Attachment 2
Response to Comments on Draft Environmental Assessment

Comments and Response to Comments Summary

We invited public comment on the Draft Environmental Assessment (DEA). In response, we received four submissions: one from the applicant, two from nongovernmental organizations (NGOs), and one from a Native American tribe. One NGO comment letter combined comments from three different environmental groups: Defenders of Wildlife, the Natural Resources Defense Council, and the San Diego Audubon Society/National Audubon Society. Our responses to the comments on the EA are presented in this attachment (Attachment 2) of the FONSI.

In total, the comment letters contained approximately 30 individual comments. These comments generally fell under one of five main categories: (1) effects (addressing a variety of issues relating to eagles, including number of fatalities, local population effects, cumulative effects, other sources of fatalities, overall population numbers, and effects on raptors); (2) conservation plan (addressing the technical advisory committee, transparency of the process, future technology, and curtailment); (3) mitigation (addressing scientific basis for electric utility retrofits and location of retrofits); (4) monitoring and reporting (addressing project reporting and eagle mortality reporting); and (5) general comments.

Overall, the comments raised issues regarding the opportunities and challenges associated with issuing eagle take permits. We made minor changes to three topic areas of the EA based on these comments. First, we added information on our risk evaluation under the curtailment program. Second, we added more detailed information on the science behind the electric utility pole retrofit process for mitigation and added an explanation for why a range was provided for the number of retrofits needed. Lastly, we added information about depositing funds into our NFWF Eagle Mitigation Account. We made additional minor changes to the EA to improve clarity. After considering the comments, and in light of the record, we determined that neither substantial revisions nor a new analysis are required for the EA.

Detailed responses to specific comments are provided in attached Table 1. Comment letters follow Table 1.

Table 1: Response to Comments

Table 1: Ocotillo Wind Energy Facility Eagle Conservation Plan Environmental Assessment Response to Comments

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
Applicant	**Applicant**		
Ocotillo Express, LLC	1-1	Recommends that footnote in Table 2-2 be revised to be consistent with language on page 2-2 of EA(description of Alternative 2) discussing what would happen if grant holder should not reapply for a permit at end of 5 year term.	Confirmed; footer language in Table 2-2 has been updated to be consistent with the process described on page 2-2.
	1-2	Notes that number of poles to be retrofitted should be "up to 74" consistent with rest of references (p 4-6 in Section 4.6.2 of the EA).	Noted; correction made in the EA.
	1-3	Comment in Section 4.6.2 of EA – commenter states that because only 10 hours of curtailment have happened since December 2012, that data on raptor risk in general collected at the Project should be sufficient to characterize risk to raptors; suggests that this risk should be characterized as low.	At this time, US Fish and Wildlife Service (Service) has no method for estimating risk of raptor mortality or injury from curtailment. Curtailment is a conservation measure to reduce mortality and depends on observer diligence. Observers can either over or under curtail based on their diligence and observer skills. There is a margin for error that would be difficult to quantify. Also, the observer was based in tower with limited or reduced visibility for wind turbines further from the tower. Visibility would vary with weather conditions and time of day, which would also be difficult to quantify. Risk for eagles from the project was estimated in the Eagle Conservation Plan (ECP) in accordance with Service approved methods (EA Appendix A).

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	1-4	Suggests that Alternative 3 recognize the possibility that the USFWS, BLM and Ocotillo would determine that the Project's risk of eagle take is sufficiently unlikely that continued biomonitoring and curtailment is not necessary to manage eagle risk.	This comment is noted and will be retained in our administrative record. The EA analyzes a range of alternatives and the outcome of an eagle take permit application considered under Alternative 3 was one component of possible reasonable alternatives. As shown in Sections 4.2 and 4.3.1 of the EA, the Service has analyzed potential risk to golden eagles at the facility, and estimates that two golden eagles may be taken within every 5 year period.
	1-5	Suggests that monitoring requirements for Alternative 4 (30-year term) be revised to say something like "1 additional year of eagle specific monitoring during the first 4 years of the permit and periodic monitoring at agreed-to intervals for the remainder of the permit term."	This comment is noted and will be retained in our administrative record.
	1-6	Suggests that additional utilities beyond PG&E and SCE be considered for providing retrofits	Section 2.3.2 of the EA has been updated to state that in accordance with our most recent analysis of golden eagle populations (Service 2016), compensatory mitigation would occur within the appropriate eagle management unit (EMU). For this area, the EMU is the Pacific Flyway. The applicant would be required to either deposit money in our eagle NFWF account or purchase credits from a Service approved in lieu fee mitigation bank within 30 days of permit issuance.
	1-7	Suggests that 10% threshold discussion in cumulative effects analysis should only apply to Alternative 4 (30 year term), and that because the other alternatives are dealing with application under 2009 permit rule, only 5% threshold applies, and that this should be clarified in the EA.	We evaluate all alternatives using the best available information and the latest policy as laid out in the 2016 PEIS. Regardless, analysis indicates that estimated take is under both the 5% and the 10% thresholds for all alternatives, including Alternative 2 (chosen alternative).

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
Nongovernmental Organization	**ORG**		
Center for Biological Diversity	1-1	Unclear why considered permitted take of golden eagles in 5 year period is rounded up instead of more conservative approach of rounding down.	The Service cannot permit the take of partial eagles. In this case, rounding up is the more conservative approach because it requires more mitigation and therefore provides more protection for golden eagles.
	1-2	Because eagle “take” permits are still relatively new, the eagle “take” permits should be given for no longer than 5 years at this point.	Comment noted.
	1-3	Additional avoidance and minimization measures should be included in permit, including: seasonal curtailment during eagle high use periods, and after local nests fledge; acquisition of local eagle nesting/foraging habitat; identification of eagle migration corridors and establishment of turbine free zones to ensure that a "wall" of turbines is not created	Eagle use and migration corridors were assessed for the Project, as summarized in Section 3.3.2 of the EA and in detail in Section 2.3 of the ECP (EA Appendix A). The Ocotillo Wind Energy Facility is not located in a known raptor migration corridor, and the site does not contain the appropriate topography to funnel migrating birds through the site. Golden eagle use at the site has not been high enough to warrant seasonal curtailment of turbines. Designation of turbine-free zones in the general region are beyond the scope of this specific Project/EA. However, it should be noted that the Ocotillo Wind Energy Facility is located east of the Jacumba Mountains and south of the Coyote Mountains, both of which are BLM-designated wilderness areas and are thereby de facto turbine-free zones. The DRECP can be found at: https://www.drecp.org/

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	1-4	DEA is not clear enough on details on mortality monitoring methodology and frequency	Details on the eagle mortality monitoring methodology and frequency are described in the Ocotillo ECP (EA Appendix A section 5.2). Under the ROW agreement, the first two years of mortality monitoring included 30% of the turbines being searched twice per month. For the third year of mortality monitoring, under the ROW agreement, the same subset of 30% of the turbines will be searched twice monthly. Additionally, eagle-specific searches will be conducted at the remaining 79 turbines; these eagle-specific searches will be conducted once a month by walking transects spaced up to 20 m apart, in search plots 160- m by 160-m in size. This protocol was developed in coordination with the Service to meet our requirements.
	1-5	Unclear if TAC will continue to be part of eagle take permit; CBD recommends extending membership to local golden eagle experts outside of agency staff. TAC meetings should be publicly noticed, open to public and minutes should be provided to public within a month of meetings.	The TAC is a BLM advisory committee only and may invite experts to attend at its discretion. The Service does not have the authority to establish a technical advisory committee and must ensure that the Service's actions do not violate the provisions of the Federal Advisory Committee Act, which specifies the terms under which federal agencies can establish, utilize, and participate in multi-stakeholder groups. Our National Eagle Programmatic Permit Implementation Team (EPPIT) will be involved in permit oversight and decision-making as appropriate. The EPPIT is composed of eagle permit coordinators and raptor biologists from each of our nine Service Regions. This team includes topical experts and scientists from the Service and the USGS as needed. The Service's Pacific Southwest Region will consider recommendations from the EPPIT, although we retain all decision-making authority over this permit and its adaptive management process. Updates will be provided to the public via our Pacific Southwest Region Eagle Page website: http://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	1-6	EA needs to state where retrofits will take place.	This response is similar to Applicant comment 1-6 above due to similar issues being raised. Compensatory mitigation of retrofitting within the Pacific Flyway is consistent with the chosen alternative outlined in the 2016 PEIS. We consider local area population effects within the species-specific natal dispersal distances, which is 109 miles for golden eagles. Thus, the applicant will work with the Service and with a utility to identify a location within that distance that is considered a high-priority for retrofits due to documented previous fatalities and nearby eagle population densities, and which has the number of poles needed. We believe that the Service and the Applicant will choose a site that best meets these requirements.
	1-7	Recommends that Imperial Irrigation District and SDG&E are closest utilities and therefore should be used for retrofits, to benefit local golden eagle populations	Comment is noted; see responses to Applicant comment 1-6 and ORG comment 1-5 above.
	1-8	EA should more clearly explain where ratio of 1.2:1 comes from for power pole retrofits, and also explain why there is a "range" of potential number of poles	The 2016 PEIS confirmed the Service's assessment of status and population size in 2009 for golden eagles, and established compensatory mitigation requirements for the authorized take of golden eagles. The ratio of 1.2:1 is established in the 2016 PEIS and is consistent with the goal of maintaining stable or increasing breeding populations in all eagle management units, and the persistence of local populations throughout the geographic range of each species. Regarding the range of number poles that is provided in the EA, our REA indicates that a minimum of 32 utility pole retrofits will offset direct impacts to eagles resulting from Project operations, if the retrofits are installed and properly maintained for 30 years. In order to account for possibility that the retrofit materials may not be maintained properly for 30 years, we also calculated how many poles would be required to offset the take assuming the retrofit poles would be maintained for only 10 years; this would require 74 poles (maintained for 10 years) to sufficiently offset direct impacts to eagles. We have added this explanation to Section 2.3.2 of the EA for clarification.

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	1-9	Additional mitigation should be included, including decommissioning problem turbines, off-site acquisition of habitat/conservation easements, and/or undergrounding transmission lines in areas of eagle mortalities	Comment is noted and will be retained in our administrative record. We will continue to encourage and coordinate needed research on other sources of eagle mortality which could be mitigated to offset take. Other options for compensatory mitigation might include a lead abatement program, a carcass removal program along highways, or funding mitigation banking efforts. However, a resource equivalency analysis would first need to be developed for any alternative compensatory mitigation options, to demonstrate that the amount of anticipated eagle take from the Project would be fully offset by the alternative mitigation measures. Service would not accept any alternative compensatory mitigation options until a credible analysis was completed and accepted. Service is evaluating other forms of compensatory mitigation to combat the lesser known forms of anthropogenic mortality but retrofits are currently the only Service-approved mitigation for eagle take.
Defenders of Wildlife, Natural Resources Defense Council, and Audubon Society	2-1	Concern with overall slow processing of eagle take permit applications, which could discourage proponents from seeking permits	This comment is noted and will be retained in our administrative record.
	2-2	States that potential increased risk to eagles from eliminating the bio-curtailment program is adequately addressed in DEA	This comment is noted and will be retained in our administrative record.
	2-3	Recommend that additional utilities beyond PG&E and SCE be considered for utilities to install retrofits - recommend Imperial Irrigation District be considered	Comment is noted; see responses to Applicant comment 1-6 and ORG comment 1-5 above.

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	2-4	Recommend that Service along with other agencies, address need to conserve golden eagles within this region through a long-term programmatic eagle conservation and mortality mitigation strategy	This comment is noted; the development of a long-term programmatic eagle conservation and mortality mitigation strategy to conserve golden eagles within this region is beyond the scope of this analysis. However, the Service is charged with protecting eagle populations and we will use our authority to ensure monitoring, mitigation, and adaptive management prescriptions are protective of eagle populations. We will keep the public informed through our Pacific Southwest Region's Eagle Page website: http://www. fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html
	2-5	Support Alternative 2, with additional recommendations for inclusion	This comment is noted and will be retained in our administrative record.
	2-6	Recommend that wind developers like Pattern who implement new technologies should be given credit for eagle mortality successfully avoided in the calculation of take limits and mitigation requirements, and additionally specific language in permit should allow consideration of alternate technologies if they become available	This comment is noted and will be retained in our administrative record. The Adaptive Management approach outlined in Table 15 of the ECP does consider implementation of Advanced Conservation Practices, which could include the use of new technologies if they become available.
	2-7	Recommend validating the monitoring technology fully and provide it as an option for future permits; additionally, recommend standardizing numbers to define what would constitute "relatively few" eagles in comparison to other projects in same region	This comment is noted and will be retained in our administrative record.
	2-8	Final EA should explain how FAA lighting change will affect golden eagles or large raptors	Reducing the occurrence of flashing lights, which would only flash when aircraft are in the vicinity of the Project, is expected to have a generally beneficial effect to visual resources in general, as described in Section 4.4.1 of the EA. Eagles and other large raptors are not typically nocturnal, and therefore will not be affected by the lighting change.

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	2-9	Recommend that contract or provisions of funds to NFWF will obligate NFWF to contact utility and schedule retrofits within a specified time period	This comment is noted and will be retained in our administrative record. .–As noted in Section2.3.2, we will require that the Applicant deposit the initial mitigation amount in the NFWF Eagle Mitigation Account within 30 days of permit issuance. While the NFWF would start coordinating with the utility(ies) as soon as possible after the funds are received, the overall coordination time for identification of high risk poles, ordering of equipment, installation and other logistics is anticipated to take approximately two years. EA updated, see Section 2.3.1.
	2-10	Recommend Service provide a formula for calculating unreported take in order to more thoroughly account for this unknown	Comment is noted and will be retained in our administrative record. This request is beyond the scope of this EA analysis. The 2016 PEIS evaluation of unreported take discusses a myriad of threats including poaching, lead poisoning, climate change, loss and fragmentation of eagle habitat, powerlines, and disease. Cumulative factors are likely contributing to ongoing declines of golden eagles. Currently, the level of golden eagle take throughout the US due to anthropogenic sources exceeds the sustainable threshold and therefore no additional unmitigated mortality is permitted (81 FR 242). It is difficult, at best, to assess the impacts of cumulative risk factors, particularly when take is unreported. Regardless, for golden eagles compensatory mitigation is required for any permitted take, which supports the conservation of golden eagles.
	2-11	States that data in ABPP is sufficient to determine a baseline risk level to raptors at Project, and are concerned that removal of the radar, video and biologists will increase mortality of large raptors and others protected by MBTA, and that these impacts should be addressed in the EA	Comment is noted and will be retained in our administrative record. Baseline risk level to golden eagle was calculated based on pre-construction surveys and used to estimate take levels for permit issuance as discussed in the ECP in accordance with Service approved methods (EA Appendix A). Risk to eagles and other raptors from the project using the current curtailment system is difficult to calculate as discussed previously.

Organization Type/Commenter Name	Comment #	Summary of Comment	Response
	2-12	Supports providing an eagle take permit given relatively low risk to eagles and adequate adaptive management program; eagle mortality monitoring should continue to support the AM aspect.	This comment is noted and will be retained in our administrative record.
	2-13	Recommend that Service develop a golden eagle conservation plan for San Diego County at the earliest opportunity, in cooperation with CDFW and local agencies	Comment is noted; response is similar to ORG comment 2-4 above. The development of a golden eagle conservation plan for San Diego County is beyond the scope of this analysis. Additionally, the Ocotillo Wind Energy Facility is in Imperial County, CA. However, the Service is charged with protecting eagle populations and we will use our authority to ensure monitoring, mitigation, and adaptive management prescriptions are protective of eagle populations. We will keep the public informed through our Pacific Southwest Region's Eagle Page website: http://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html
Native American Tribe	**Tribe**		
Augustine Band of Cahuilla Indians	1-1	The Augustine Band of Cahuilla Indians is unaware of specific cultural resources that may be affected by the proposed Project, but recommends that tribal monitors be on site during pre-construction and construction phases, and requests the Service notify them immediately should any cultural resources be discovered during the development of the Project.	This comment is noted and will be retained in our administrative record. The federal action reviewed under this EA will not result in any ground disturbing activities; however, cultural resources would be respected during any Project activities. Section 1.8 of the EA provides a detailed description of the Tribal Consultation that has occurred as part of this federal action.

Comment Letters

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November 26, 2018

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Re:Ocotillo Wind Energy Facility DEA Comments

Dear Heather:

Thank you for the opportunity to comment on the U.S. Fish and Wildlife Service ("Service") Draft Environmental Assessment ("DEA") of the Ocotillo Wind Energy Facility Eagle Conservation Plan ("ECP"). Pattern Energy Group, Inc., on behalf of Ocotillo Express LLC ("Ocotillo") would also like to thank the Service for its assistance in developing the ECP to support Ocotillo's eagle take permit application. The DEA provides a thorough assessment of the impacts to the human environment that may arise from the Service's issuance of the eagle take permit and the Bureau of Land Management's ("BLM") amendment of the right-of-way in accordance with the National Environmental Policy Act. Ocotillo offers a few clarifying and conforming suggestions for the DEA.

- **Alternative 2 - biomonitoring**. In section 2.2.2, the DEA accurately describes the process that would follow upon expiration of the five-year permit term. On page 2-2, the DEA says that:

  > [a]t the end of the 5-year permit term, the BLM would require coordination between the applicant, the Service, and the BLM to determine if a subsequent eagle take permit process would be initiated. Should the grant holder (holder) not reapply for a permit, BLM would coordinate with the Service and the applicant to consider resuming the requirement for a daytime biological monitoring and curtailment, or to consider if alternate eagle take avoidance and minimization measures and/or additional mortality monitoring would be appropriate.

  Ocotillo agrees this is the appropriate response at the conclusion of the permit term. However, footnote "***" in Table 2-2 on page 2-11 briefly describes Alternative 2 and states: "should the grant holder not reapply for a permit, day time biological monitoring and curtailment would resume." This footnote describes Alternative 2, but is inconsistent with the language quoted above and should be revised to be consistent with the above.

- **Alternative 2 — Number of power poles to be retrofitted**. In section 4.6.2 on page 4-6, it states that up to 62 power poles will be retrofitted. This number should be updated to be 74, consistent with the rest of the references in the DEA.

- **Alternative 2 — Effects on migratory birds**. In section 4.6.2, the DEA describes the effect that Alternative 2 would have on migratory birds. It states:

  > Because the eagle risk minimization system has been in place since operations and during both years of post-construction mortality monitoring that have occurred to date, we do not have the data necessary to determine if the relatively low raptor fatality rates are due to the curtailment system or simply a low level of baseline risk to raptors in the area.

  This statement is inaccurate. Since December of 2012, biomonitoring curtailments have occurred for less than a total of 10 hours. Given that amount of curtailment to date has been extremely low, the curtailment system has not impacted Project data on raptors such that risk could not be assessed based on available data. The DEA should be revised to accurately characterize the risk to raptors as low.

- **Alternative 3 - Biomonitoring**. In section 2.2.3, on page 2-3, the DEA describes a scenario where the Service denies Ocotillo's eagle take permit application, but BLM proceeds with amending the right-of-way. In this scenario, the DEA states that:

  > The wind Project would continue to operate without a take permit being issued. Under this alternative, the BLM would require that unless or until an eagle take permit is obtained, that the applicant would continue full time bio-monitoring and associated curtailment during daylight hours.

  Ocotillo recommends that this alternative recognize the possibility that the Service, BLM, and Ocotillo determine the Project's risk of eagle take is sufficiently unlikely that continued biomonitoring and curtailment is not necessary to manage eagle risk. From early December of 2012 through November 15, 2018, the biological monitors spent approximately 25,850 hours conducting biomonitoring, during that time only 17 eagle curtailments were implemented, for a total of 8.87 hours, out of over 25,000 hours. This means that eagles have been identified in the project area less than 0.0004% of the daylight hours in which they are active. No eagle fatalities have occurred. If the Service incorporates this recommendation, please note that this language appears again in Table 2-2 and in section 4.6.3 on page 4-7 and conforming edits should be made throughout.

- **Alternative 4 — Eagle mortality monitoring**. In table 2-2, the Service describes eagle mortality monitoring for a thirty-year eagle take permit option as: "1 additional year of eagle-specific monitoring during the first 4 years of the permit; 2 years eagle specific monitoring year 6-10 of the permit; 1-2 years of eagle specific monitoring every following 5-year term as determined necessary by the Service." It is possible that an eagle mortality monitoring program for a thirty-year eagle take permit may ultimately end up as

described in Table 2-2. However, because Ocotillo has focused on proposed Alternative 2, it has not had extensive discussions with the Service regarding a thirty-year eagle mortality monitoring program. Ocotillo suggests that this column of table 2-2 be revised to more accurately reflect the nature of conversations to date with the Service such as "1 additional year of eagle specific monitoring during the first 4 years of the permit and periodic monitoring at agreed-to intervals for the remainder of the permit term."

- **Power pole retrofit providers**: Ocotillo, pursuant to its ECP, will commit to providing power pole retrofits as compensatory mitigation for predicted eagle take. The Service, on page 2-7, has identified Southern California Edison ("SCE") and Pacific Gas and Electric (PG&E") as primary candidates for these power pole retrofits. Ocotillo recommends that the Service edit this language on page 2-7 to acknowledge that other electric transmission and distribution providers may also be appropriate for fulfilling Ocotillo's power pole retrofit obligation. Singling out SCE and PG&E is advertently limiting before Ocotillo has finalized the power pole retrofitting details.

- **Local Area Population analysis**. Section 4.3.4 describes the cumulative effects analysis common to all alternatives. In this discussion, the DEA evaluates whether unauthorized take exceeds 10% of the local area population. This 10% analysis should apply to Alternative 4 only. The Eagle Conservation Plan Guidance speaks only to the 5% local area population threshold, and the Service introduced the 10% unauthorized take analysis in the 2016 amendments to the eagle permit rule. Since alternative 2 entails the issuance of an eagle take permit under the 2009 eagle permit rule, the 10% analysis would not apply to that alternative. This should be clarified in the DEA.

Ocotillo appreciates the Service's time and effort spent processing our eagle take permit application. Should the Service have any questions regarding the above suggestions, please do not hesitate to contact me.

Sincerely,

Rene Braud
Director, Environmental Policy & Compliance

CENTER *for* BIOLOGICAL DIVERSITY
Because life is good.

Protecting and restoring natural ecosystems and imperiled species through
Science, education, policy, and environmental law

Via email

November 26, 2018

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RE: Ocotillo Wind Energy Facility DEA Comments

Dear Ms. Beehler,

On behalf of the one million staff, members and supporters of the Center for Biological Diversity (Center), we submit the following comments on the Draft Environmental Assessment (DEA) for Ocotillo Wind's Eagle Conservation Plan. The Center strongly supports the development of renewable energy as a critical component of efforts to reduce greenhouse gas emissions, avoid the worst consequences of global warming, and to assist in achieving needed emission reductions. The development of renewable energy production and the generation of electricity from wind power in an important part of those efforts. However, like all projects, wind power projects should be thoughtfully planned and implemented to minimize impacts to the environment. In particular, the Ocotillo wind energy facility should seek to avoid operational impacts to sensitive species such as golden eagles and their habitat. Only by maintaining the highest environmental standards with regard to local impacts, and effects on species including eagles and habitat at the local and regional scale, can wind energy production be truly sustainable.

The Center supports wind projects applying for golden eagle permits as required under the Bald and Golden Eagle Protection Act, because of the overall benefits to eagle conservation that the Act provides, by providing permit conditions that limit mortality, require consistent mortality monitoring, and require application of avoidance measures including adaptive management.

The Center is concerned over the decline in golden eagles in the southwest[1] and the regionally high impact of wind energy on golden eagles in California[2] compared to other regions. From that perspective we offer the following comments

[1] Millsap et al. 2013
[2] Pagel et al. 2013

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Current Eagle Mortality

Because the Ocotillo Express Wind project has been in operation since 2012, and monitoring for eagles and other avian species has occurred in the area, some data are available on golden eagle use of the site. The DEA is unclear if any or how many eagles have been impacted by the operation of the wind turbines at Ocotillo Express. Clearly avoidance of injury and mortality to golden eagles needs to be the highest priority of any eagle permit and the EA should provide these very basic data.

Alternatives

If the current system in place for avoidance of eagles is working (i.e. no mortalities), and curtailment of only "8.49 hours of curtailment over the 4.5-year period" (at pg. 2-1), which equates to less than 2 hours of curtailment per year, has provided adequate safeguards for eagles, then the current system is a success and should remain in place as part of the Eagle Conservation Plan and "take" permit. Unfortunately, this successful approach was not included as an alternative in the EA, but it should be. If it is not included, then justification for why this feasible and successful strategy was dismissed needs to be included.

Because eagle "take" permits are still relatively new, the eagle "take" permits should be given for no longer than 5 years at this point. Only Alternative 2 meets this requirement. However, Alternative 2 also allows for "take" of 2 eagles over the five year period "rounded up to two eagles over a 5-year period under Alternative 2" (at pg. 2-5) from the mortality estimates from the Service's modeling of 0.3 golden eagles per year during operations. It is unclear why the number of golden eagles was "rounded up" instead of a more conservative approach to eagle conservation by "rounding down". Rounding down is more consistent with eagle conservation in southern California where golden eagle populations have been noted to decline for decades[3].

In order to provide adequate protection for this local eagle population, in addition to an alternative that keeps the existing avoidance of eagle "take" in place, other avoidance and minimization measures need to be included in the permit that could reduce potential impacts to golden eagles and should be considered as part of the alternatives analysis. These measures include:

- Seasonal curtailment during eagle high use periods and especially after local nests fledge should be considered annually.
- Acquisition of local eagle nesting/foraging habitat for conservation purposes (also see below)
- Identification of eagle migration corridors and the establishment of "turbine free zones" in those areas, via land use planning to ensure that future projects would not create a "wall" of turbines that would be unnavigable to eagles.

Mortality Monitoring

Mortality monitoring needs to be over the life of the project, and certainly must be required over the life of the eagle permit. The DEA is mute on the methodology and frequency to be used for eagle mortality monitoring. This lack of clarity is troubling particularly because mortality monitoring has been inconsistent both in

[3] Bittner and Oakley 1999

timeframes, methodologies and across wind projects, complicating the capacity of the U.S. Fish and Wildlife Service (Service) to estimate eagle mortality and model future mortalities. Consistent monitoring going forward will improve the ability of the Service and the companies to better implement conservation measures in the future.

Technical Advisory Committee

It is unclear if the Technical Advisory Committee (TAC) is proposed to continue to be part of the eagle "take" permit. It is currently made up of representatives of the BLM, the Service, and California Department of Fish and Wildlife (CDFW), (at pg. 1-2). While we support the retention of the established TAC, we believe that extending the membership of the TAC to golden eagle experts, preferably local, outside of the agencies would be beneficial. In addition, the TAC meetings should be publicly noticed, open to the public, and detailed minutes of TAC meetings should be provided to the public within a month of any meeting including any recommendations from the TAC.

Compensatory Mitigation Falls Short

While we support the reduction of avian mortalities from power poles in general, if power poles are causing golden eagle (or other sensitive species) mortality, then it is incumbent on the power pole owner(s) to retrofit the power poles, not this project proponent. Yet, even if power pole retrofits were appropriate mitigation, the EA needs to identify where the retrofits would take place. While the EA states that power pole retrofits would be coordinated with PG&E and/or SCE, the two closest electricity providers to the project (and therefore the potential impact) are Imperial Irrigation District (IID) and San Diego Gas and Electric (SDG&E). In order to offset the impact to the local population of golden eagles, it needs to commit to working with the local utilities to forward conservation of golden eagles in the area.

If power pole retrofits were appropriate mitigation for eagle injury and mortalities from wind tower impact, which they are not, it is unclear how a 1.2:1 mitigation ratio was determined. Frankly, it is unclear what that ratio represents. The EA needs to more clearly identify how the ratio was determined and how it applies to the power poles to be retrofitted (i.e. how was the ratio applied to estimate that "a range of 32 to 74 power poles proposed to be retrofitted under Alternative 2 and for the first five year term of the 30-year permit term under Alternative 4." (at pg. 2-5)). That estimate has quite a large range and the proposed 1.2:1 ratio should not result in a "range".

Additional mitigation for impacts should be included in the permit. For example, decommissioning of problem turbines or groups of turbines needs to be included. The EA should also consider off-site acquisition of habitat or conservation easements specifically in support of golden eagle conservation in perpetuity to offset the impacts from this project. Mitigation acreage should include more than just the rotor swept area acreage, it should include the landscape as a whole, because effectively the whole Ocotillo Wind Project site will continue to pose an ongoing threat to golden eagles as long as turbines of the current technology are present. Mitigation lands should be acquired to secure lands nearby to provide safe movement corridors for eagles and other birds, for example, lands adjacent to Anza Borrego Desert State Park or other open spaces in the region.

Another example of mitigation instead of power pole retrofitting (although it is inappropriate for mitigating eagle mortalities from being hit by a wind tower rotor) is undergrounding transmission lines in areas of eagle mortalities. Not only do transmission lines electrocute eagles, but they continue to be the ignition source for devastating wildfires that affect not only eagle nests, but the prey that the eagles rely on. Undergrounding lines would decrease this ignition source which would benefit many species including eagles.

Conclusion

We appreciate the effort that went into this analysis for this golden eagle take permit for Ocotillo Wind project, and we appreciate the opportunity to comment on the EA. By clarifying the confusing points in the DEA and incorporating a full range of alternatives, avoidance, minimization and mitigation requirements as we have laid out in the comments above, we believe the FWS will be able to craft an adequate permit. Please feel free to contact me with any questions.

Sincerely,

Ileene Anderson
Senior Scientist

Cc via email:
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References:

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Heather Beeler
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Re: Ocotillo Wind Energy Facility Draft Environmental Assessment (DEA) Comments Dear

Ms. Beeler,

Defenders of Wildlife (Defenders), the Natural Resources Defense Council (NRDC), San Diego Audubon Society and National Audubon Society (Audubon) appreciate the opportunity to provide comments on the U.S. Fish and Wildlife Service (USFWS) proposal to issue an eagle take permit to Pattern Energy for its operating Ocotillo Express Wind Energy Facility (Ocotillo project or Ocotillo Express) located in the southwestern portion of Imperial County, California.

Defenders is a national conservation organization dedicated to protecting all wild animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction. Defenders has 1.8 million members and supporters nationally, including 279,000 in California.

NRDC combines the power of more than three million members and online activists with the expertise of some 500 lawyers, scientists and policy advocates across the globe to solve the most pressing environmental issues we face today. NRDC has worked for many years to protect wildlands and natural values on public and private lands and to promote sustainable energy development. NRDC has been a long-time advocate for guided low-conflict renewable energy development, as well as enduring protections for the sensitive species and habitat values present in California.

The mission of the San Diego Audubon Society is to foster the protection and appreciation of birds, other wildlife, and their habitats, through education and study, and advocate for a cleaner, healthier environment. Since 1917, San Diego Audubon Society members have been dedicated to protecting and appreciating our local wildlife and their habitats. From the tidal flats to the sun-parched Borrego badlands, we actively work to preserve San Diego's environment.

For more than a century, Audubon has built a legacy of conservation success by mobilizing the strength of its network of one million members and supporters, 450 chapters, 41 Audubon centers, 23 state offices, and dedicated professional staff to connect people with nature and the power to protect it. Audubon's 2014 Climate science hosted online at www.climate.audubon.org reveals that 314 species of our North American birds are seriously threatened on their breeding and wintering grounds by changes in climate suitability depending on how fast we can reduce our emissions. Transforming our energy sector to emission-free generation by wind, solar and geothermal energy is a key strategy to combat the effects of climate change on our birds while providing jobs and economic benefits to our people, and is a priority for Audubon.

Golden Eagle is projected to lose climate-suitability in 41 percent of its breeding range and 16 percent of its non-breeding range by 2080 depending on how fast we can reduce our emissions, according to Audubon's climate model. Whether the raptor will keep pace with a shrinking breeding range is uncertain, as is how changes in prey abundance will adjust to the shifting climate.[1]

At the national, state and local level in California and elsewhere our groups have supported policies that drive a rapid deployment of renewable energy as well as the adoption of siting guidelines and other policies to avoid, minimize and mitigate effectively for impacts on birds and other wildlife of that energy. This includes comments on each iteration of the Eagle rule and the PEIS that this permit analysis tiers off of.

Our groups also participated in the environmental review and permitting for the Ocotillo project conducted by the Bureau of Land Management (BLM) in 2011 and other nearby wind energy projects, such as the Tule Wind farm project located in McCain Valley. Based on the extensive monitoring data made available, we agree that issuing an eagle permit for this site is compatible with the conservation of the golden eagle, consistent with USFWS' preferred alternative, assuming permit terms comply with USFWS regulations.

Background Information

The BLM issued a right of way (ROW) grant for the construction, operation and decommissioning of the Ocotillo project on 12,565 acres of public land in 2012. It became operational in 2013 and is comprised of 112 wind turbines and related infrastructure, with a generating capacity of 265 MW. The BLM ROW grant required the applicant to complete an Avian and Bat Protection Plan and an Eagle Conservation Plan (ECP), both of which were approved by BLM and the USFWS.

Continuous monitoring of the project for a two-year period to assess avian mortality has occurred since the project became operational and, to date, no injury or mortality to golden eagles has been observed. Monitoring for a third year is now underway. Monitoring utilized a state-of-the-art MERLIN Avian Radar System (DeTect, Inc.) in conjunction with an avian biologist stationed in an observation tower to detect birds within the project area, and who had the ability to curtail operation of individual wind turbines to eliminate or minimize bird collision risk if a bird came within $^1/_2$-mile of an operating turbine. The radar system was also used to detect movements of endangered Peninsular bighorn sheep during the first year of operation of the project. A total of 41 golden eagle observations were recorded from December 2012 through June 2017 (19,687 hours) by biological monitors stationed in the monitoring tower. Wind turbines were curtailed 16 times for a total of 8.49 hours when 35 golden eagles were observed within the $^1/_2$-mile buffer zone surrounding individual turbines. The average turbine curtailment time was approximately 32 minutes. Pattern Energy found the DeTect Merlin radar system regularly displayed "false positives" or non-bird detections such as spinning turbine blades, vehicles, motorcycles, rain, and notified the USFWS that it does not consider the system useful in detecting golden eagles.

Based on the documented low risk to golden eagles from the Ocotillo project, Pattern Energy has applied to the USFWS for an eagle take permit under the Bald and Golden Eagle Protection Act ("Eagle Act") for a five-year period provided it can receive an amended ROW grant from the BLM to discontinue the Advanced Conservation Practices (ACPs) pertaining to golden eagles and to implement an adaptive management program

[1] http://climate.audubon.org/birds/goleag/golden-eagle.

to address unforeseen impacts to golden eagles. The ACPs associated with the project included the DeTect Merlin Radar avian radar system, video tracking system and a full-time biological monitor. As part of its application for an eagle take permit, Pattern Energy prepared and submitted a revised ECP which the USFWS has used in analyzing the effects of issuing an eagle permit for the project. Pattern Energy has requested a permit allowing for the incidental take of up to two golden eagles over a period of five-years. The USFWS must determine if the revised ECP is sufficient to avoid, minimize, and mitigate adverse effects on golden eagles.

Overarching Comment

Overall, we appreciate the efforts of Pattern Energy, BLM and USFWS to address potential impacts to eagles and large raptors at Ocotillo Express with experimental radar detection and on-site biologist stationed in a tower that has avoided take through turbine curtailment. The DEA confirms that this experiment has worked in avoiding take citing Pattern's data. The DEA and ECP appear to be well-reasoned and demonstrate a thoughtful range of alternatives.

We note that the permit application was made in 2013 and the DEA was not issued until 2018. This five-year delay seems unreasonable in light of a permitting program that we hoped would provide for certainty in conservation of eagles as well as certainty for developers and operators of wind energy by encouraging more proponents to seek and obtain permits for activities that would otherwise continue to take eagles without implementing the conservation measures that are critical to eagle conservation nationally, regionally, and locally. The delays in processing permits may actually discourage proponents from seeking permits and may be an obstacle to the rapid growth of wind energy that is needed to combat climate change.

Additional Comments on the DEA

Standards for issuing golden eagle take permit. The USFWS can only issue golden eagle take permits if it finds that in doing so the affected golden eagle breeding population would remain stable or increase as required in the Eagle Act's preservation standard. For purposes of the DEA, the analysis of the effects to the local breeding population of issuing an eagle permit is based on: 1) the project area plus a 10-mile radius, and 2) the local population of golden eagles, defined as a 109-mile radius around the project based on the dispersal distance for young eagles from nests.

Within a 10-mile radius of the project, surveys conducted in 2010 documented five golden eagle nesting territories, three of which were active, with the closest active nest located 4.1 miles from existing wind turbines. No active nests were documented within 10 miles of the operating project during monitoring conducted in 2013, 2014 and 2015. Ongoing drought conditions in Imperial County from 2013 through 2017 is considered a factor in documented inactive nesting. If existing nests become active during the planned 30-year operational life of the project, nesting adults and young eagles produced from these nests will be at risk from injury or mortality due to the operational project.

Within the 109-mile radius of the project are portions of four Bird Conservation Regions (BCRs) in California and Mexico, 1) BCR 32 – Coastal California, 2) BCR 33 – Sonoran and Mohave Deserts, 3) BCR 39 – Sierras de Baja California, and 4) BCR 40 – Desierto de Baja California. The golden eagle breeding

population within 109 miles of the project in California is estimated by the USFWS to be 419. Based on this analysis, the local-area 5% benchmark would be 21 golden eagles annually. Assuming a mortality rate of 0.28 golden eagles per year, this amount of mortality comprises less than 0.1% of the total estimated local area population and less than 2.0% of the local-area 5% benchmark for golden eagle mortality.

Comment: Given that turbine operation was curtailed 16 times for a total of 8.49 hours when golden eagles were observed within the $^1/_2$-mile buffer zone surrounding individual turbines, eliminating turbine curtailment in the Pattern Energy's revised ECP has the potential to increase the probability that golden eagles would experience increased injury or mortality. However, we concur that such increased risk is adequately addressed in the DEA because if authorized take exceeds predicted levels, the observer-curtailment of wind turbines posing a risk to eagles would resume as an adaptive management measure.

Mitigation measures to fully mitigate projected mortality at the Ocotillo project: Power pole retrofitting is proposed as the mitigation measure to fully offset projected mortality, and is proposed to occur within service territories for Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE). Retrofitting 15 power poles would benefit one golden eagle according to the EA for an eagle permit for the Shiloh wind project[2].

Comment: While we appreciate that two electrical utilities, PG&E and SCE, have established power pole retrofit programs throughout their service territories, we recommend that power pole retrofit projects be located in high quality eagle nesting and foraging habitats as close to the project as practicable and where there are known electrocution problems. The service territory of PG&E is outside the local area population of golden eagles and power pole retrofits. Given the resident nature of the golden eagle population in this area, we recommend that the primary service territory where power pole retrofits should occur is within that for San Diego Gas and Electric Company. The service territory for the Imperial Irrigation District should also be evaluated if there are known electrocution problems within eagle nesting and foraging territories. Maps of the service territories for each of these utility companies are attached to this comment letter.

A total of 30 power pole retrofits would be needed to offset the anticipated take of two eagles from the project over a five-year period; and the USFWS proposes a ratio of 1.2:1 for calculating the number of retrofits (36) needed to achieve a net gain in the overall eagle breeding population. For a 30-year eagle take permit, the number of retrofits required would be 180 to offset anticipated impacts, and 216 needed to achieve a net gain in the breeding population.

Need for a regional golden eagle conservation and mortality mitigation strategy: There are four operational wind farms in southeastern San Diego County (Tule, Jordan, Manzanita and Campo). An additional project, the Torrey Wind Project, is proposed on approximately 2,000 acres of private land in McCain Valley with generating capacity of 126 MW from 30 wind turbines.

Comment: Given that contemporary wind turbines are known sources of avian mortality, including golden eagles, and that there are numerous active eagle nesting and foraging territories in the mountainous regions of San Diego County, we urge the USFWS, in concert with federal, state and local agencies, to address the need to conserve golden eagles within this region through a long-term programmatic eagle conservation and mortality

[2] https://www.fws.gov/cno/pdf/ShilohIV-ECP-DEA.pdf

mitigation strategy that seeks to increase compliance of wind energy facilities and other sources of eagle mortality in the region with the Eagle Act.

We support Alternative 2: Issue a 5 year Permit for Applicant's Revised ECP and issue ROW grant amendment; and make the following additional comments on the DEA and Alternative 2, in particular, for consideration of inclusion:

1. From the DEA: ***The applicant is also requesting an amendment to their BLM right of way (ROW) grant, to allow discontinuation of a system designed to minimize risk to eagles.*** *The golden eagle risk minimization system includes a DeTect Merlin avian radar system, radar-controlled video tracking system, and a full-time golden eagle biological monitor to observe any golden eagles flying within the wind facility and to curtail turbines when eagles are at risk of collision. This eagle risk minimization program was required as part of the ROW grant and associated Record of Decision (ROD) that was signed by the BLM on May 11, 2012.* (DEA, p. 1-1)

Alternative 2: *Under this alternative, the radar system and observer-curtailment system would no longer occur at the Project for the 5-year permit term, unless take exceeds predicted levels, in which case reinstallation of the observer-curtailment measure could be an adaptive management measure.* (DEA, p. 2-2)

Comment: Technology for detection and avoidance of eagles, Condors, and potentially Whooping cranes and other large birds is progressing rapidly, and our groups support funding from DOE and other agencies and the private sector in developing, testing and refining these technologies that emphasize avoidance and minimization before compensatory mitigation.

Pattern, BLM and USFWS should get recognition and credit for collaborating in the creation and operation of a system that was experimental at the time and that has shown results in zero mortality of eagles and low mortality of large raptors.

Wind energy developers, like Pattern, who implement new technologies should be given credit for any eagle mortality successfully avoided in calculation of take limits and compensatory mitigation requirements or other considerations. This will help incentivize avoidance as the most effective step of addressing impacts in the mitigation hierarchy.

Additionally, we expect new technologies for detection and avoidance to come online over the term of the permit and recommend inclusion of specific language in the permit that allows consideration of alternate technologies for detection and avoidance in adaptive management.

2. As documented in Section 5.1 of the ECP, ***the biomonitors have documented relatively few golden eagles at the Project since it became operational.*** *Over 19,867 hours of bio-monitoring conducted from early December 2012 through June 30, 2017, 41 observations of golden eagles have occurred (0.002 golden eagles/hour). Turbines were curtailed as a result of these operations 16 times between December 2012 and the end of June 2017, for a total of 8.49 hours of curtailment over the 4.5-year period.* (DEA, p. 2-1)

Comment: Since this technology was an experiment, USFWS should consider whether it may be appropriate to validate the technology fully and provide the technology as an option for future eagle permits and operations at wind projects.

Additionally, if 41 observations are relatively few golden eagles, we wonder if there could be standardized quantified numbers to define eagle observations in comparison to other projects in the same region.

3. This alternative would involve removal of the DeTect Merlin radar system and installation of an aviation radar system which would turn on the Federal Aviation Administration (FAA) required flashing lights on the turbines when aircraft are in the area.

Comment: Please explain in the final EA how this lighting change affects golden eagles or large raptors.

4. NFWF Eagle Mitigation Account

The DEA states: We established an Eagle Mitigation Account with the National Fish and Wildlife Foundation (NFWF) to facilitate the eagle permit process in our Pacific Southwest Region. Deposits to this account would be used to accomplish specified conservation practices as identified in permits issued under the Eagle Act. Under the action alternatives that involve issuance of an eagle take permit (Alternatives 2 and 4), the applicant would deposit compensatory mitigation funds into the NFWF Eagle Mitigation Account. Within 30 days of permit issuance, the applicant would make the initial deposit into our NFWF Eagle Mitigation Account. Further deposits would be required if the funds run out before the required retrofits are completed. Under Alternative 4, for eagle take permit terms beyond the first 5 years, the Service may consider compensatory mitigation options that do not include use of the NFWF account. (DEA, p. 2-7)

Comment: In order to provide effective and time-efficient mitigation, we recommend that the terms of a contract or deposit of funds to NFWF obligate NFWF to contact the utility and schedule the retrofits within a specified time period.

5. Table 4-1 in the DEA summarizes known unauthorized take within the LAP.

Comment: We recommend that USFWS provides a formula for calculating unreported take to be applied to the Local-Area Population analyses in a standardized way, in order to more thoroughly account for this unknown.

6. In 4.6.2 Alternative 2: Issue a 5-year permit for Applicant's Revised ECP and Issue ROW Grant Amendment, Effects on Migratory Birds, the following is stated:

Because the eagle risk minimization system has been in place since operations and during both years of post-construction mortality monitoring that have occurred to date, we do not have the data necessary to determine if the relatively low raptor fatality rates are due to the curtailment system or simply a low level of baseline risk to raptors in this area.

Yet the Avian Protection Plan (Appendix A) reports that:

A total of 2, 073 raptors/large birds were recorded on site or directly adjacent to the site during the four seasons of raptor migration surveys (165 raptors/large birds during the fall of 2009, 522 during spring 2010, 451 during fall 2010, and 935 during spring of 2011). The number of raptors and turkey vultures observed during the spring migration counts were greater compared to fall.

Comment: Since raptors are at high risk from collision with turbines, it would seem that this data would be sufficient to determine a baseline risk level to raptors in this area. We are concerned that removal of the DeTect radar unit, video program and biologist will increase mortality of large raptors/large birds and recommend that impacts to these birds and other migratory birds that are protected by the Migratory Bird Treaty Act of 1918 and California regulations (see https://oag.ca.gov/news/press-releases/attorney-general-becerra-and-california-department-fish-and-wildlife-issue-legal) be addressed in the FEA.

Conclusion

Defenders, NRDC, San Diego Audubon Society and Audubon thank USFWS, BLM and Pattern Energy for their successful collaboration on this permit and significant efforts to address potential impacts to eagles. We consider it reasonable to offer an eagle take permit for the Ocotillo project given its relatively low risk to golden eagles and an adequate adaptive management program that would effectively address unanticipated take. Accompanied by transparent five-year reviews and revision, a longer duration permit may also be appropriate in the future. Eagle mortality monitoring at the project must continue to be required in support of the adaptive management aspect of the permit.

We strongly urge the USFWS, in cooperation with the California Department of Fish and

Wildlife and local agencies, to develop a golden eagle conservation plan for San Diego County at the earliest opportunity due to the ongoing known and unknown levels of eagle mortality, especially that associated with existing and planned wind energy projects in the eastern portion of the county. Thank you for the opportunity to provide comments on the DEA.

Sincerely,

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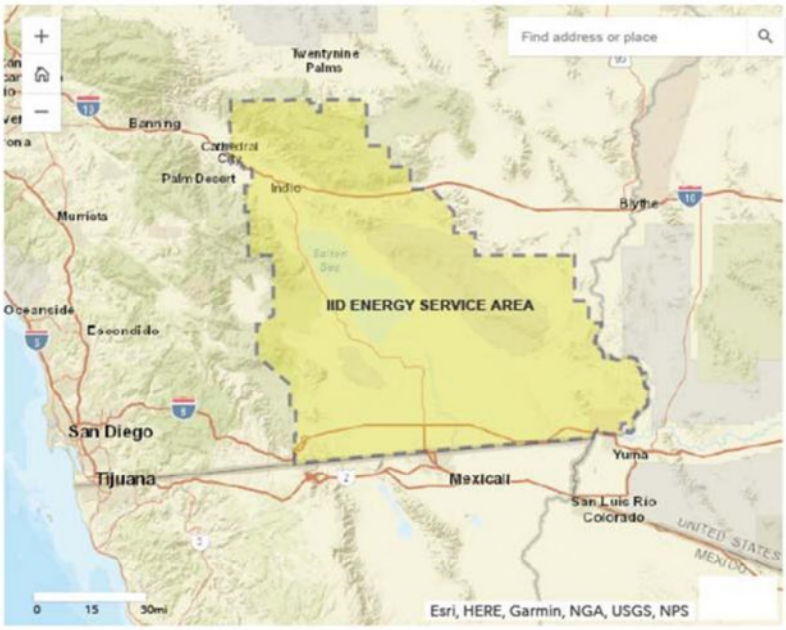
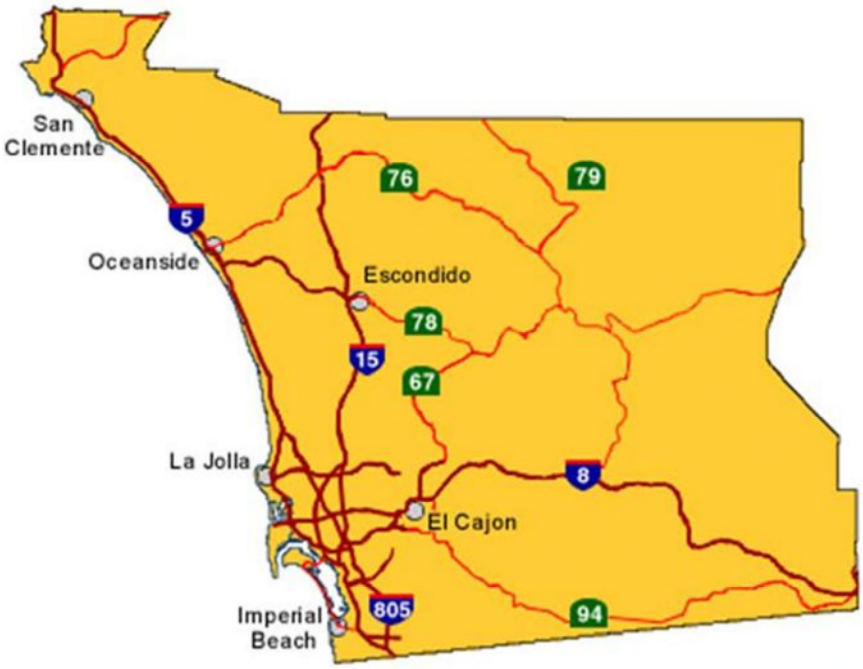
ATTACHMENTS: ELECTRIC UTILITY SERVICE AREA MAPS

Energy Service Maps

The IID energy service territory covers 6,471 square miles, including all of Imperial County along with parts of Riverside and San Diego counties. With low electric and water rates, an abundance of natural resources, a capable workforce and a close proximity to the border, this region has turned into a destination for business and industry of all kinds.

To learn more about the IID energy service area, please click on the map below. To find out if a specific home or business is located within the service territory, please enter the address in the search box.





AUGUSTINE BAND OF CAHUILLA INDIANS

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Tribal Secretary: Victoria Martin

November 6, 2018

Thomas Dietsch
United States Department of the Interior
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Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

Re: **The Bald and Golden Eagle Protection Act**

Dear Mr. Dietsch—

Thank you for the opportunity to offer input concerning the development of the above-identified project. We appreciate your sensitivity to the cultural resources **that** may be impacted by your project, and the importance of these cultural resources to the Native American peoples that have occupied the land surrounding the area of your project for thousands of years. Unfortunately, increased development and lack of sensitivity to cultural resources has resulted in many significant cultural resources being destroyed or substantially altered and impacted. Your invitation to consult on this project is greatly appreciated.

At this time we are unaware of specific cultural resources that may be affected by the proposed project. We encourage you to contact other Native American Tribes and individuals within the immediate vicinity of the project site that may have specific information concerning cultural resources that may be located in the area. We also encourage you to **contract with** a monitor who is qualified in Native American cultural resources identification and who is able to be present on-site full-time during the pre-construction and construction phase of the project. Please notify **us** immediately should you discover any cultural resources during the development of this project.

Very truly yours,

Victoria Martin
Tribal Secretary