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Katey Grange
Environmental Lead, WRE Project (DOE/EIS-0419)
Bonneville Power Administration - KEC-4
P.O. Box 3621
Portland, OR 97208-3621

Amy M. Gardner
Project Manager, WRE Project (DOE/EIS-0419)
Bonneville Power Administration - TEP-TPP-1
P.O. Box 61409
Vancouver, WA 98666-1409

Re: Whistling Ridge Energy Project (DOE/EIS-0419), Skamania County, Washington

Dear Ms. Grange and Ms. Gardner:

Friends of the Columbia Gorge ("Friends") and Save Our Scenic Area ("SOSA") submits the following comments regarding the Whistling Ridge Energy Project ("Project"). The purpose of this letter is to advise the Bonneville Power Administration ("BPA") about recent information involving the impacts of wind energy projects on eagles and other migratory birds. BPA should evaluate and incorporate this information into a supplemental environmental impact statement for the Project prior to making a decision on the pending interconnection request. This letter and the attached exhibits are supplemental to our July 3, 2014comments.

First, BPA should consider recent investigations and criminal penalties assessed by the United States in connection with the deaths of protected birds, including golden eagles, at wind projects in Wyoming, pursuant to the federal Migratory Bird Treaty Act ("MBTA"). Attached as Exhibits D.20 through D.23 are press releases and articles about these events.

In a December 19, 2014 press release (Exhibit D.22), the U.S. Fish and Wildlife Service ("USFWS") notes that "[i]mproperly sited and operated wind energy facilities can kill significant numbers of federally protected birds and other species." The U.S. Department of Justice ("DOJ") further discusses the important need to determine whether wind turbines are properly sited to avoid avian impacts *before* the turbines are installed:

> For wind projects, due diligence during the pre-construction stage . . . requires surveying the wildlife present in the proposed project area, consulting with agency professionals, determining whether the risk to wildlife is too high to justify proceeding and, if not, carefully siting turbines so as to avoid and minimize the risk as much as possible. *This is critically important because no post-construction remedies, known as "advanced conservation practices" have been developed that can "render safe" a wind turbine placed in a location of high avian collision risk.*

The italicized language above is critical and is directly relevant to the Whistling Ridge Energy Project and the review of the Project by the Washington State Energy Facility Site Evaluation Council ("EFSEC"). The lesson from the DOJ's statement quoted above is that agencies and applicants must fully determine whether wind projects will harm migratory birds *before* the wind turbines are installed. According to the DOJ, it is impossible to "render safe" a project once it is killing migratory birds.

However, in an unfortunate contrast with the DOJ's guidance, the Washington Supreme Court approved an approach for the Project articulated by EFSEC on appeal that directly conflicts with the DOJ's approach discussed above. Rather than properly surveying for migratory birds and addressing proper siting in advance, as recommended by the DOJ, EFSEC argued for—and the Washington Supreme Court approved—a post-construction, "adaptive management" approach that defers adequate surveys and siting analysis until *after* the Project is constructed and *after* the wind turbines are installed:

> [The] requirement [to survey for migratory birds] is part of the ongoing oversight of the project and is not relevant to the sufficiency of preapplication studies. In essence, WAC 463–62–040(2)(f) requires that the [Site Certification Agreement] and the ongoing oversight mechanisms ensure that [the Applicant] studies wildlife impacts in all seasons. If, for example, an unexpectedly high number of olive-sided flycatcher mortalities occur [once the project is constructed and in operation], [the Applicant] might be required to implement additional mitigation measures.

Friends of the Columbia Gorge, Inc. v State Energy Facility Site Evaluation Council, 178 Wn.2d 320, 341, 310 P.3d 780 (2013); *see also* Brief of Respondents (Exhibit D.24) at 24 n.18 ("[T]he best time to study the impact of actual physical hazards is when actual physical structures are in place. Based on the record, EFSEC correctly concluded that post-construction mortality studies, combined with adaptive management, will provide more benefit than pre-construction studies performed in a vacuum.").

The "adaptive management" approach approved by EFSEC and endorsed by the Washington Supreme Court is not consistent with the DOJ's and USFWS's statements and with the MBTA. BPA should address this issue in a supplemental EIS, including whether the proposed Project site has been adequately surveyed for migratory birds in advance to ensure proper turbine siting and avoid mortality risks, as well as any potential criminal liability under the MBTA.

Second, BPA should consider and evaluate the implications of the killings of at least two golden eagles by the Wild Horse Wind Project, another wind energy facility previously reviewed by EFSEC and approved by Washington's Governor. In June 2014, the carcasses of two golden eagles that had been killed by the Wild Horse Wind Project were discovered. Prior to approval of the Wild Horse Project, all wildlife studies for that project had found an overall low risk to raptors and golden eagles in particular. For example, the 2002–2003 "Wildlife Baseline Study for the Wild Horse Wind Project"[1] ("Wild Horse Study") (attached as Exhibit D.25) includes the following conclusions regarding golden eagles:

- "[G]olden eagles have a lower risk of collision given their low to moderate abundance in the Project area." (Wild Horse Study at ii.)

- "Species with low risk of collisions includes northern harrier, golden eagle, rough-legged hawk and Swainson's hawk." (Wild Horse Study at 35.)

- "Golden eagle use of the site is low relative to other existing wind projects (e.g., Foote Creek Rim and Altamont Pass, Erickson et al. 2002) and the mortality risk for golden eagles is also expected to be low." (Wild Horse Study at 35.)

Thus, the pre-construction studies for the Wild Horse Project predicted low impacts to golden eagles, yet that project has killed at least two golden eagles. In addition, the owner of the Wild Horse Project has subsequently applied for and/or received an eagle take permit from the U.S. Fish and Wildlife Service.

The Whistling Ridge EIS notes that golden eagles use the Whistling Ridge site, but predicts that "the potential for golden eagles to experience a turbine collision is extremely low." FEIS at 3-79; *see also id.* at 3-47. In light of the new information regarding the Wild Horse Project, BPA should consult with EFSEC and USFWS, reevaluate the accuracy of the Whistling Ridge FEIS's predictions for impacts to golden eagles as well as other raptors and migratory birds, and determine whether the Applicant should seek an eagle take permit for the Whistling Ridge Project.

Thank you in advance for your consideration of our comments. If you have any questions or comments, please do not hesitate to contact us. In addition, if there are any responses to these comments by BPA staff, the Applicant, or others, please forward them to the undersigned.

Sincerely,

Nathan Baker
Staff Attorney
Friends of the Columbia Gorge

Gary K. Kahn
Reeves, Kahn, Hennessy & Elkins
Attorney for Friends of the Columbia Gorge

[1] The Wild Horse Study was prepared by WEST, Inc., the same company that prepared the majority of the avian studies for the Whistling Ridge Energy Project.

J. Richard Aramburu
Aramburu & Eustis, LLP
Attorney for Save Our Scenic Area

Enclosures (Exhibits)
cc: Elliot Mainzer, Bonneville Power Administration
The Honorable Jay Inslee
William Lynch, Chair, Washington Energy Facility Site Evaluation Council
Stephen Posner, Manager, Washington Energy Facility Site Evaluation Council
Ann Essko, Assistant Attorney General, Office of the Washington Attorney General
Timothy L. McMahan, Stoel Rives LLP, Attorney for Whistling Ridge Energy LLC
Susan P. Jensen, Counsel for the Environment
Nanette Seto, Chief for Migratory Birds and Habitat Programs, USFWS Region 1