



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO:
PPN 3165

NOV 12 2003

Andrew N. Young
Development Planning Division
Alameda County Community Development Agency
224 West Winton Avenue
Hayward, California 94544

Dear Mr. Young:

The U.S. Fish and Wildlife Service (Service) has reviewed your letters, dated October 31, and November 4, 2003, regarding conditional use permit applications for wind power projects in the Altamont Pass Wind Resource Area (APWRA), Alameda County, California. These comments are intended to assist you in your review of the proposal, and will not take the place of any formal comments that we may provide under the provisions of the Fish and Wildlife Coordination Act or through consultation under the Endangered Species Act as amended.

Alameda County has determined that these projects are Categorically Exempt from the requirements of the California Environmental Quality Act. The Service is concerned that the environmental impacts of these projects have not been adequately addressed. In particular, the Service is concerned with ongoing avian mortalities in the APWRA. Avian mortality due to wind energy development has been an ongoing problem in the APWRA. The Service has been working closely with the California Energy Commission (CEC), Alameda County, Contra Costa County, and industry representatives in an attempt to reduce avian mortality in the APWRA. The Service has recently issued its *Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines*, and the CEC is currently developing a predictive model specific to the APWRA which will provide guidance for the placement of new turbines during the repowering process.

The Migratory Bird Treaty Act (16 U.S.C. 703-712) (Act) 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 Act has no provision for allowing unauthorized take, it is recognized that some birds may be killed at structures such as wind turbines even if all reasonable measures to avoid it are implemented. The Service believes that the potential to minimize mortalities in the APWRA have not been fully explored, and further analysis and implementation of avian mortality minimization techniques is warranted at this time. The Service's Division of Law Enforcement carries out

its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impacts to migratory birds. While it is not possible under the Act to absolve individuals or companies from liability, the Division of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals or companies who have made good faith efforts to avoid the take of migratory birds.

The Service looks forward to working with all parties involved in the APWRA to reduce avian mortalities. If you have any questions concerning these comments, please contact Larry Butcher at (916) 414-6583.

Sincerely,



David L. Harlow
Acting Field Supervisor

cc:

AES, Portland, OR

MBSP, Portland, OR (Mike Green)

California Energy Commission, Sacramento, CA (Linda Spiegel)

CDFG, Yountville, CA (Janice Gan)