

APPENDIX I

**USFWS ACKNOWLEDGEMENT LETTER OF THE EAGLE
CONSERVATION PLAN AND BIRD CONSERVATION STRATEGY**



United States Department of the Interior

FISH AND WILDLIFE SERVICE
P.O. Box 1306
Albuquerque, New Mexico 87103



In Reply Refer To:
FWS/R2/MBO/053280

DEC 13 2012

Daniel Runyan, Vice President for West Development
Kim Wells, Ph.D., Environmental Affairs Advisor
BP Alternative Energy, Wind
700 Louisiana Street, 33rd Floor
Houston, Texas 77002

Dear Mr. Runyan and Dr. Wells:

The U.S. Fish and Wildlife Service (Service), Southwest Region, has concluded its review of the final (December 2012 version) "Mohave County Wind Farm Eagle Conservation Plan [ECP] and Bird Conservation Strategy [BCS]" for the proposed Mohave County Wind Farm (Project) in Mohave County, Arizona. The ECP was developed by BP Wind Energy North America, Inc. (BP Wind), a wholly owned, indirect subsidiary of BP p.l.c. BP Wind proposes to develop, own, and operate the 46,066-acre, 425- to 500-megawatt Project on Federal lands managed by the Bureau of Land Management (BLM) and the Bureau of Reclamation.

We appreciate the opportunity to provide comments and technical recommendations on drafts of the ECP. Our review is in the context of our legal mandate and trust responsibility to maintain healthy migratory bird populations for the benefit of the American public, pursuant to the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). BP Wind initiated coordination with the Service in 2008, early in the Project's development, as documented in the ECP. Between July 2011 and October 2012, staff from the Migratory Bird and Ecological Services Programs of the Service's Southwest Region collectively attended, in person or via conference phone, 23 consultation meetings with BP Wind.

During this period we also exchanged at least 180 email and phone communications with BP Wind and its consultant, commented on two drafts of the ECP, then reviewed the final draft in November 2012. Additionally, during September and October 2012, the Service's Eagle Technical Assessment Team worked directly with BP Wind, its consultant, and the Southwest Region's Migratory Division of Migratory Birds to assess an eagle estimate fatality for the Project that was generated by BP Wind's consultant.

Baseline preconstruction assessments for the Project, including surveys for eagles, were completed in 2009, before the Service finalized permit regulations to authorize limited take of eagles under the

BGEPA, where the take is associated with otherwise lawful activities. (Federal Register, September 11, 2009) and well prior to the release of the Draft ECP Guidance (January 2011; Draft Guidance).

Early coordination and assessment afforded sizable opportunity for BP Wind to make initial siting, construction, and operation decisions that minimized potential negative impacts of the Project on golden eagles and other species of migratory birds and their habitats. The Service appreciates BP Wind's history of substantive efforts to consider and protect eagles and thus views the ECP with much flexibility.

The Project ECP is a comprehensive, objective, state-of-the-art document that conveys strong commitment to conservation of the golden eagle. Field efforts to evaluate potential risks to this species were extensive, especially during 2012. These efforts lent solid information to support decisions for avoiding and minimizing risks to golden eagles by developing a no-build buffer and omitting sections of proposed turbine corridors in the Squaw Peak area.

Moreover, we credit BP Wind and its consultant for fully developing a novel approach to compensatory mitigation, in collaboration with the Arizona Game and Fish Department and the Service. The approach focuses on offsetting fatalities of eagles associated with Project infrastructure by moving carcasses off roads and roadsides, where scavenging eagles may be struck by passing vehicles, to safe sites away from roads. Another significant and unique part of the ECP is incorporation of a flexible curtailment zone south of the Squaw Peak area. The ECP outlines a means of adaptively managing eagle risk by tailoring the spatial extent and seasonal timing of curtailment according to information gleaned from detailed study of local movements of the birds.

We find the ECP to be reasonably consistent with the Draft Guidance and believe it could be used to support an application to the Service for a programmatic eagle take permit by BP Wind. Assuming other requirements, such as the Service's analysis under the National Environmental Policy Act, are adequately developed, the ECP could facilitate a relatively expedited permit issuance decision from the Service.

The BCS component of the Project ECP-BCS document is well conceived, communicated, and supported by on-site data. We note that a possible indirect benefit of the no-build measure to protect golden eagles in the Squaw Peak area is decreased likelihood of negative impacts to passeriform birds, as passerine use on the Project appeared to be greatest on the west slope of Squaw Peak.

We emphasize that the ECP must be fully executed if BP Wind is to avoid take of eagles to the maximum extent possible. We also note that the MBTA and its implementing regulations (Title 50, Code of Federal Regulations [CFR] Part 21) do not provide for issuance of permits that authorize take of migratory birds that may be killed or injured by otherwise lawful activities, such as energy generation by wind turbines. Currently, the list of federally protected migratory birds includes 1007 species (50 CFR Part 10).

Through the BGEPA, however, there is limited opportunity for permits that authorize take of eagles when such take is associated with otherwise lawful activities, cannot practicably be avoided, and is compatible with the goal of stable or increasing eagle breeding populations (Federal Register, September 11, 2009). The BGEPA also affords eagles additional protections beyond those provided by the MBTA, in particular, by making it unlawful to *disturb* eagles. The ECPs support issuance of programmatic permits for incidental take of eagles at wind energy facilities. Information on ECPs and programmatic permits for take of eagles can be found via this link to the Service's website:

http://www.fws.gov/windenergy/eagle_guidance.html.

The Service recognizes that BP Wind's ECP-BCS document includes viable measures to avoid and minimize impacts to eagles and other species of migratory birds during construction and operation of the Project, and that it is being voluntarily prepared and implemented as a good faith effort. Nonetheless, it is not possible for the Service to absolve individuals, corporations, or agencies from liability even if they implement avian mortality avoidance or similar conservation measures. There is no threshold as to the number of birds or other animals taken at wind energy sites beyond which the Service will initiate enforcement action, although the Service's Office of Law Enforcement focuses its resources on investigating and referring for prosecution individuals and companies that take migratory birds without regard for their actions or without taking effective steps to avoid or minimize take.

As additional evidence of its continuing good faith efforts, BP Wind may voluntarily report birds injured or killed in association with construction, infrastructure, and operation of the Project. As well as any actions taken to address such events to the Service's Bird Injury and Mortality Reporting System (BIMRS), maintained by the Office of Law Enforcement. To enter the Project in the database and to set up an account for reporting purposes, visit the BIMRS website: <https://birdreport.fws.gov/>.

In keeping with our trust responsibilities to American Indian Tribes, we encourage you to continue to coordinate with the Bureau of Indian Affairs when implementing this project. We are also notifying Tribes that may be interested in the Project ECP-BCS by a copy of this letter.

Please contact Robert Murphy in the Southwest Region's Division of Migratory Birds at, (robert_murphy@fws.gov; 505-248-6879) or William Werner at the Service's Arizona Ecological Services Office (william_werner@fws.gov; 602-242-0210) for questions regarding the ECP and its implementation. We also encourage you to continue consultation regarding the Project with the Arizona Game and Fish Department.

Sincerely,

ACTING



Regional Director

