

Kelly Fuller
P.O. Box 685
Descanso, CA 91916

September 2, 2014

Service Information Collection Clearance Officer
U.S. Fish and Wildlife Service
MS 2042–PDM
4401 North Fairfax Drive
Arlington, VA 22203
hope_grey@fws.gov

Subject: Proposed Information Collection 1018–0115; Land-Based Wind Energy Guidelines

Dear Ms. Grey:

Thank you for this opportunity to comment on the proposed Information Collection Notice (Notice) for the Land-Based Wind Energy Guidelines.¹ I am an independent consultant to the environmental NGO community and was the Wind Campaign Coordinator at American Bird Conservancy in Washington, D.C. at the time the Land-Based Wind Energy Guidelines (Guidelines) were published by the U.S. Fish and Wildlife Service (FWS). I hope that the FWS will consider this Information Collection from the perspective of the public in addition to the perspectives of the agency and the wind energy industry. The public submitted many comments to the FWS as the Guidelines were being drafted and finalized, and the implementation of the Guidelines (which this data collection supports) remains of keen interest.

I. Comments about the Notice's Abstract

The Notice states, “When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern” (page 38056). However, currently FWS has *no* regulatory tools² to use with the Guidelines for conserving FWS-designated Birds of Conservation Concern other than eagles. This is significant because Birds of Conservation Concern are, other than federally threatened or endangered species, FWS’s highest conservation priorities.³ In contrast, species

¹ The Notice was published in the Federal Register on July 3, 2014 (Vol. 79, No. 128) and is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-07-03/pdf/2014-15617.pdf>.

² The Federal Register notice of availability of the final Guidelines identifies Habitat Conservation Plans, Bird and Bat Conservation Strategies, and Eagle Conservation Plans as the tools that will be used with the Guidelines. See page 17497, Federal Register, Vol. 77, No. 58 (March 26, 2012). Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-26/pdf/2012-7011.pdf>. Habitat Conservation Plans are associated with the Endangered Species Act and Eagle Conservation Plans with the Bald and Golden Eagle Protection Act. However, unless required by another agency or a FWS permitting decision associated with the ESA or Eagle Act, Bird and Bat Conservation Strategies (BBCSs) cannot be considered a “regulatory tool” because without those other regulatory links, BBCSs are related only to the Guidelines, which are voluntary and not regulatory.

³ See page iii. FWS, Division of Migratory Bird Management (2008). *Birds of Conservation Concern 2008*. Available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/BCC2008/BCC2008.pdf>.

listed under the Endangered Species Act (ESA) are protected from unregulated take and its consequences via Incidental Take Permits, Habitat Conservation Plans, and the ESA's citizen-suit provision, which allows the public to enforce the conservation of listed species. Similarly, eagles have special take permit regulations implementing the Eagle Act. These regulations include Incidental Take Permits that seek to conserve eagles through avoidance and minimization measures, as well as in some cases, compensatory mitigation. However, excepting eagles, FWS-designated Birds of Conservation Concern are only protected by the Migratory Bird Treaty Act (MBTA), which does not have implementing regulations managing take and conservation at wind energy facilities. Nor does the MBTA have a citizen-suit provision that would allow the public to enforce conservation these species.

Thus, due to the lack of true regulatory tools to accompany the Guidelines and the voluntary nature of the Guidelines themselves, many FWS-designated Birds of Conservation Concern are left without adequate protection at wind energy facilities. This is exemplified by the fact that to date, the federal government has only prosecuted *one* energy company for the deaths of migratory birds at wind power facilities. In contrast, there have been many prosecutions of other energy sectors for killing migratory birds protected by law (e.g., owners of electric power lines, oil and gas production facilities).

One passage in the Information Collection notice increases the impression that FWS is leaving Birds of Conservation Concern that are only protected by the MBTA vulnerable to wind power:

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with applicable laws and regulations. Developers of wind energy projects have a responsibility to comply with the law; for example, they must obtain incidental take authorization for species protected by the Endangered Species Act and/or Bald and Golden Eagle Protection Act. (page 38056)

Here, only the ESA and Eagle Act are mentioned as laws that require compliance from wind project developers even though the MBTA protects FWS Birds of Conservation Concern. This omission seems odd given that the Guidelines list the MBTA under "Statutory Authorities," saying,

The statute's language is clear that actions resulting in a "taking" or possession (permanent or temporary) of a protected species, in the absence of a Service permit or regulatory authorization, are a violation of the MBTA. (page 2)

I hope that this does not mean that in current practice this data collection de-emphasizes migratory birds in general.

II. Comments on the Necessity and Utility of This Information Collection

The Notice invites comments on "Whether or not the collection of information is necessary, including whether or not the information will have practical utility." This information collection is both necessary and useful because if it did not take place, the FWS would not have any means of monitoring the effectiveness of the Guidelines except for whatever information came in through complaints to or investigations conducted by the FWS Office of Law Enforcement. Furthermore, the Senior Advisor to the Director of FWS (David Cottingham) stated publicly at a 2012 research conference that Tier 4 data collection reports would be the FWS's means of knowing whether the Guidelines were effective:

Q: How is the Service going to measure the effectiveness of the new voluntary guidelines, and how share that with public?

A: The Service has a system for tracking technical assistance that we provide. It is an internal system and the reports are not publicly available. When people come to us with any project, we work with them to incorporate the Tier 4 data collection reports (generated as a result of the new voluntary guidelines) into that tracking system.⁴

In addition, in the Federal Register notice announcing the availability of the final Guidelines, the FWS stated,

The Service believes that the comprehensive approach described by the Guidelines in combination with use of existing tools such as Habitat Conservation Plans, Bird and Bat Conservation Strategies, and Eagle Conservation Plans will provide robust conservation of wildlife and their habitats. If appropriate, based on experience gained under these Guidelines, the Service can revisit their voluntary nature in the future.⁵

Data collection is necessary for the FWS to determine whether the Guidelines are indeed working well for wildlife conservation and if their “voluntary nature” should receive a “revisit.”

III. Comments on the Accuracy of Notice’s Estimate of the Burden for This Collection of Information

The Notice estimates that there will only be 50 responses and 50 respondents annually submitting information related to the Guidelines’ Tier 4 (post-construction fatality monitoring and habitat studies). This seems low considering that the Guidelines are intended to apply not only to projects initiated after publication of the Guidelines, but also to projects that were already in development and already operating. See, for example, page 4 of the Guidelines:

- For projects initiated prior to publication, the developer should consider where they are in the planning process relative to the appropriate tier and inform the Service of what actions they will take to apply the Guidelines.
- For projects operating at the time of publication, the developer should confer with the Service regarding the appropriate period of fatality monitoring consistent with Tier 4, communicate and share information with the Service on monitoring results, and consider Tier 5 studies and mitigation options where appropriate.

Regarding burden, the Guidelines describe the relief from prosecution for violating wildlife laws that is available to the wind power industry in exchange for Guidelines adherence:

⁴ See page 6, National Wind Coordinating Collaborative (2013). Meeting Proceedings, Wind Wildlife Research Meeting IX (November 28-30, Broomfield, CO). Available at http://nationalwind.org/wp-content/uploads/2013/05/NWCC_WWRM_IX_Proceedings_06-27-13_.pdf.

⁵ See page 17497, Federal Register, Vol. 77, No. 58 (March 26, 2012). Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-26/pdf/2012-7011.pdf>.

The Service urges voluntary adherence to the Guidelines and communication with the Service when planning and operating a facility. While it is not possible to absolve individuals or companies from MBTA or BGEPA liability, the Office of Law Enforcement focuses its resources on investigating and prosecuting those who take migratory birds without identifying and implementing reasonable and effective measures to avoid the take. *The Service will regard a developer's or operator's adherence to these Guidelines, including communication with the Service, as appropriate means of identifying and implementing reasonable and effective measures to avoid the take of species protected under the MBTA and BGEPA.*⁶ (page 6, emphasis added)

Having an established FWS procedure to reduce likelihood of prosecution for violations of the MBTA seems like more than full recompense for the industry's burden of data collection.

Moreover, the wind industry frequently and publicly states it is proactive about reducing impacts to wildlife.⁷ This data collection can help the wind industry substantiate those claims and so benefits the industry.

In addition, the Notice does not include any estimate of the burden to the *public* of accessing this data collection through the only mechanisms generally at the public's disposal: Freedom of Information Act (FOIA) requests and administrative appeals and lawsuits after FOIA requests are made. For example, since the Guidelines were published, American Bird Conservancy (ABC) has administratively appealed to the Department of Interior multiple times and sued the FWS at least twice after FWS chose not to release Tier 4 and other Guidelines-related data requested by ABC through FOIA.⁸ Accessing this data is necessary for public oversight of the effectiveness of the Guidelines.

IV. Comments on ways to enhance the quality, utility, and clarity of the information to be collected

The quality and utility of this data collection could be markedly improved by allowing the public greater access to it. This would not only facilitate the public's evaluation of the effectiveness of the Guidelines (which speaks to the utility of this data collection), but would also improve the quality of the information being collected, by increasing public oversight. For example, the public at times has local knowledge that the FWS does not and so can increase oversight of the data's accuracy.

⁶ The Guidelines clarify that this prosecutorial discretion in exchange for Guidelines adherence applies at wind energy facilities not expected to take eagles; otherwise, an Eagle Conservation Plan should be developed and if necessary the project should apply for an eagle take permit. There is no clarification offered for the MBTA. See Guidelines, page 6.

⁷ See, for example, American Wind Energy Association (August 19, 2011), "Wind Energy's Commitment to Wildlife." Available at <http://www.awea.org/MediaCenter/pressrelease.aspx?ItemNumber=4661&RDtoken=41096&userID=>.

⁸ See, for example, American Bird Conservancy (June 26, 2012), "Federal Agencies Sued Over Failure to Disclose Correspondence with Wind Industry - Promise of Government Transparency Not Being Met." Available at <http://www.abcbirds.org/newsandreports/releases/120626.html>. The legal complaint for ABC's second wind FOIA lawsuit is available at http://www.abcbirds.org/abcprograms/policy/collisions/pdf/ABC_FOIA_lawsuit_6-14-13.pdf.

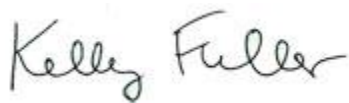
Although the FWS seems to be increasing its support for wind industry claims of “confidential business information” to deny FOIA requests by the public for information related to birds and wind energy,⁹ the FWS does have the legal ability and legal obligation under FOIA to exercise its own judgment. Moreover, the FWS has used this judgment at least once in the past to reject an energy company’s request to withhold Guidelines-related data.¹⁰ There may well be other examples.

In summary:

- 1. I urge the FWS to ensure that this data collection adequately collects data for all FWS Birds of Conservation Concern, as well as birds that are only protected by the MBTA, not just eagles and ESA-listed species.**
- 2. This data collection is both necessary and useful.**
- 3. The Notice appears to underestimate the number of responses and respondents.**
- 4. Burden on the wind industry is balanced by the Guidelines’ offer of prosecutorial discretion.**
- 5. The FWS should also consider the burden to the public of gaining access to this data collection, which is necessary for public oversight.**
- 6. The quality and utility of this data collection could be increased by allowing the public better access to it.**

Thank you for this opportunity to comment. Please add me to the notification list for updates in this matter, via this email address: kelly@kellyfuller.net.

Sincerely yours,



Kelly Fuller

⁹ For example, in a June 20, 2014 FOIA release to The Protect Our Communities Foundation (POC), FWS withheld items 1-9 of Iberdrola Renewables’ Tule Wind eagle take permit application. See Appendix A, Tule Wind eagle take permit application and Appendix B, June 20, 2014 letter from Larry Buklis (FWS) to Kelly Fuller (representing POC). Although FWS supplied the application itself to POC, Iberdrola had submitted items 1-9 as an attachment to the application. The company then claimed the attachment was confidential business information, and FWS supported the company’s claim. This denied the public the ability to see basic factual information such as the species of eagle(s) and number of eagles the company estimates would be killed annually by its wind project. The FOIA denial also harmed public oversight of whether Iberdrola was meeting the conditions of the U.S. Bureau of Indian Affairs’ Record of Decision for a lease enabling phase II of the Tule Wind project. In contrast, FWS has previously released at least one eagle take permit application in response to a FOIA request. See Appendix C, May 17, 2013 letter from FWS to Louise Red Corn (Big Heart Times). FWS’s partial denial of POC’s Tule Wind FOIA is currently undergoing administrative appeal at the Department of the Interior.

¹⁰ See Appendix D, March 8, 2012 letter from Melvin Tobin (FWS) to Judy Rodd (Friends of Blackwater).



Department of the Interior
U.S. Fish and Wildlife Service
Federal Fish and Wildlife Permit Application Form

OMB Control No. 1018-0022
Expires ~~12/12/13~~

Return to: U.S. Fish and Wildlife Service (USFWS)
Migratory Birds
Attn: Heather Beeler
2800 Cottage Way, W-2606
Sacramento, CA 95825

Type of Activity: Eagle Take – Associated With
But Not the Purpose of an Activity

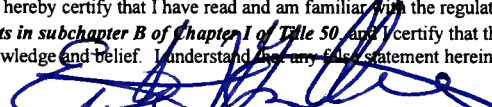
X **New Application**
 Requesting Renewal or Amendment of Permit # _____

Complete Sections A or B, and C, D, and E of this application. U.S. address may be required in Section C, see instructions for details.
See attached instruction pages for information on how to make your application complete and help avoid unnecessary delays.

A. Complete if applying as an individual			
1 a. Last name	1 b. First name	1 c. Middle name or initial	1 d. Suffix
2. Date of birth (mm/dd/yyyy)	3. Social Security No.	4. Occupation	5. Affiliation/ Doing business as (see instructions)
6 a. Telephone number	6 b. Alternate telephone number	6 c. Fax number	6 d. E-mail address

B. Complete if applying on behalf of a business, corporation, public agency, Tribe, or institution			
1 a. Name of business, agency, tribe, or institution Tule Wind LLC	1 b. Doing business as (dba) Tule Wind LLC		
2. Tax identification no. 83-0457010	3. Description of business, agency, or institution Renewable Energy Development		
4 a. Principal officer Last name Raviv	4 b. Principal officer First name Rany	4 c. Principal officer Middle name/ initial	4 d. Suffix
5. Principal officer title Vice President of Business Development		6. Primary contact name Amy E. Parsons	
7 a. Business telephone number 503-796-7082	7 b. Alternate telephone number 503-467-6403	7 c. Business fax number 503-796-6906	7 d. Business e-mail address amy.parsons@iberdrolaren.com

C. All applicants complete address information				
1 a. Physical address (Street address; Apartment #, Suite #, or Room #; no P.O. Boxes) 1125 NW Couch Street, Suite 700				
1 b. City Portland	1 c. State OR	1 d. Zip code/Postal code: 97209	1 e. County/Province Multnomah	1 f. Country USA
2 a. Mailing Address (include if different than physical address; include name of contact person if applicable)				
2 b. City	2 c. State	2 d. Zip code/Postal code:	2 e. County/Province	2 f. Country

D. All applicants MUST complete	
1. Attach check or money order payable to the U.S. FISH AND WILDLIFE SERVICE in the amount of 30 year programmatic - \$51,600 nonrefundable processing fee. Federal, Tribal, State, and local government agencies, and those acting on behalf of such agencies, are exempt from the processing fee – <i>attach documentation of fee exempt status as outlined in instructions.</i> (50 CFR 13.11(d))	
2. Do you currently have or have you ever had any Federal Fish and Wildlife permits? Yes <input checked="" type="checkbox"/> If yes, list the number of the most current permit you have held or that you are applying to renew/re-issue MB18861B-0, MB99468A-0, MB89554A-0, MB96371A-0 No <input type="checkbox"/>	
3. Certification: I hereby certify that I have read and am familiar with the regulations contained in <i>Title 50, Part 13 of the Code of Federal Regulations</i> and the other applicable parts in subchapter B of Chapter I of Title 50, and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.	
Signature (in blue ink) of applicant/person responsible for permit (No photocopied or stamped signatures) 	
Date of signature (mm/dd/yyyy) <u>03/12/2019</u>	

Please continue to next page

**SECTION E. EAGLE TAKE – ASSOCIATED WITH BUT NOT THE PURPOSE OF AN ACTIVITY
(EAGLE NON-PURPOSEFUL TAKE)
(Bald and Golden Eagle Protection Act, 50 CFR 22.26)**

Note: A Federal eagle non-purposeful take permit authorizes the disturbance or other take of eagles where the take results from but is not the purpose of an otherwise lawful activity. Permits are available to individuals, agencies, businesses, and other organizations. This permit does not authorize possession of any eagle, eagle parts, or eagle nests. Please read “What You Should Know About a Federal Permit for Non-Purposeful Eagle Take” and the pertinent regulations at 50 CFR 22.26 before you sign and submit your application.

Please provide the information requested below on a separate sheet of paper. You should be as thorough and specific as possible in your responses. Incomplete applications will be returned, delayed or abandoned. Processing time depends on the complexity of the request and completeness of the application.

Although you may submit supplemental documents that contain the required information, you must respond to each application requirement below specifically in a single attachment that includes all and only the information required by the application. Enumerate each response in accordance with the question numbers below. Please do not send pages that are over 8.5” x 11” or DVDs.

Please see the attached ECP for responses to items 1-9

1. The name and contact information for any U.S. Fish and Wildlife Service employee(s) who has provided technical assistance or worked with you on this project.
2. The species and number of eagles that are likely to be taken and the likely form of that take (e.g., disturbance, other take).
3. The dates the activity will start and is projected to end. If the project has begun, describe the stage of progress.
4. A detailed description of the activity that will likely cause the disturbance or other take of eagles.
5. An explanation of why the take of eagles is necessary, including what interests will be protected by the project or activity.
6. Maps, digital photographs, county/city information, and latitude/longitude geographic coordinates of the proposed activity.
7. Maps, digital photographs, county/city information, and latitude/longitude geographic coordinates of eagle-use areas in the vicinity of the activity, including nest site(s), roost areas, foraging areas, and known migration paths. Provide the specific distance and locations of nests and other eagle-use areas from the project footprint.
8. If the projected take of eagles is in the form of disturbance, answer the following two questions:
 - a. Will the activity be visible to eagles in the eagle-use areas, or are there visual buffers such as screening vegetation or topography that blocks the view?
 - b. What is the extent of existing activities in the vicinity that are similar in nature, size, and use to your activity, and if so, what is the distance between those activities and the important eagle use areas
9. A detailed description of all avoidance and minimization measures that you have incorporated into your planning for the activity that you will implement to reduce the likelihood of take of eagles.
10. You must retain records relating to the activities conducted under your permit for at least 5 years from the date of expiration of the permit. Please provide the address where these records will be kept.
11. Any permit issued as a result of this application is not valid unless you also have any required State or Tribal permits associated with the activity. Have you obtained all required State or Tribal permits or approvals to conduct this activity? Indicate “Yes”, “Have applied”, or “None Required”. If “Yes”, attach a copy of the approval(s). If “Have applied”, submit a copy when issued.
12. If you have received technical assistance for your project from your State wildlife agency, please provide the name and contact information for the individual(s).
13. **Disqualification factor.** A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Service Director in response to a written petition. (50 CFR 13.21(c)) Have you or any of the owners of the business, if applying as a business, been convicted, or entered a plea of guilty or nolo contendere, forfeited collateral, or are currently under charges for any violations of the laws mentioned above? Indicate “Yes” or “No”. If you answered “Yes” provide: a) the individual’s name, b) date of charge, c) charge(s), d) location of incident, e) court, and f) action taken for each violation.

Fee Schedule for Eagle Take – Associated with but not the purpose of an Activity

Type of Permit	Permit Application Fee	Administration Fee ¹	Amendment Fee
Eagle Take—Associated With But Not the Purpose of an Activity	\$500		\$150
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, low-risk projects, 5- to 30-year tenure ¹	\$8,000	\$500	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, up to 5-year tenure	\$36,000	\$2,600	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 5-year to 10-year tenure	\$36,000	\$5,200 ²	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 10-year to 15-year tenure	\$36,000	\$7,800 ²	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 15-year to 20-year tenure	\$36,000	\$10,400 ²	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 20-year to 25-year tenure	\$36,000	\$13,000 ²	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 25-year to 30-year tenure	\$36,000	\$15,600 ²	\$1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Transfer of a programmatic permit	\$1,000		

¹ “Low-risk” means a project or activity is unlikely to take an eagle over a 30-year period and the applicant for a permit for the project or activity has provided the Service with sufficient data obtained through Service-approved models and/or predictive tools to verify that the take is likely to be less than 0.03 eagles per year.

² \$2,600 assessed upon approval of permit, and for each 5-year review.

PERMIT APPLICATION FORM INSTRUCTIONS

The following instructions pertain to an application for a U.S. Fish and Wildlife Service or CITES permit. The General Permit Procedures in 50 CFR 13 address the permitting process. For simplicity, all licenses, permits, registrations, and certificates are referred to as a permit.

GENERAL INSTRUCTIONS:

- Complete all blocks/questions in Sections A or B, and C, D, and E.
- **An incomplete application may cause delays in processing or may be returned to the applicant. Be sure you are filling in the appropriate application form for the proposed activity.**
- Print clearly or type in the information. Illegible applications may cause delays.
- Sign the application in blue ink. Faxes or copies of the original signature will not be accepted.
- Mail the original application to the address at the top of page one of the application or if applicable on the attached address list.
- **Keep a copy of your completed application.**
- **Please plan ahead. Allow at least 60 days for your application to be processed. Some applications may take longer than 90 days to process. (50 CFR 13.11)**
- Applications are processed in the order they are received.
- Additional forms and instructions are available from <http://permits.fws.gov/>.

COMPLETE EITHER SECTION A OR SECTION B:

Section A. Complete if applying as an individual:

- Enter the complete name of the responsible individual who will be the permittee if a permit is issued. Enter personal information that identifies the applicant. ***Fax and e-mail are not required if not available.***
- If you are applying on behalf of a client, the personal information must pertain to the client, and a document evidencing power of attorney must be included with the application.
- **Affiliation/ Doing business as (dba):** business, agency, organizational, or institutional affiliation *directly* related to the activity requested in the application (e.g., a taxidermist is an individual whose business can *directly* relate to the requested activity). The Division of Management Authority (DMA) will **not** accept *doing business as* affiliations for individuals.

Section B. Complete if applying as a business, corporation, public agency, Tribe, or institution:

- Enter the complete name of the business, agency, Tribe, or institution that will be the permittee if a permit is issued. Give a brief description of the type of business the applicant is engaged in. Provide contact phone number(s) of the business.
- **Principal Officer** is the person in charge of the listed business, corporation, public agency, Tribe, or institution. The principal officer is the person responsible for the application and any permitted activities. Often the principal officer is a Director or President. **Primary Contact** is the person at the business, corporation, public agency, Tribe, or institution who will be available to answer questions about the application or permitted activities. Often this is the preparer of the application.

ALL APPLICANTS COMPLETE SECTION C:

- For all applications submitted to the Division of Management Authority (DMA) a physical U.S. address is **required**. Province and Country blocks are provided for those USFWS programs which use foreign addresses and are not required by DMA.
- **Mailing address** is address where communications from USFWS should be mailed if different than applicant's physical address.

ALL APPLICANTS COMPLETE SECTION D:

Section D.1 Application processing fee:

- An application processing fee is required at the time of application; unless exempted under 50 CFR 13.11(d)(3). The application processing fee is assessed to partially cover the cost of processing a request. **The fee does not guarantee the issuance of a permit. Fees will not be refunded for applications that are approved, abandoned, or denied.** We may return fees for withdrawn applications prior to any significant processing occurring.
- **Documentation of fee exempt status is not required for Federal, Tribal, State, or local government agencies; but must be supplied by those applicants acting on behalf of such agencies.** Those applicants acting on behalf of such agencies must submit a letter on agency letterhead and signed by the head of the unit of government for which the applicant is acting on behalf, confirming that the applicant will be carrying out the permitted activity for the agency.

Section D.2 Federal Fish and Wildlife permits:

- List the number(s) of your most current FWS or CITES permit or the number of the most recent permit if none are currently valid. If applying for re-issuance of a CITES permit, the original permit must be returned with this application.

Section D.3 CERTIFICATION:

- **The individual identified in Section A, the principal officer named in Section B, or person with a valid power of attorney (documentation must be included in the application) must sign and date the application in blue ink.** This signature binds the applicant to the statement of certification. This means that you certify that you have read and understand the regulations that apply to the permit. You also certify that everything included in the application is true to the best of your knowledge. Be sure to read the statement and re-read the application and your answers before signing.

ALL APPLICANTS COMPLETE SECTION E.

Please continue to next page

APPLICATION FOR A FEDERAL FISH AND WILDLIFE PERMIT
Paperwork Reduction Act, Privacy Act, and Freedom of Information Act – Notices

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and the Privacy Act of 1974 (5 U.S.C. 552a), please be advised:

1. The gathering of information on fish and wildlife is authorized by:
(Authorizing statutes can be found at: <http://www.gpoaccess.gov/cfr/index.html> and <http://www.fws.gov/permits/ltr/ltr.html>.)
 - a. Bald and Golden Eagle Protection Act (16 U.S.C. 668), 50 CFR 22;
 - b. Endangered Species Act of 1973 (16 U.S.C. 1531-1544), 50CFR 17;
 - c. Migratory Bird Treaty Act (16 U.S.C. 703-712), 50 CFR 21;
 - d. Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, *et seq.*), 50 CFR 18;
 - e. Wild Bird Conservation Act (16 U.S.C. 4901-4916), 50 CFR 15;
 - f. Lacey Act: Injurious Wildlife (18 U.S.C. 42), 50 CFR 16;
 - g. Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249), <http://www.cites.org/>, 50 CFR 23;
 - h. General Provisions, 50 CFR 10;
 - i. General Permit Procedures, 50 CFR 13; and
 - j. Wildlife Provisions (Import/export/transport), 50 CFR 14.
2. Information requested in this form is purely voluntary. However, submission of requested information is required in order to process applications for permits authorized under the above laws. Failure to provide all requested information may be sufficient cause for the U.S. Fish and Wildlife Service to deny the request. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.
3. Certain applications for permits authorized under the Endangered Species Act of 1973 (16 U.S.C. 1539) and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374) will be published in the **Federal Register** as required by the two laws.
4. Disclosures outside the Department of the Interior may be made without the consent of an individual under the routine uses listed below, if the disclosure is compatible with the purposes for which the record was collected. (Ref. 68 FR 52611, September 4, 2003)
 - a. Routine disclosure to subject matter experts, and Federal, Tribal, State, local, and foreign agencies, for the purpose of obtaining advice relevant to making a decision on an application for a permit or when necessary to accomplish an FWS function related to this system of records.
 - b. Routine disclosure to the public as a result of publishing **Federal Register** notices announcing the receipt of permit applications for public comment or notice of the decision on a permit application.
 - c. Routine disclosure to Federal, Tribal, State, local, or foreign wildlife and plant agencies for the exchange of information on permits granted or denied to assure compliance with all applicable permitting requirements.
 - d. Routine disclosure to Captive-bred Wildlife registrants under the Endangered Species Act for the exchange of authorized species, and to share information on the captive breeding of these species.
 - e. Routine disclosure to Federal, Tribal, State, and local authorities who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured birds under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act; federally permitted rehabilitators; individuals seeking a permitted rehabilitator with whom to place a bird in need of care; and licensed veterinarians who receive, treat, or diagnose sick, orphaned, and injured birds.
 - f. Routine disclosure to the Department of Justice, or a court, adjudicative, or other administrative body or to a party in litigation before a court or adjudicative or administrative body, under certain circumstances.
 - g. Routine disclosure to the appropriate Federal, Tribal, State, local, or foreign governmental agency responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, or licenses, when we become aware of a violation or potential violation of such statutes, rules, or licenses, or when we need to monitor activities associated with a permit or regulated use.
 - h. Routine disclosure to a congressional office in response to an inquiry to the office by the individual to whom the record pertains.
 - i. Routine disclosure to the Government Accountability Office or Congress when the information is required for the evaluation of the permit programs.
 - j. Routine disclosure to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor or to consumer reporting agencies to prepare a commercial credit report for use by the FWS.
5. For individuals, personal information such as home address and telephone number, financial data, and personal identifiers (social security number, birth date, etc.) will be removed prior to any release of the application.
6. The public reporting burden on the applicant for information collection varies depending on the activity for which a permit is requested. The relevant burden for an Eagle Non-Purposeful Take (standard) permit application is 16 hours, and 6 hours for a standard amendment. For an Eagle Non-Purposeful Take (programmatic) permit application, the relevant burden is 452 hours and 70 hours for an amendment. [This burden estimate includes time for reviewing instructions, gathering and maintaining data and completing and reviewing the form. You may direct comments regarding the burden estimate or any other aspect of the form to the Service Information Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C Street, NW, Washington D.C. 20240.

Freedom of Information Act – Notice

For organizations, businesses, or individuals operating as a business (i.e., permittees not covered by the Privacy Act), we request that you identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA. Confidential business information must be clearly marked "Business Confidential" at the top of the letter or page and each succeeding page and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.26 – 2.33].



U.S. Fish & Wildlife Service

Migratory Bird Regional Permit Offices

FWS REGION	AREA OF RESPONSIBILITY	MAILING ADDRESS	CONTACT INFORMATION
Region 1	Hawaii, Idaho, Oregon, Washington	911 N.E. 11th Avenue Portland, OR 97232-4181	Tel. (503) 872-2715 Fax (503) 231-2019 Email permitsR1MB@fws.gov
Region 2	Arizona, New Mexico, Oklahoma, Texas	P.O. Box 709 Albuquerque, NM 87103	Tel. (505) 248-7882 Fax (505) 248-7885 Email permitsR2MB@fws.gov
Region 3	Iowa, Illinois, Indiana, Minnesota, Missouri, Michigan, Ohio, Wisconsin	5600 American Blvd. West Suite 990 Bloomington, MN 55437-1458 (Effective 5/31/2011)	Tel. (612) 713-5436 Fax (612) 713-5393 Email permitsR3MB@fws.gov
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virgin Islands, Puerto Rico	P.O. Box 49208 Atlanta, GA 30359	Tel. (404) 679-7070 Fax (404) 679-4180 Email permitsR4MB@fws.gov
Region 5	Connecticut, District of Columbia, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia	P.O. Box 779 Hadley, MA 01035-0779	Tel. (413) 253-8643 Fax (413) 253-8424 Email permitsR5MB@fws.gov
Region 6	Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming	P.O. Box 25486 DFC(60154) Denver, CO 80225-0486	Tel. (303) 236-8171 Fax (303) 236-8017 Email permitsR6MB@fws.gov
Region 7	Alaska	1011 E. Tudor Road (MS-201) Anchorage, AK 99503	Tel. (907) 786-3693 Fax (907) 786-3641 Email permitsR7MB@fws.gov
Region 8	California, Nevada	2800 Cottage Way Room W-2606 Sacramento, CA 95825	Tel. (916) 978-6183 Fax (916) 414-6486 Email permitsR8MB@fws.gov

Iberdrola Renewables Holdings, Inc.
Accounts Payable Dept.
1125 NW Couch Suite 600
Portland, OR 97209

Check Date 06-MAR-14
Check 5114669
Vendor No 626434 Page 1 of 1

If you have any question or require further information, please contact our Suppliers Service Center:

SupplierAssistance@iberdrolaren.com
(+01) 503-796-7050

US FISH & WILDLIFE SERVICE
2800 COTTAGE WAY W-2606
Sacramento, CA 95825-1846

Payment on behalf of	Invoice Number	Invoice Date	Description	Net Amount
Pacific Wind Development LLC	030614	06-MAR-2014	TULE II PROJECT	38,600.00
TOTALS				\$38,600.00

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

Iberdrola Renewables Holdings, Inc.
1125 NW Couch Street, Suite 700
PORTLAND, OR 97209-4129

JPMorgan Chase Bank, N.A.
Chicago, Illinois

70-2322/719

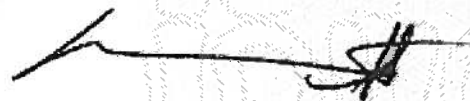
CHECK NO: 5114669

CHECK DATE	CHECK NO	PAY THIS AMOUNT
06-MAR-14	5114669	\$**38,600.00**

AMOUNT Thirty-eight Thousand Six Hundred Dollars And 00 Cents *****

PAY TO THE ORDER OF:

US FISH & WILDLIFE SERVICE
2800 COTTAGE WAY W-2606
Sacramento, CA 95825-1846



Authorized Signature

0005114669 071923226

009408402

004774060

004774060

ENDORSE CHECK HERE

X

DO NOT WRITE/SIGN/STAMP BELOW THIS LINE

DEPOSITORY BANK ENDORSEMENT



Please look for the following additional check security features before accepting this document. IF NOT PRESENT, DO NOT NEGOTIATE THE DOCUMENT.

- Laid lines on the back of check should be in argument of the check, ie not authentic - watch for cut and paste
- Microprinting - under magnification the top border on the front of this check should read "Standard Register Security"
- Thermochromic Ink - Standard Register mark on back of check fades from blue to clear when heat is applied
- All Artificial Watermark is present and is visible at all angle
- Copyban Capture - security void feature on front of check

Each check is signed & certified by the Standard Register Payment Systems Association.





United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Avenue
Portland, Oregon 97232-4181



In Reply Refer to:
ABA-CGS-FOIA
FWS-2014-00870

June 20, 2014

Ms. Kelly Fuller
The Protect Our Communities Foundation
P.O. Box 305
Santa Ysabel, California 92070

Dear Ms. Fuller:

This letter completes our response to your Freedom of Information Act (FOIA) request dated May 6, 2014, regarding:

- “1. POC seeks any eagle take permit application(s) for the Tule Wind project that have been submitted to FWS; and
2. Any supporting documents submitted with the application(s), e.g., eagle take estimate modeling.

Please provide all records responsive to this request that were created on or after January 15, 2014.”

Your FOIA request was received by me by email on May 7, 2014, and was placed in the Department of the Interior (DOI) FOIA Tracking System under reference number FWS-2014-00870. Please refer to this number in your communications regarding this request.

Your fee category is understood to be “other,” based upon the information you have provided. You requested a waiver of fees. In my letter to you dated May 8, 2014, I reported that your request for waiver of fees had been granted.

A thorough record search was conducted, and 13 records responsive to your request were located. Accompanied by my letter to you dated June 13, 2014, I had sent to you 12 of those 13 records in their entirety, with no portions withheld. Regarding the last of those 13 records, I had informed you that, consistent with Department of the Interior FOIA regulations (43 CFR 2.35), we had provided submitter notification to Iberdrola Renewables that a document we had located in the course of our record search in response to your FOIA request may contain confidential information.

Upon completion of the submitter notification process and our review of this one remaining responsive record, which is a 59 page draft plan entitled “*Draft Eagle Conservation Plan for the Tule II Wind Project March 2014*,” we have made the determination to withhold this record in



full under FOIA Exemption 4, Confidential Commercial Information. The Confidential Commercial Information exemption (5 USC§552 b (4)) protects trade secrets and other customarily non-public, confidential, and privileged proprietary information. The submitter holds this information to be confidential; its disclosure would cause substantial harm by allowing competitors to benefit from the time and resources that the submitter has expended in developing this draft plan.

The exemption decision was made in consultation with Veronica Rowan, Assistant Regional Solicitor, Office of the Solicitor, Pacific Southwest Region, Department of the Interior, in Sacramento, California. You have a right to treat this as a denial of your request, and may appeal this matter to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240

You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including a copy of your original FOIA request and this final response letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the bureau's response is in error.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 &

Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions on your FOIA request, please contact me at larry_buklis@fws.gov or by telephone at 503-231-2072.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Buklis". The signature is fluid and cursive, with the first name "Larry" and last name "Buklis" clearly distinguishable.

Larry Buklis
Regional FOIA Coordinator
Region 1 and Region 8



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103



In Reply Refer To:
FWS/R2/FOIA/054483
FWS-2013-00627

MAY 17 2013

Ms. Louise Red Corn
The Bigheart Times
P.O. Box 469
Barnsdall, Oklahoma 74002

Dear Ms. Red Corn:

This is a final response to your Freedom of Information Act (FOIA) request dated March 22, 2013, FWS-2013-00627, regarding eagle take permits in Oklahoma. Please refer to our letter dated March 29, 2013, for a summary of your request.

Staff in the Division of Migratory Birds in the Regional Office identified two records responsive to your request. We have reviewed the records, and after communicating with you via email on May 6, 2013, we have redacted the permittee's tax identification number and personal phone number, and are otherwise releasing the records in full. Both records can be found on the enclosed compact disc.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552 (c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This completes our response to your request. Any fees associated with the processing of your request have been waived in accordance with 43 CFR §2.45. If you have any questions or would like to discuss your request, please contact Melanie Ikenson, Regional FOIA Coordinator, at 505-248-6284; or, by email at melanie_ikenson@fws.gov.

Sincerely,


for Assistant Regional Director
Ecological Services

Enclosure



United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241



March 8, 2012

Ms. Judy Rodd, Director
Friends of Blackwater
501 Elizabeth Street, Room 3
Charleston, West Virginia 25311

Re: Two Freedom of Information Act Requests, Nos. 2012-00544 and 2012-00545

Dear Ms. Rodd:

Thank you for your letters, each dated February 24, 2012, requesting copies of two records pursuant to the Freedom of Information Act (FOIA). You requested copies of the avian and bat protection plans for the Laurel Mountain and the New Creek wind energy projects in West Virginia. Because your requests were similar, we are responding with one letter for both requests, which have been assigned FOIA tracking numbers 2012-00544 and 2012-00545, respectively.

During discussions and an e-mail exchange with Laura Hill of this office on February 24, 2012, we informed you that the submitter of the records, the AES Corporation, considered them to be confidential business information. Therefore, the Service needed to follow procedures under the FOIA regulations which allow opportunity for the submitter to object to release of the records (43 C.F.R. §§ 2.23 and 2.24).

On February 28, 2012, we notified the AES Corporation of our preliminary determination that we found no basis under the FOIA exemptions to withhold information in the two records, and thus we intended to release them in entirety. After considering our input, a manager from the corporation notified us on March 6, 2012, of his decision to withdraw the request to withhold these records.


Enclosed please find a cd-rom containing electronic copies of the two records you requested, consisting of a total of 61 pages. No portions of the records have been withheld and your request for a fee waiver has been granted for both requests.

Ms. Judy Rodd, Director
March 8, 2012

2

If you have any questions regarding this letter, please call Laura Hill at 304-636-6586, extension 18.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melvin Tobin', with a stylized flourish at the end.

Melvin Tobin
Acting Field Supervisor

Enclosure: cd-rom