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ALBUQUERQUE REGIONAL OFFICE
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FINDING OF NO SIGNIFICANT IMPACT

Oso Grande Wind Energy Project

The U.S. Fish and Wildlife Service (the Service) proposes to issue a 30-year permit (ITP) for take of golden eagles (*Aquila chrysaetos*) that is incidental to otherwise lawful activities associated with the operation of the Oso Grande Wind Energy Project in Chaves, Lea, and Eddy counties, New Mexico (Project), under authorization of the Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. §§ 668-668d and 50 Code of Federal Regulations [C.F.R.] § 22.80). The permit would authorize non-purposeful (incidental) take of 13 golden eagles in the first 2-year review period (up to 193 golden eagles over the permit term). The Service will monitor the Project's eagle take, coordinate with the Applicant at least every 5 years to reassess the ITP (eagle mortality rates, measures to reduce take, compensatory mitigation, and eagle population status, as needed), and adjust the ITP conditions as necessary to maintain compliance with the preservation standards of the Eagle Act.

The Service prepared an Environmental Assessment (EA) that tiered off the Service's Programmatic Environmental Impact Statement for the Eagle Rule Revision, December 2016 (PEIS; Service 2016) to analyze the environmental effects of two permit alternatives and the no action alternative for authorizing take of eagles. The Service incorporates the EA by reference into this Finding of No Significant Impact (FONSI). Together they constitute the Service's NEPA finding.

As the responsible official, I have evaluated the effects of the proposed action and alternatives relative to the definition of significance established by the CEQ Regulations (40 C.F.R. § 1508.13). I have reviewed and considered the EA and documentation included in the project record, and I have determined that the proposed action and alternatives will not have a significant effect on the quality of the human environment. As a result, no environmental impact statement will be prepared. My rationale for this finding is as follows.

Purpose and Need for Action

The purpose of this action is to issue an Eagle Act permit to the Oso Grande Wind Energy Project that will authorize potential lethal take of golden eagles that is incidental to otherwise lawful activities associated with the operation of the Project. The need for the action is to respond to the application from the Tucson Electric Power Company requesting a permit to legally authorize that take.

The Service has analyzed one no action alternative and a second alternative for the proposed action. A third alternative was considered but not evaluated.

Proposed Action – Issue 30-year Golden Eagle ITP (preferred alternative)

The Service would issue an eagle ITP for the non-purposeful take of 13 golden eagles in the first 2-year review period (up to 193 golden eagles over the permit term) with associated conditions, as allowed by regulation.

Alternative 1 – No Action

The Service would take no further action on the permit application. The Service assumes that the applicant will implement all measures required by other agencies and jurisdictions to conduct the activity at this site, but the conservation measures proposed in the ITP application package would not be required.

Alternative 2 – Issue 5-year Golden Eagle ITP

Under this alternative, the Service would issue a 5-year eagle ITP authorizing the incidental take of eagles associated with the Project, as allowed by regulation. The eagle ITP would be for the incidental take of up to 33 golden eagles during the 5-year permit term.

The Service selected Proposed Action Alternative over the other alternatives

Effect	Proposed Action – 30-year ITP	Alternative 1 – No Action	Alternative 2 – 5-year ITP
Eagle Take Levels	193 eagles over 30 years	193 eagles over 30 years	33 eagles over 5 years
Avoidance and Minimization	No additional avoidance or minimization proposed beyond what has been completed relative to the ECP	Same as Proposed Action	Same as Proposed Action
Compensatory Mitigation	530 to 1,217 high-risk pole retrofits, depending on retrofit longevity and mitigation schedule, mitigating take of 33 golden eagles for the first 5 years. Mitigation required over the life of the eagle ITP to be determined based on estimated past take and predicted future take to fully offset 30-year take of eagles at a 1.2 to 1 mitigation ratio.	No power pole retrofits.	530 to 1,217 high-risk pole retrofits, depending on retrofit longevity and mitigation schedule, mitigating take of 33 golden eagles.
Unmitigated Eagle Take	None	193 golden eagles over 30 years	None during the 5-year eagle ITP term
Adaptive Management	See Table 2 in the EA. Adaptive Management Trigger Values in the EA	None	Same as Proposed Action but limited to 5-year eagle ITP term

Effect	Proposed Action – 30-year ITP	Alternative 1 – No Action	Alternative 2 – 5-year ITP
Data Collected by USFWS	Annual monitoring report of fatalities; reporting of injured eagles; information on the effects of specific, applied, conservation measures; report on completion of pole retrofits	None	Same as Proposed Action but for a 5-year duration
Company Liability for Eagle Take	None (if in compliance with permit conditions)	Company liable	None during the 5-year eagle ITP term (if in compliance with permit conditions)

The Proposed Action Alternative allows the Service to monitor and manage take of golden eagles throughout the life of the Project without significantly affecting regional or local eagle populations. It is preferable to the other alternatives for the following reasons.

- With the issuance of the permit under the Proposed Action, the 530 to 1,217 power pole retrofits provide a benefit by reducing the electrocution risk to eagles and other migratory birds.
- The avoidance and minimization measures associated with the Proposed Action, along with the additional adaptive management measures, are designed to further ensure that the permit is compatible with the preservation of golden eagles.
- Under the No-Action Alternative, conservation measures to avoid or minimize risk to eagles would not be required. Therefore, the risk to eagles is expected to be higher under this alternative as compared to the Proposed Action. Under this alternative, direct impacts on the golden eagle population over the 30-year life of the Oso Grande Wind Energy Project are anticipated to be the loss of 193 eagles. No adaptive management measures would be triggered should take exceed predictions and none of the impacts to golden eagles would be offset by compensatory mitigation.
- Under Alternative 2, the ITP would need to be renewed after 5 years for the Project to have take coverage for the entire 30-year life of the Project. This would add a regulatory burden to the applicant.
- Under Alternative 2, all adaptive management, mitigation, monitoring, and avoidance and minimization measures would be implemented for a duration of 5 years only, unless renewed. This alternative meets the purpose and need for the action, but provides the Applicant and the Service less long-term certainty.

The Service concludes that issuing an eagle permit under Proposed Action Alternative would result in the following non-significant environmental, social, and economic effects:

Environmental effects would be limited to the direct take of golden eagles (fatalities via collisions with turbines), which is well within the limits of the Local Area Population take thresholds analyzed in the 2016 PEIS. The 2016 PEIS determined cumulative authorized take below 5% of the Local Area Population would be compatible with the preservation of eagles. There are currently two permitted projects that overlap the project Local Area Population; therefore, the Project's estimated annual take combined with the authorized take from overlapping projects of 6.59 golden eagles would be approximately 2.27% of the Local Area

Population, which is below the 5% threshold. Further, all authorized take will be offset by the Project through compensatory mitigation approved by the Service. Small changes in local population dynamics may occur under either permit Alternative but we expect the overall effect on golden eagle take at the Project to be minor. The Service does not anticipate that nest disturbance or territory loss effects will occur at the Project. The EA concludes that there will be no significant effects on migratory birds, including any threatened and endangered bird species that could potentially occur in Chaves, Lea, and Eddy counties.

On March 21, 2022, the Service emailed and mailed an information handout and a letter to all Tribes within the Southwest Region, the New Mexico Department of Game and Fish, and the New Mexico State Historic Preservation Office providing details on the Project, the regulatory process, and informing them that the Draft EA would be posted to the Service's webpage. On March 21, 2022, the Service released the Draft EA for public comment, identifying three alternatives, including the preferred alternative. The Draft EA was available for 45 days and it was posted on the Service's Southwest Region NEPA Documents for Eagle Permits webpage. The Service received responses to the Draft EA from the Tribes listed below and from the New Mexico State Historic Preservation Office.

- Chickasaw Nation, Oklahoma
 - No objections
- Hopi Tribe, Arizona
 - Requested the Service give more than 45 days for Tribes to comment
 - There is no mandatory time limit for response from Tribes and we can work with any Tribe to arrange government-to-government consultation.
- Hopi Tribe, Arizona
 - Questioned why the wind facility is operational without an eagle ITP
 - Eagle ITPs are voluntary and only authorize take of eagles according to the Eagle Act's "preservation standard," which requires that permitted take be compatible with the preservation of eagles. The voluntary eagle take permit program is our only available avenue to require the implementation of these conservation measures. It is not a prerequisite or an authorization to construct and operate wind projects.
- Colorado River Indian Tribes, Arizona
 - Opposed to any permitting that would threaten the protection of eagles
 - Eagle ITPs seek to reduce eagle take through avoidance, minimization, adaptive management, and compensatory mitigation; the voluntary eagle take permit program is our only available avenue to require the implementation of these conservation measures.
- New Mexico State Historic Preservation Office
 - Requested Section 106 consultation and the results of tribal consultations
 - The Project is operational and the Service did not have any influence on siting or any subsequent ground disturbance. No additional ground disturbance or other impacts will occur. Results from Tribal outreach are summarized in the final EA.

Cumulative Effects

The Proposed Action in this EA is the issuance of a permit authorizing take. The issuance of this permit to allow take in itself does not necessarily result in mortality of an eagle, but the

cumulative mortality from multiple factors may result in the Service re-evaluating the take threshold. The Project's estimated take of 6.42 (7 individuals) golden eagles annually is below the Local Area Population cumulative allowable take of 14.5 (15 individuals) golden eagles annually. Small changes in population dynamics may occur, but the Service concludes that the overall effect of golden eagle take at the Project under the proposed alternative will be minor. We do not expect nest disturbance or territory loss effects to occur at the Project.

Issuance of the eagle ITP for the Oso Grande Wind Energy Project will result in continued monitoring and maintenance of 530 to 1,217 power poles retrofitted, mitigating take for the first 5 years. Additional mitigation will be required over the life of the ITP to fully offset all authorized take. At this time, it is not known if other operational wind projects in the analysis region or other future development will apply for permits. However, if permit applications are submitted, the resulting retrofits will have a beneficial cumulative impact on the golden eagle population since modifying extensive sections of high-risk power lines will contribute to reducing eagle fatalities from electrocution.

Measures to mitigate and/or minimize adverse effects would be required in the proposed action. In addition, the applicant has already implemented several measures in anticipation of applying for a permit. These measures include:

Avoidance and Minimization

- The Applicant incorporated minimization and avoidance recommendations from the Eagle Conservation Plan (ECP) Guidance.
- The Applicant designed power lines and transmission structures for appropriate spacing and/or applied cover-up materials or devices following Avian Power Line Interaction Committee (APLIC) suggested guidelines (APLIC 2006) to minimize electrocution risk of perching birds. Collision risks for eagles were minimized by designing all utility lines in accordance with APLIC collision guidelines (APLIC 2012).
- Site development that involves additional turbines would require additional NEPA analysis to assess take of eagles and may require amendments to the conditions set forth in this permit or development of a new permit application.

Monitoring

- The terms and conditions outlined in a permit from the Service authorizing incidental take would require all eagle mortality monitoring and bias correction trials to meet design approval and third party requirements as outlined in the 2016 Eagle Rule. Eagle mortality monitoring and bias correction trials will be required over the life of the permit.
- At the initial 2-year permit review and each subsequent 5-year review, based on estimated actual take during the preceding 5 years, the Service will, if appropriate, adjust predicted (not-to-exceed) take for the next 5 years, and maximum authorized take over the full 30-year permit. The Service will estimate actual take based on the observed levels of take at the project. Once this review is complete, the Service may adjust compensatory mitigation requirements accordingly.

Compensatory Mitigation

- Issuance of the eagle ITP for the Oso Grande Wind Energy Project will result in the retrofitting and continued monitoring and maintenance of 530 to 1,217 power poles to offset estimated take for the first 5 years of the permit term.
- Mitigation required to offset take over the duration of the eagle ITP will be determined at each review period based on estimated past take and predicted future take.

Significance

Significance, as used in NEPA, requires considerations of the potentially affected environment and the degree of effects to that environment (40 C.F.R. § 1501.3). The covered area, a wind facility of 10,322 ha (25,507 acres) is limited to a small area within the nearly 3,793,297 ha (9,373,440 acres) of Chaves, Lea, and Eddy counties, New Mexico. Breeding and non-breeding, and resident golden eagles have been recorded throughout southeastern New Mexico. In 2016, the Eagle Rule Revision incorporated a Local Area Population (LAP) cumulative effects analysis into permit issuance. This LAP analysis involves compiling information on permitted anthropogenic mortality of eagles within a specified distance (derived from each eagle species' natal dispersal distance) of the permitted activities' boundary. In order to issue a permit, cumulative authorized take must not exceed 5% of a LAP unless the USFWS can demonstrate why allowing take to exceed that limit is still compatible with the preservation of eagles. The Project's estimated take of 6.42 (7 individuals) golden eagles annually is below the LAP cumulative allowable take of 14.5 (15 individuals) golden eagles annually. This prediction is based on a conservative approach that is expected to overestimate annual and cumulative take at the outset of the permit. Therefore, we consider the context of the impacts (both negative and beneficial) to be negligible for the State and the remainder of the Nation.

We have considered the following regulatory factors in evaluating the potentially affected environment and the degree of effects to that environment.

- (1) Both short-term and long-term effects.

The authorized take would be within the allowable take threshold for the LAP so will not have significant short- or long-term effects to local golden eagle populations. In addition, take that would be authorized by the permit would be fully offset by the compensatory mitigation provided by the Applicant so would not have significant short- or long-term effects on the Eagle Management Unit eagle population. Eagle mortality monitoring that will be conducted throughout the permit tenure and the required adaptive management measures further support the conclusion that the Selected Alternative will not have a significant impact. Power pole retrofits could have long-term impacts through reduced electrocution risks for golden eagles and other large-bodied birds.

- (2) Both beneficial and adverse effects. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The potential beneficial effects and adverse impacts of the Selected Alternative are discussed briefly below.

Beneficial Effects. The Selected Alternative includes implementation of the ECP and adaptive management, which includes mortality monitoring that will benefit the Service's understanding of mortality of golden eagles at the Project. Our analysis is in comparison to the No Action Alternative under which the Project continues to operate without any eagle ITP requirements or conservation commitments and Alternative 2 which meets the purpose and need for the action, but provides the Applicant and the Service less long-term certainty. Issuance of this permit will allow the Project to operate in compliance with the Eagle Act should eagle take occur, while also providing the Service with valuable data from monitoring requirements. The issuance of an eagle ITP may have a minor beneficial effect on eagles and other large-bodied birds through the implementation and maintenance of power pole retrofits to prevent electrocutions.

Adverse Effects. As described in the EA, the Applicant has worked with the Service in development of the ECP to ensure that it contains commitments to avoid and minimize adverse effects on eagles. The Proposed Action Alternative incorporates these measures. Even so, birds, including eagles, can be injured and killed by collision with wind turbines. The Project's ECP describes commitments to avoid and minimize impacts to eagles. Eagle mortality will be monitored and an adaptive management plan will be implemented to address impacts as operational data are gathered.

In summary, the analyses in the EA and implementation of the measures identified in the Proposed Action Alternative (including those in the ECP) support the conclusion that the Selected Alternative will not have a significant effect on the quality of the human environment.

- (3) The degree to which the proposed action affects public health or safety.

We do not expect the issuance of an eagle ITP to affect public health and safety. Therefore, we did not consider public health and safety issues for further analysis in the EA.

- (4) Consideration of the affect areas (national, regional, or local) and its resources. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas and other listed species or critical habitat.

The issuance of an eagle ITP is not expected to impact wetlands, wild or scenic rivers, ecologically critical areas, or park lands; and these resources do not occur within the covered area. There are no previously recorded artifacts or archaeological sites within the boundary of the project.

No species currently listed under the Endangered Species Act are expected to occur in the project area. No critical habitat for federally-listed species intersects the Project Area. No federally-listed species were observed during any of the pre-construction surveys.

- (5) Significance. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The Proposed Action is not directly related to any other future action. We evaluated cumulative effects on golden eagles as required by NEPA (40 C.F.R. 1508.8) and the Eagle Act's permitting regulations (50 C.F.R. 22.80(f)(1)). To date, two other permits have been issued that overlap the LAP, and the estimated take by this Project and other overlapping projects is below the LAP allowable take. The Service has established take limits for golden eagle populations by Eagle Management Unit in the Final Environmental Assessment (FEA) for the 2009 Eagle Act take regulations and these were revised in the PEIS. This Project is within the Central Flyway Eagle Management Unit, which has an annual take threshold of zero golden eagles per year (USFWS 2016b). As a result, the Applicant is required to offset this take through compensatory mitigation (530 to 1,217 power pole retrofits for the first 5 years and additional mitigation over the duration of the ITP) and as a result, there will be no significant adverse cumulative effects contributed by the Project under the Proposed Action Alternative.

- (6) Whether the action threatens a violation of Federal, State, Tribal, or local law or requirements imposed for the protection of the environment.

The issuance of a Permit does not violate applicable Federal, State, or local laws or requirements imposed for the protection of the environment. All permits state that the permit holder is responsible for ensuring that the permitted activity is in compliance with all federal, tribal, state, and local laws and regulations applicable to eagles.

The Service concluded that neither the proposed action nor any of the alternatives will have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because:

The Project is already built and operational. Issuing a permit authorizing incidental take of golden eagles under any of the action alternatives will not affect wetlands or floodplains.

The Service has thoroughly coordinated the proposed action with all interested and/or affected parties. Parties contacted include:

In March 2022, the Service emailed and mailed an information handout and a letter to the New Mexico State Historic Preservation Office, New Mexico Department of Game and Fish, and all Tribes within the Southwest Region. Also in March 2022, the Service released the EA for public comment and posted it on the Service's Southwest Region NEPA Documents for Eagle Permits webpage. The Draft EA was available for a 45 day comment period. The Service received responses to the Draft EA from three Tribes and the New Mexico State Historic Preservation Office as noted above.

I conclude, based on the analysis of potential environmental impacts in the attached EA, that issuing a 50 C.F.R. § 22.80 Eagle Act incidental take permit to Tucson Electric Power Company for the Oso Grande Wind Energy Project will not have any significant effects on the human environment:

For this proposal, the Service's authority is limited to authorizing incidental take of eagles by the Project, and not Project construction, which is complete, or operation. The permit, with its required conditions, will not have any significant effects on natural resources, environmental justice, floodplains, prime and unique farmlands, wetlands, air quality, climate change,

communication signals, Federal Aviation Administration transportation, geology/hydrogeology, human health and safety, land use, noise, radar signals, sub-surface minerals, vegetation, visual resources, waters of the U.S., socioeconomic resources, or any other aspect of the human environment.

Therefore, it is my determination that the proposal 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 environmental impact statement is not required. The Service has prepared an environmental assessment in support of this finding. The EA and FONSI are available upon request to the FWS facility identified above or on the Service's Southwest Region NEPA Documents for Eagle Permits webpage.

References: Final Environmental Assessment for the Proposed Issuance of an Eagle Incidental Take Permit for the Oso Grande Wind Energy Project, 2022.

KRISTIN MADDEN

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Chief, Division of Migratory Birds
U.S. Fish and Wildlife Service, Southwest Region

Date