



Shaping the future for birds

Noreen Walsh
Regional Director, Mountain-Prairie Region
U.S. Fish and Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

November 17, 2014

Subject: Revival of the Poorly-sited Merricourt Wind Energy Project in North Dakota

Dear Regional Director Walsh:

The American Bird Conservancy (ABC) and International Crane Foundation (ICF) wish to express our serious concerns about the reported revival of the poorly-sited Merricourt Wind Energy project in North Dakota (<http://www.prairiebizmag.com/event/article/id/21594/>). This large, commercial wind project would consist of 100 turbines and be located in a key migratory pathway for many federally-protected birds in the Prairie Pothole region of North Dakota, including the federally-listed Whooping Crane and Piping Plover. The loss of even a few Whooping Cranes could result in a population-level effect, so the bar for approval of this project must be set very high. With such serious Endangered Species Act concerns, we would hope that a full blown Environmental Impact Statement (EIS) would be required before the Service would even consider issuing the first incidental take permit for Whooping Cranes. Please find our original scoping comments prepared and submitted by ABC's legal counsel, Meyer, Glitzenstein & Chrystal on this project attached.

ABC and ICF support the development of clean, renewable sources of energy such as wind and solar power, but also believe that it must be done responsibly and with minimal impact on our public trust resources, including native species of birds and bats, and particularly threatened, endangered and other protected species, such as Bald and Golden Eagles. ABC and ICF support Bird Smart Wind Energy, which is described in some detail on the ABC web site (http://www.abcbirds.org/abcprograms/policy/collisions/wind_developments.html). In the case of wind energy, careful siting and mitigation is crucial in preventing the unintended impacts to America's native bird and bat species. This risk to birds and bats can be substantial, depending on the circumstances (<http://onlinelibrary.wiley.com/doi/10.1002/wsb.260/abstract>; <http://www.sciencedirect.com/science/article/pii/S0006320713003522>).

ABC and ICF understand that under FWS' current voluntary permitting guidelines for wind energy development, wind energy companies are not required to apply for incidental take permits under the BGEPA or ESA *a priori* when the project sits on private property. However, this still does not allow developers to break the law and kill federally-protected wildlife with impunity. Regrettably, under the current non-regulatory guidelines, the only way that FWS will find out if federally-protected species are killed is if the developers voluntarily report the deaths, something that is unlikely to occur when the companies are faced with the threat of a



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large fine, obligatory and expensive mitigation or compensation. Given the potential and, in our opinion, unacceptable risks posed to federally-protected birds by this project, we believe that, if built, post-construction bird deaths should be monitored independently (by a third party) to ensure accuracy of reporting. Furthermore, if the project is allowed to go forward, and the developers individually or collectively exceed kill limits under their incidental take permits, then the developers should receive the maximum penalties under the law, including the threat of a complete and permanent shutdown.

How will the FWS assess and take into account the cumulative impact of nearly a hundred large, commercial turbines, including disturbance, on Whooping Cranes, especially considering that 5,500 turbines already exist in the species' migratory corridor and that 18,518 are planned? In addition, many new transmission lines and towers (the most significant threat to Whooping Cranes) will also be going up to carry the electrical energy produced by these turbines into the grid. As you know, our ability to accurately predict cumulative impact is limited and based on experimental and largely untested modeling procedures. We are also concerned that Whooping Cranes may be impacted by the considerable habitat disturbance that will result from this and other energy development projects in the migratory corridor. This introduces a great deal of uncertainty into decision-making, with our public trust resources lying in the balance.

ABC and ICF also wonder how the proposed developer will argue that they can mitigate the effects of such poorly-sited turbines? As you know, most forms of mitigation touted by the wind industry have not yet been tested for their efficacy. While ABC believes that appropriate siting is the best and most effective form of mitigation, there are currently several other mitigation methods—though largely untested—that the wind industry has inappropriately promoted as “effective” ways to reduce bird and bat mortality at existing facilities, including use of radar to detect birds, combined with temporary or seasonal shutdowns (e.g., during migration), lighting adjustments to reduce attraction, deterrents (e.g., audio deterrents for bats), habitat management (e.g., removal of standing water and vegetation under turbines), prey population management (e.g., for raptorial birds), and retrofitting of the associated transmission lines and towers to reduce the risk of collisions and electrocution. This, of course, can also include burying the lines, which is likely the most effective type of mitigation.

All of these mitigation techniques have potential—under the right circumstances—to reduce bird kills at wind energy sites. However, as the U.S. Department of Energy (DOE) recently pointed out, before various methods can be promoted as “effective”, they must be tested experimentally using scientifically valid methods. ABC and ICF also believe that mitigation methods should be systematically tested for their efficacy under a wide range of circumstances, including in different seasons, time of day, landscapes and weather conditions before their efficacy can be appropriately evaluated. For example, it is well known that weather conditions, such as cloud cover and strong wind, can significantly alter the migratory pathways of birds and also influence how often they come to the ground and at what height they fly. All of these factors can influence the risk of wind energy development to federally-protected birds, such as



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the highly-endangered Whooping Crane, upon which tens of millions of tax dollars have been spent on recovery.

ABC and ICF strongly agree with DOE's statement that: "More research, development, field testing, and validation of impact minimization will therefore be needed in order for the industry to grow while managing the impacts that increased wind energy development may cause to sensitive wildlife" (<https://eere-exchange.energy.gov/>). ABC and ICF are aware that some of this research is being undertaken now by USGS scientists and others in academia and this work should be rapidly expanded and targeted to fill current gaps in our knowledge before it is too late. Thousands of turbines may be constructed in areas that pose grave dangers to federally-protected bird (and bat) populations, including eagles, before such analyses are completed.

Unfortunately, the Merricourt Wind Energy project is another potential example of the failure of the current voluntary guidelines to protect our native bird species. The poor siting of this project should, at the very least, require that the voluntary guidelines be followed to the letter, which means consultation under Section 7 of the ESA, applications for incidental take permits under the ESA and Bald and Golden Eagle Protection Act, and an Avian Protection Plan must be in place *before* the companies are allowed to go ahead with any construction. We also believe that the presence of endangered and threatened species calls for a more detailed Environmental Impact Statement (EIS) study to be conducted to assess the potential risks instead a cursory and potentially biased Environmental Assessment conducted by a paid consultant hired by the developer, and that it should be transparent and open for public review and comment. Our nation's birds do not belong to the wind industry, but rather belong to the American people and are held in trust for this and future generations.

ABC and ICF will be watching the situation very carefully. Thank you for your attention to these important matters.

Sincerely,

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ABC is a 501(c) (3) not-for-profit membership organization whose mission is to conserve native birds and their habitats throughout the Americas. ABC acts by safeguarding the rarest species, conserving and restoring habitats, and reducing threats, while building capacity in the bird conservation movement. ICF is a 501(c) (3) not-for-profit, science-based organization that is dedicated to the study and conservation of the 15 species of cranes worldwide. ICF's senior scientist, Dr. George Archibald, is a member of the International Whooping Crane Recovery Team and ICF contributes to Whooping Crane conservation through research and land/water conservation efforts in Texas and participation in Whooping Crane reintroduction projects.