for two months during the winter bird migration.

In addition, wind-power companies will be asked to commit about \$540 million over the next 13 years to replace existing windmills with newer machines.

Because the new turbines spin less rapidly, and are believed to rise above the flight paths of most birds traversing the Altamont, hopes are high that

the machines will be much less lethal. Painted blades that are easier for birds to see may also help.

A lawyer for the wind industry, Nikki Carlsen, told county supervisors this month that winter shutdowns and other costly measures being demanded by the county would stretch the power industry financially as far as it can go. A more stringent bird-protection program sought by the state Attorney General's Office "would shut down the Altamont," Carlsen said.

Meanwhile, a spokesman for FPL Energy, the largest windmill operator in the Altamont, said the conditions approved in concept by Alameda County supervisors this month amounted to "a framework," not a finalized bird-protection program.

"There are lots of details that need to be discussed and agreed upon between now and September," Steve Stengel said.

The comment surprised county Supervisor Scott Haggerty, who said winter windmill shutdowns and the phased-in conversion to newer machines are not negotiable.

"The conditions that were outlined by the board earlier this month are what I expect will be written into the new permits," Haggerty said.

Wildlife groups, meanwhile, say they believe swifter, more exhaustive bird-protection measures should be imposed on the industry.

"We think there's much more the industry can and should do to reduce bird mortality immediately," said Richard Wiebe, a lawyer for the Center for Biological Diversity, the wildlife group that has led the charge against Altamont power companies.

Wiebe said the phase-in approach favored by the county will not prevent scores more protected birds from being killed in the future, even though wind-power companies have known about the problem for years and have had ample time to correct it.

In addition, he said the evidence undercuts claims of financial hardship that are the main industry defense to avoid more stringent bird-protection measures.

According to papers Wiebe filed in court last month, Altamont wind-power companies have reaped \$73 million in additional profits over the past five years beyond those projected in 1998, a year of dramatic turnover in the Altamont when new investors bought up much of the wind operations.

Much of the additional profits stem from higher energy rates that were adopted after the energy crisis of 2001, Wiebe said.

Stengel said he had not seen the financial analysis and could not comment on its findings.