United States Department of the Interior

U.S. Fish and Wildlife Service, Pacific Region
Migratory Birds and Habitat Program
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FINDING OF NO SIGNIFICANT IMPACT

Decision to Issue an Eagle Take Permit to Utah Associated Municipal Power Systems for the Horse Butte Wind Project

U.S. Fish and Wildlife Service
Portland, OR

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C 4321 et seq.), the United States Fish and Wildlife Service (hereafter, Service) prepared an Environmental Assessment (EA). In the EA, the Service proposes to make a decision on an eagle incidental take permit application (pursuant to 50 CFR 22.26), submitted by Utah Associated Municipal Power Systems (UAMPS), for the annual take (i.e. incidentally killing) of up to 3.5 golden eagles (*Aquila chrysaetos*) and 1.2 bald eagles (*Haliaeetus leucocephalus*) over the 5-year duration of a permit at the Horse Butte Wind facility (Project) in eastern Idaho.

The Service needed to make a decision on UAMPS' eagle permit application and ensure that our decision to issue the permit meets the Service's preservation standard for eagles; is otherwise consistent with the Eagle Act (16 United States Code [U.S.C.] §§ 668–668d) and its implementing regulations (50 CFR 22.26); is consistent with general permit issuing criteria (50 CFR Part 13); and is consistent with our legal authorities, ensuring the incidental take permit, if issued, and implementation of the permit conditions would further long-term conservation of bald and golden eagles.

The EA considered three alternatives:

Alternative 1, deny the permit **(the No Action Alternative)**;
Alternative 2, issue an eagle take permit to the applicant based on their permit application and negotiated conditions (**our Preferred Alternative**); and
Alternative 3, issue a permit with additional mitigation requirements.

Other alternatives were considered but rejected as not meeting our purpose and need.

BACKGROUND

Horse Butte Wind I, LLC (HBW) submitted an application for a 5-year Eagle Permit in 2012. The ownership of the Project changed from HBW to Utah Associated Municipal Power Systems (UAMPS) on March 5, 2018. Despite new permit regulations developed in 2016, UAMPS requested we process their application under the prior regulations (an option for completed applications received prior to July 14, 2017). This Project is described in the Eagle Conservation Plan (Appendix A), which is the foundation of the permit application. Subsequently, the Service provided technical assistance regarding measures to

avoid, minimize, and mitigate adverse effects to golden eagles and bald eagles. This technical assistance resulted in alterations to many aspects of the ECP since its latest update in April 2013, described in detail under the Preferred Alternative. Based on the Service's most recent fatality prediction for both species, the Service estimates an annual take of 3.5 golden eagles and 1.2 bald eagles over the 5-year duration of a permit.

DESCRIPTION OF PROJECT PRACTICES

Under the Preferred Alternative, UAMPS will be required to provide avoidance, minimization, and mitigation measures to reduce the risk of eagle take, and post-construction monitoring negotiated with the Service.

Minimization Measures and Best Management Practices
UAMPS would take the following actions to minimize harm, injury, or mortality to eagles, in addition to the actions listed under Alternative 1 (described in the EA). Many of these actions would also minimize adverse effects on other birds and bats.

Minimization Measures:

- Marking balls and painted avian diverters on guy lines of any future MET towers.
- Perform risk assessments on post-construction monitoring data.
- Non-emergency maintenance or other activities at the Project (such as future MET tower removal) will be restricted to outside the critical periods of the eagle nesting season if eagle nests of any species are discovered or reported to UAMPS within 1 mile of the activity.

Best Management Practices:

- Work with local and state agencies to ensure the regular removal of any dead medium- and large-sized mammals from the area of the Project.
- Work with the Idaho Department of Fish and Game to designate appropriate disposal areas for these carcasses that are safer and that could benefit the local eagle population.
- Remove animal carcasses from project site.
- Remove rock piles, woody debris piles and vegetation beneath turbines to reduce shelter and forage for small mammals, prey for raptors.

Compensatory Mitigation Measures
Under the Preferred Alternative in the EA, UAMPS will be required to provide compensatory mitigation to offset predicted take of both eagle species. This offset will be achieved by retrofitting high-risk electrical distribution poles, to ensure no net loss to bald and golden eagle populations. The number of poles that would be retrofitted or rebuilt is derived using our Resource Equivalency Analysis (REA), which is based on the predicted number of annual eagle fatalities (Appendix D in the EA) and literature-accepted values for how many eagles are killed at high-risk power poles. When running the REA, we assumed that a power pole retrofit is effective at preventing eagle deaths for 30 years. This assumption is supported by a Power Pole Retrofit Reimbursement Agreement between UAMPS and the utility owning and managing the power poles to be retrofitted.

UAMPS's compensatory mitigation commitment under the Preferred Alternative is summarized in Table 1.

Table 1. Compensatory Mitigation Commitment for Preferred Alternative

	Bald Eagle	Golden Eagle
Predicted Take (Annual / 5-year Permit Term)	1.2 / 6	3.5 / 18

Longevity of pole retrofit effectiveness	30 years	30 years
Number of poles to be retrofitted	81 poles	241 poles

UAMPS will contract with partner/member utilities to retrofit power poles considered to be high risk to each species. Priority will be given to identifying high-risk poles within the species-specific LAP. High-risk poles would be identified using the criteria and a system developed by Hawkwatch International (method described in Appendix E of the EA), which considers the configuration of the poles in question, and other local factors to determine the relative risk of a pole to eagles. Such local factors may include proximity of the pole to a known eagle nest, or known eagle habitat, and proximity of the pole to key foraging spots (e.g., water for bald eagles and cliff lines for golden eagles). To count as compensatory mitigation, the power poles to be retrofitted must be in addition to whatever the power company already had plans to do; that is, poles retrofitted under this compensatory mitigation package must be an entirely new set of poles, not already scheduled for retrofitting or replacement by the power company in the foreseeable future.

As part of its annual report, UAMPS will provide an accounting of the poles retrofitted in the previous year, and monitoring data analyzing the efficacy of those retrofits. All compensatory mitigation listed in Table 2 would be implemented, as described above and as determined using the method outlined in Appendix E, before the beginning of the 2020 breeding season.

Post-Construction Monitoring

Under the Preferred Alternative, UAMPS will be required to conduct post-construction fatality monitoring for 3 years after the Eagle Permit is issued as described in the EA. This monitoring would consist of three primary field components – Fatality Surveys, Searcher Efficiency Trials, and Carcass Persistence Trials. A fourth year of monitoring may be required under Adaptive Management if estimated take during the permit term reaches concerning levels (described in the EA).

Adaptive Management

Under the Preferred Alternative, UAMPS will be required to implement the adaptive management plan described in the EA. This plan, coupled with post-construction fatality monitoring, will help ensure that authorized take is not exceeded during the permit term. If observed take at the project reaches pre-determined levels that would cause the Service to be concerned, an additional conservation measure will be implemented at the project with the goal of reducing take rates.

Reporting

Take Reports

UAMPS would report all eagle fatalities to our Eastern Idaho Field Office, and Migratory Bird Permit office via email, within 48 hours of discovery, whether observed during post-construction fatality monitoring or by Project personnel. Reports of eagle fatalities would be documented using a standardized form and include the date of discovery, the species and estimated age of the eagle, the location, the suspected cause and date/time of death or injury, and any other pertinent details (e.g., turbine location, wind conditions, etc.).

Annual Reports

UAMPS would submit written reports each year during the 5-year permit term. Reports will be submitted to us by January 31 of each year. A summary of some of the key components of each annual report is provided below.

- Observed and estimated incidental annual take rates (and the level of uncertainty of the estimates (e.g., confidence intervals).
- Disposition (alive/dead), location, species, sex, age, and dates of each observed fatality.

- Maps or graphical representations illustrating the geographic distribution and location of all observed fatalities (relative to turbine locations).

EFFECTS AND FINDINGS

The three alternatives considered in the EA provide a reasonable range to assess differing potential environmental effects associated with issuance of an Eagle Permit. Alternative 1 does not achieve a net conservation benefit to eagles whereas the other alternatives do. Alternatives 2 and 3 have similar but slightly differing environmental effects. Alternative 2 is our Preferred Alternative because it requires measures that are likely to both reduce incidental take rates and offset incidental take that is predicted to occur, which meets our population management objective. Additionally, the Preferred Alternative requires fatality monitoring and adaptive management, which ensures that actual eagle take rates can be estimated and adaptively managed if the observed take at the project is higher than the predicted take. Alternative 3 would provide for additional mitigation that might compensate for take at the facility beyond what is required under current authorities.

Rigorous analyses of eagle population data and models allowed the Service to determine allowable take thresholds for both species (Final Programmatic Environmental Impact Statement (PEIS) for the Eagle Rule Revision[1]). Using that national guidance, we have determined that implementing the Preferred Alternative will not result in direct, indirect, or cumulative permitted take that exceeds the 1- and 5-percent thresholds of the Local Area Population (LAP, described in the EA and PEIS) for golden eagles. Further, we do not have evidence to suggest that authorized and unauthorized take combined will exceed 10 percent of the LAP for golden eagles. For bald eagles, the Preferred Alternative will not result in direct or cumulative permitted take that exceeds the 5-percent thresholds of the LAP. In addition, we do not have evidence to suggest that authorized and unauthorized combined will exceed 10 percent of the LAP for bald eagles. Authorizing take at this facility is, therefore, compatible with the preservation of bald eagles and golden eagles.

Direct and indirect effects to other species of birds and bats are similar under all alternatives, as discussed in Section 5.2.2 of the EA, because the project is operational now and would continue so regardless of this permit decision. However, the intensity of mortality and injury impacts would likely be reduced under the Preferred Alternative due to the implementation of avoidance/minimization measures, monitoring, and mitigation for eagles. Adverse impacts to migratory birds and bats could be further reduced if conservation measures were implemented under the required adaptive management framework. Specifically, if adaptive management triggered the application of visual and/or audial deterrence procedures for eagles, these could also potentially deter migratory birds and bats from the rotor swept area of the turbines, thereby reducing the potential for fatalities and injuries associated with collisions with turbine blades. Additionally, compensatory mitigation required under the Preferred Alternative to offset eagle take could benefit raptors and other birds with large wingspans by reducing the risk of electrocution elsewhere.

The Service must also find that, upon receipt of a complete application, the criteria in 50 CFR 13.21 "Issuance of Permits" are met, the issuance criteria are met and required determination are made in 50 CFR 22.26 (prior to 2016 revision).

Based on the EA, the Service finds that the issuance of this permit meets all of the criteria required of 50 CFR 22.26 and 50 CFR 13.21.

[1] https://www.fws.gov/migratorybirds/pdf/management/FINAL-PEIS-Permits-to-Incidentally-Take-Eagles.pdf

PUBLIC SCOPING AND TRIBAL CONSULTATION

The Draft EA was made available to the public for a 30-day comment period, allowing the public opportunity to provide comments on the content and scope of the document. We received no comments from the public during this 30-day comment period.

Additionally, four federally recognized Indian Tribes (the Shoshone-Bannock Tribes, Eastern Shoshone Tribe, Nez Perce Tribe, and Northern Arapaho Tribe) could have special interests that may be affected in the area surrounding the Project based on their proximity to the Project and previous communication. Letters were sent to these Tribes on January 28, 2014, to inform them about the Eagle Permit application, and to provide them the opportunity to review the application and consult on the potential issuance of an Eagle Permit. We received a response from the Shoshone-Bannock Tribes requesting formal government-to-government consultation.

The Service met with the Shoshone-Bannock Tribes on March 17, 2014, in Fort Hall, Idaho, to discuss their concerns regarding revisions to the regulations for permits for the take of eagles, and their concerns over the UAMPS application for an Eagle Permit. Because comments on our, then proposed, rule revision are outside the scope of this analysis, only the comments related to the permit application for the Project are summarized here.

The Shoshone-Bannock Tribes submitted a letter to us on April 2, 2014, detailing their concerns about the Project's Eagle Permit application. In this letter, the Tribes recommended that any Eagle Permit issued for a wind development project be reviewed every 5 years and that additional measures be added to reduce eagle mortality. They also recommended that post-construction monitoring be a requirement of a permit to inform future management of eagle mortality.

Consistent with these comments, we are requiring a) an adaptive management protocol that outlines measures to reduce take, and b) post-construction fatality monitoring which allows the Service and UAMPS to evaluate whether or not observed levels of take are consistent with levels authorized on the permit. Further, the maximum tenure of the permit would be 5 years. As such, a 5-year review of the take levels at the Project will naturally occur, in the form of another application review, should UAMPS wish to receive additional authorization beyond the initial 5-year permit. Through another formal application process, tribes will again have opportunities to request consultation or provide input on future Eagle Permit applications for this Project.

DETERMINATION

The Service has selected the Preferred Alternative as described in the EA and will issue an Eagle Incidental Take permit (50 CFR 22.26) for the incidental take of bald eagles and golden eagles associated with operation of the Horse Butte Wind facility. We have found the application submitted for the permit under 50 CFR 22.26, and the conditions negotiated with the applicant, meet the issuance criteria.

We considered impacts to eagles and other resources from the Project at the eagle management unit and local area scales in this EA, incorporating the PEIS by reference. The eagle take that we predict will occur at this facility is conservative, within allowable thresholds, and will be compensated by UAMPS through power pole retrofits that UAMPS will implement with its member/partner utilities. Additionally, under this alternative UAMPS would be required to perform sufficient fatality monitoring and implement adaptive management that would reduce eagle mortalities further if take rates appear to be higher than expected, and to continue operational measures that avoid and minimize eagle mortality. Because of this,

and considering the population analysis in the PEIS for both species, we conclude that any direct, indirect, and cumulative effects of the action under the Preferred Alternative are not significant.

The Service determined that issuance of a permit under 50 CFR 22.26 for the annual take of 3.5 golden eagles and 1.2 bald eagles over the 5-year duration of the permit does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an EIS is not required.

Nanette M. Seto

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Feb. 4, 2019

Date