



United States Department of the Interior  
Bureau of Land Management

# **Environmental Assessment**

DOI-BLM-CA-D070-2018-0065-EA

Ocotillo Wind Energy Facility Eagle Conservation Plan

## **Decision Record**

U.S. Department of the Interior  
Bureau of Land Management  
El Centro Field Office  
1661 South 4<sup>th</sup> Street  
El Centro, CA 92243

March 2019

**Proposed Action Title/Type:** Ocotillo Wind Energy Facility right-of-way grant amendment

**Applicant/Proponent:** Ocotillo Express LLC

**Location of Proposed Action:** Ocotillo Wind Energy Facility, Ocotillo, Imperial County, CA

## INTRODUCTION

- I. This Decision Record documents the Bureau of Land Management’s (“BLM”) decision on the application submitted by Ocotillo Express LLC (“Applicant”) requesting amendments to mitigating conditions in its right-of-way (“ROW”) grant and associated Record of Decision (“ROD”) issued May 11, 2012. Specifically, the amendments would allow discontinuation of a risk minimization system designed to limit risks of the Ocotillo Wind Energy Facility (“OWEF” or “Project”) on golden eagles (*Aquila chrysaetos*). . The Environmental Assessment (“EA”) for the OWEF evaluated this action. The risk minimization system for golden eagles currently in place and proposed for discontinuation includes a DeTect Merlin avian radar system, a radar-controlled video tracking system, and a full-time biological monitor to observe golden eagles flying within the boundaries of the OWEF and curtail turbines when eagles are at risk of collision.

As documented in Section 2.1 of the EA, the biological monitors have documented relatively few golden eagles at the OWEF since it became operational. Over 19,867 hours of monitoring conducted from early December 2012 through June 30, 2017, resulted in 41 observations of golden eagles (0.002 golden eagles/hour). Turbines were curtailed 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. Furthermore, the DeTect Merlin radar system regularly displayed “false positives” or non-bird detections such as spinning turbine blades, vehicles and rain. The Applicant has communicated to the U.S. Fish and Wildlife Service (“Service”) that they have not found it useful in aiding the biological monitoring in detecting golden eagles. The Applicant has therefore requested the ROW grant amendment to allow discontinuation of the risk minimization system, in addition to applying to the Service for a 5-year take permit for golden eagles under the Bald and Golden Eagle Protection Act (“BGEPA”). The Applicant worked closely with the Service and the BLM to develop and update an Eagle Conservation Plan (“ECP”) to assure that it contains commitments to avoid, minimize, and mitigate adverse effects on golden eagles. The ECP is the foundation of the eagle take permit application for the operational Project.

## SELECTED ALTERNATIVE

- I. Description of Selected Action

Alternative 2 as described in the EA is the selected action. Under this alternative, the BLM would amend the ROW grant to remove the requirement to continue the risk

minimization system and the Service would issue a 5-year permit under the 2009 Eagle Rule allowing the take of up to two golden eagles based on the Applicant's implementation of the final ECP (Attachment 3 of the Finding of No Significant Impact [FONSI]). Additionally, the Applicant would provide compensatory mitigation by retrofitting up to 74 power poles (depending on the retrofit utilized) at a mitigation ratio of 1.2 to 1. At the end of the 5-year permit term, the BLM would require coordination between the Applicant, the Service, and the BLM to determine if an eagle take permit renewal process would be initiated. If a permit renewal is not sought by the Applicant, the 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. Furthermore, this alternative would authorize replacement of the existing aviation radar lighting system with a system that would turn on the Federal Aviation Administration (FAA) required flashing lights on the turbines only when aircraft are present in the area of the OWEF. This would be a change from the existing lighting system, which continually flashes lights on the turbines regardless of aircraft presence.

## II. Identify mitigation and monitoring measures selected for implementation.

- a. The Applicant would provide compensatory mitigation by retrofitting up to 74 power poles (depending on the retrofit utilized) at a mitigation ratio of 1.2 to 1.
- b. Measures to minimize and avoid risk for golden eagles are laid out in section 4.0 of the final ECP (Attachment 3 of the FONSI) and in sections 2.2.2 and 2.3.2 of the EA.
- c. Post-construction monitoring will be implemented as described in Section 5.2 of the ECP.
- d. The Applicant will implement adaptive management practices as outlined in Section 6.0 of the ECP, and Section 5.2 of the Avian and Bat Protection Plan ("APBB") (Appendix B of the EA).
- e. The Applicant will install an aviation radar system which will turn on the FAA-required flashing lights on the turbines only when aircraft are in the area, which could have a positive impact on nocturnal bird and bat species.

## CONSISTENCY WITH LAND USE PLANS, LAWS, REGULATIONS AND POLICIES

### I. Identify compliance with major laws pertaining to the decision.

This decision has been prepared in conformance with applicable laws, regulations, and directives, including the Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), the regulations issued by the Council on Environmental Quality and the Department of the Interior (DOI), 40 C.F.R. 1500 – 1508 and 43 C.F.R. part 46, guidance documents including DOI requirements contained in Department Manual 516, Environmental Quality (BLM 1980), guidelines listed in the BLM NEPA Handbook, H-1790-1 (BLM 2008), and Guidelines for Assessing and Documenting Cumulative Impacts (BLM 1994).

- a. Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act – The ECP for the Project includes data collected on eagles, avoidance, minimization and conservation measures designed to minimize the risks to eagles to the extent practicable that any remaining take is unavoidable, and monitoring provisions to determine the effectiveness of these measures (see Appendix A of the ECP). Additionally, compensatory mitigation measures have been developed to offset anticipated golden eagle fatalities. The Service is approving issuance of a take permit under Alternative 2, in adherence with BGEPA, 16 U.S.C. 668–668d.

The potential impacts of the OWEF on migratory birds were analyzed in the 2012 Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FIER; BLM) and ROD (BLM). Furthermore, the results of the initial years of post-construction avian fatality monitoring at the OWEF are analyzed in Section 3.3.3 of the EA, showing relatively low overall general bird and raptor fatality rates. The EA also analyzed the potential impacts of issuing the eagle take permit and amending the ROW grant to allow the discontinuation of the risk minimization system currently in place; the Service has determined that Alternative 2 would not result in significant impacts to avian species protected by the Migratory Bird Treaty Act.

- b. Endangered Species Act – The BLM requested formal consultation from the Service on the proposed issuance of a ROW grant for the OWEF pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The Service prepared a biological opinion, dated April 26, 2012, and analyzed the effects of the proposed action on the federally endangered peninsular bighorn sheep and federally endangered least Bell’s vireo. The Service concluded that the proposed action (granting of ROW and subsequent construction and operation of the OWEF) was not likely to jeopardize the continued existence or significantly impair the recovery of federally listed species, and the ROD required that all terms and conditions in the Biological Opinion be followed.

The BLM, as a cooperating agency on the EA, coordinated with the Service on the analysis of the potential effects of the Selected Action. As a result, the two agencies’ processes, although distinct, have been coordinated and have analyzed the same alternative (amendment of the ROW grant by the BLM and issuance of an eagle take permit by the Service). Once compensatory mitigation sites are selected for the power pole retrofits, the Service will conduct an internal Section 7 Consultation to further analyze impacts and address required compliance with the ESA. Adverse effects to listed species are anticipated to be avoidable by timing retrofits to avoid sensitive seasons, and/or through the use of other species-specific avoidance measures. However, if the determination of the Section 7 Consultation is that adverse effects are likely to occur to listed species, the Service will prepare additional NEPA documentation to supplement the EA.

- c. National Historic Preservation Act - Tribal consultation is integral to complying with the National Historic Preservation Act (NHPA) process, as well as a key component of determining whether to issue an eagle take permit. In accordance with Executive Order 13175 (2000) and the Native American Policy, it is necessary to consult with Native American tribal governments whenever actions taken under authority of BGEPA may affect tribal lands, resources, or the ability to self-govern. This coordination is also intended to ensure compliance with the NHPA and the American Indian Religious Freedom Act. To initiate consultation with Tribes regarding potential issuance of an eagle take permit, letters were sent to 41 Tribes located within 109 miles (the natal dispersal distance of golden eagles) of the Project. Comments were also encouraged and welcome during the 30-day comment period on the EA. One Tribe provided a letter during the comment period, noting that the Tribe is unaware of specific cultural resources that may be affected by the proposed Project, and requesting that they be notified immediately should any cultural resources be discovered during the development of the Project.

## II. Land Use Plan (LUP) Conformance

The Selected Action (Alternative 2) is wholly within the boundaries of the Desert Renewable Energy and Conservation Plan (DRECP) Land Use Plan Amendment to the California Desert Conservation Area (CDCA) Plan of 1980. The DRECP designated new land use allocations throughout the CDCA. The project site is located on lands identified as General Public Land (GPL). GPL's are BLM-administered lands that do not have a specific land allocation or designation and are suitable for renewable energy development. The Selected Action results in the amendment to the existing right-of-way grant and will result in no additional ground disturbing activities.

The Selected Action is in conformance with the CDCA Plan, as amended by the DRECP.

## FINDING OF NO SIGNIFICANT IMPACT

As explained in the FONSI, the impacts of the Selected Action have been analyzed in the EA and determined not to result in significant impacts to the quality of the human environment, individually or cumulatively with other actions in the general area under NEPA.

## CONSULTATION AND COORDINATION

The Applicant worked closely with the BLM and the Service to develop a final ECP which contains commitments to avoid, minimize, and mitigate adverse effects on eagles in order to amend the ROW grant and comply with the NEPA process for the Ocotillo Wind Energy Facility.

## PUBLIC INVOLVEMENT

- I. The EA was open for a 30-day public comment period ending on November 30, 2018. The Service received four comment letters: 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. The responses to the comments on the EA are presented in attachment 2 of the FONSI.
- II. The Service, in coordination with the BLM, made minor changes to the EA based on substantive comments received. 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.

## DECISION RATIONALE

- I. The need for this action was to make a decision in response to an application to amend the ROW grant for the Project while taking into account the previous environmental analysis by the BLM, and coordinating with the Service on their decision on whether to issue and eagle take permit. The decision must comply with all applicable regulatory requirements, and be compatible with the preservation of eagles. Under the selected alternative (alternative 2) the Service would issue a 5-year eagle take permit and the BLM would issue a ROW grant amendment. The conservation measures and compensatory mitigation outlined in the ECP ensure compliance with the regulatory requirements and are compatible with the preservation of eagles. Therefore, the selected alternative is consistent with the purpose and need stated in the EA.
- II. As indicated in the EA, the implementation of any of the identified action alternatives would result in no significant impacts to any of the environmental resources specified in the EA, although alternatives 1 and 3 could result in the Applicant being in violation of BGEPA and thereby subject to investigation and possible prosecution in the event of golden eagle take. Alternative 2 was selected because it best addresses the purpose and need stated in the EA. The proposed action under alternative 2 is compatible with the preservation of eagles and there is some potential for beneficial impacts to nocturnal migrating birds by reducing the occurrence of flashing lights, which would only flash when aircraft are in the vicinity of the Project under this alternative. The amendment of the ROW grant allows the Applicant to reduce the cost of the previous experimental golden eagle risk minimization system while still promoting conservation of eagles through the implementation of the revised ECP. Conservation measures in the revised ECP include compensatory mitigation through power pole retrofits, as well as compliance monitoring and adaptive management measures.

Based on information in the EA and consultation with my staff, I have decided to amend the ROW grant to allow for discontinuation of the risk minimization system for golden eagles at the OWEF and installation of the new aviation radar.

## ADMINISTRATIVE REMEDIES

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in accordance with the regulations in 43 CFR Part 4, and BLM form 1842-1. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, CA 95825.

The effective date of this decision (and the date initiating the appeal period) will be the date this notice of decision is posted on BLM's online National NEPA Register ([https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do)).



Carrie L. Sahagun, Acting Field Manager  
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3/29/19

Date