

NOTES | 9/28/2010 Conference Call**Altamont Pass Wind Resource Area Scientific Review Committee**

Prepared by the Center for Collaborative Policy is no

Reviewed and Approved by the SRC

All SRC Members Present**Discussion Topics****SRC Input to Scoping for APWRA EIR****Status Update on Implementation of New Monitoring Program****Meeting Outcomes**

- The SRC developed an integrated comment document to submit to Alameda County in response to the Notice of Preparation for the APWRA revised CUPs programmatic environmental impact report.
- A majority of SRC members supported leaving Contra Costa turbines in the new monitoring sample, despite the fact that NextEra plans to remove them in 2011 for repowering. SRC members felt the removal plans were uncertain and at least a half-year of data could be gathered.

Action Items

Party	Due Date	Action
Sandra Rivera		Provide graphic that shows the EIR processes and how they feed into each other

Introductions, Ground Rules and Agenda Review

Associate facilitator Ariel Ambruster gave a reminder about the Ralph M. Brown Act. While SRC members can produce individual written comments by e-mail that are then posted on the website for the public, and the Monitoring Team can revise its documents based on those comment, and post those revisions on the website for the public, it is important to refrain from e-mail conversations involving SRC members that concern content-related issues that would be the subject of deliberations.

Mike Boyd of CARE responded by clarifying that e-mail conversations with individual SRC members are within the framework of the Brown Act.

Ariel Ambruster responded by thanking Mike and agreeing, that the only issue is e-mails involving at least a quorum of the SRC.

SRC Input to Scoping for APWRA EIR**Related Documents**

[P179 SRC Comments on APWRA EIR NOP](#)

Sandra Rivera of Alameda County said there has been some confusion about the EIR. Alameda County has initiated a notice of preparation for a programmatic EIR on the CUP, which involves the repowering projects for AWI and NextEra, and other repowering projects, as well as the maintenance and operation of old turbines until repowering occurs. The environmental process for the HCP/NCCP, or Conservation Plan, will begin at a later date. CEQA requires that the two documents be brought together. Alameda County hopes that the documents and processes can be integrated, because they are examining the same area, and both are looking at siting. As far as the individual projects, the companies haven't provided specific details yet. The SRC will have time to peer review those siting plans, as well. A programmatic EIR allows for a broader view of the Altamont. Conservation Plan EIR scoping will occur in the fall to winter timeframe.

Scoping allows the SRC to raise issues, and make sure issues are not overlooked, and to make recommendations on techniques and resources that the EIR should be considering and analyzing.

SRC Discussion of Comments

In regards to the EIR process, SRC members raised the following points:

- An SRC member said he has been hired as an expert witness to challenge EIRs and has never seen an EIR process more confusing than this. He is concerned about deferring the mitigation plan to a later, unspecified date, effectively removing the ability of the SRC and other members of the public from making meaningful comments. Deferring the mitigation plan in this manner is a CEQA violation. The Notice of Preparation (NOP) says the PEIR would be replaced by the Conservation Plan document.
- Another SRC member agreed that it was confusing. One of these issues is how the environmental process would address the impacts of repowering separately from overall bird mortality, and how impacts from the different projects would be addressed. It doesn't seem to address the effects of the existing projects very effectively. The repowering analysis is likely to indicate a benefit to repowering that could overshadow the analysis of the impact of the existing projects. There is value in doing a programmatic environmental impact report, but looking at existing projects doesn't seem to lend itself to that sort of process. The SRC has analyzed the existing projects' impact on bird mortality. How mitigation is addressed becomes confusing when the two are put together.
- It would be helpful to have a diagram linking the multiple processes and responsible parties. Sandra Rivera said that that could be provided.
- It seems like there is an attempt to produce two EIRs within one, and it's difficult to combine the impacts because they get lost when the two are put together.
- At least two SRC members had an issue with rolling in the HCP process.
- The NOP should discuss probable environmental effects and issues

In response, Sandra Rivera said she wouldn't say that the EIR would be overridden by another plan -- nothing is being superseded. The County is trying to be more government efficient. CEQA requires that an EIR and EIS be integrated. She understands the issues. The programmatic EIR would allow for the analyzing of impacts at the individual level. This would be similar to the 1998 Diablo Winds repowering EIR. The process to date has been

looking at the impacts of the existing projects. An EIR is supposed to look at cumulative impacts. CEQA requires the analysis of noise and growth inducing impacts, which NEPA would not address, so it makes sense to combine the two.

Facilitator Mary Selkirk said the County is looking to receive from the SRC recommendations on how to do that impact analysis: how this document should be scoped, the impacts analyzed, and the mitigations that should be proposed or would be optimal.

An SRC member asked if this process would preclude other repowering projects not named in the NOP from being proposed and developed. Sandra Rivera said not, but that there would be a timeframe of the analysis. A programmatic environmental review would help speed up the repowering projects. The idea is that it could cover many of the larger issues. There would have to be a smaller level of CEQA or environmental analysis for the individual projects.

Rivera was asked how existing impacts would be addressed. She agreed that she wants SRC input on how to do that, and on how to clearly identify the existing project impacts.

Designation of SRC member to craft single text comment document

Facilitator Mary Selkirk suggested, given the variety of ways that individual SRC members approached their comments, and the fact that some asked questions, rather than making recommendations, that it might be most efficient to have the SRC select one member to consolidate the comments and turn the questions into comments.

SRC members agreed that there seemed to be general agreement among their different comments, although not all of the questions could be easily turned into comments. One document is preferred

SRC member Shawn Smallwood agreed to consolidate the comments, but said he needed to ask some clarifying questions of other members to make sure he understood their perspectives, and he did so.

The following questions and responses were discussed:

- Estep comments, page 1 item C.: Do you think these impacts could be addressed in the same EIR, but split out? Response: My concern is that the avoidance/minimization section of the HCP will be oriented to the repowering projects, and have entirely different issues than the existing projects. How to work to minimize impacts at the existing projects? It was clarified that the NCCP would also address existing turbines, as the County expects that all the old turbines will not be removed quickly. It gets awkward, as one might come up with two different determinations of significance. One might retain significance for existing turbines, while repowered turbines might have mitigated for impacts. There was SRC consensus that this issue needs to be very carefully considered by the EIR consultant.
- Estep issue on threshold of significance, in regards to the new regulation for golden eagles. The Migratory Bird Treaty Act does not allow take -- wouldn't any fatalities of MBTA-protected birds be a significant impact? Response: Under CEQA, one might

not necessarily reach that conclusion solely on the basis of this federal designation. The golden eagle is neither threatened nor endangered, and may not meet one's criteria of a 'rare' species. However, the golden eagle is a state fully protected species. While mortality to the extent found in the APWRA would likely be significant under CEQA, the issue is that there is no provision for take of fully protected species. Take in any form and quantity therefore violates DFG code. The EIR opens up the County to scrutiny on that issue by potentially permitting take through Section 10 of the federal process and being in conflict with the state through take prohibition under the Fully Protected language of the DFG code. How would Alameda County anticipate addressing that issue in the context of CEQA? Sandra Rivera said the County will be breaking new ground. An SRC member said there is a federal take for golden eagle, but it is very hard to get, and he was unaware of any permits having been issued.

- Burger issue on existing roads: Can you elaborate? Response: Landowners are obligated to do a series of items. Some might want to keep the roads because they are useful for their own activities. The concern is the level to which landowners have been consulted on the rules and regulations, and will have input on what is done with their property.
- Burger issue: What is meant by "site neighbors?" Response: Property owners all around the Altamont, all around the perimeter who might be affected by the actions.
- Orloff issue: What would be the effective period of the EIR? Response: It could be five years. An SRC member said the SRC is all on the same page, asking how the HCP/NCCP will roll into this process, and when that will happen. There is a consensus that there should not be two timeframes. Sandra Rivera said the CUP runs to 2018 and it would be helpful for the SRC to comment on the length of time issue. One SRC member recommended one simple process, as the Altamont already has too many complications. The concern is that the processes be closely aligned.
- Orloff recommendation on target species list? Response: Use the same target species list that has already been developed for the HCP/NCCP.
- Yee issues? Response: She is in general agreement with other SRC members.

For the benefit of SRC members who have not worked with CEQA, SRC members familiar with CEQA discussed the definition of "less than significant." It is not defined statistically, and there are a variety of opinions. A threshold is established; for biological impacts, it should be a biological threshold. It is complex at the Altamont, because there is so much mortality APWRA-wide that one easily sees significant impacts. The complication is in the difference between existing and repowered turbines. One might see a dramatic reduction in mortality after repowering, but the remaining amount of mortality still might be considered a significant impact, which makes CEQA challenging when addressing this issue.

Additionally, impacts can be measured at the local or regional level. A decrease in impact does not necessarily reduce it to a level that is less than significant.

If there is a take of a state or federal species, one may have a mandatory significance. The consultant will have to resolve if a violation of the Migratory Bird Treaty Act constitutes a significant impact. If the consultant does not satisfy the community at large that their approach is acceptable, the EIR could be challenged.

If there are significant impacts, Alameda County must issue a statement of overriding consideration, which may not be the desirable thing to do. If there were significant impacts, the County would have to take that action for the project to proceed.

Public Comment

Mike Boyd of CARE said this discussion concerns the EIR that his organization went to court in 2006 to try to get Alameda County to do. CARE agreed to a settlement that put DEIR off for three years, and the companies committed in return to reduce mortality 50% for the four target species. Four years later, they haven't made the target. The EIR is one year late. Now that he is finally getting somewhere with the EIR, Alameda County is polluting the well by bringing in the NCCP/HCP. Deferring mitigation is called NEPA backfill and is a procedural lapse in implementation of the NEPA process, involving premature selection and commitment to actions, that's negating the intent of the law, treating NEPA as a process rather than a document. The County is not treating it as one or two documents, which is illegally bifurcating the process. It can't be done that way. The County can either treat NEPA and CEQA together or separately, but is doing a mishmash of the two. The County won't be able to get its document certified. If the SRC is being confused, then the public is certainly going to be confused. The County has to fish or cut bait. What is happening is that one company has made a real commitment to repowering, and the other companies have not. This EIR should look at NextEra's repowering plan, because they have one. The other operators don't have a repowering plan. If that goes forward, at that point, the County could consider an HCCP/NCP. It's improper to mix the two.

Craig Weightman of DFG said the Alameda County website has some slides that might dispel some of the confusion. He referred to Section 4 of Exhibit G-2, which says Alameda County shall obtain "detailed repowering proposals from the Permittee(s), and with input from the SRC shall have completed a draft scope of work for the preparation of an Environmental Impact Report (EIR), initiated a request for proposals from qualified consultants, and have selected an EIR consultant." His question or comment is that with the draft scope of work for two repowering projects -- AWI and NextEra, maybe there should be a second part to the SRC's involvement. He said that the 1998 EIR included both specific projects as well as the repowered approach.

Sandra Rivera clarified that G-2 applies only to AWI, the non-settling party.

SRC Consensus on Comments Document

After the SRC returned from a two-hour break, SRC member Shawn Smallwood had integrated SRC thoughts into a single document. SRC members then edited the document, turning some remaining questions into statements, moving one set of paragraphs to a different section and streamlining wording in a few places. The following substantive comments were made during this discussion:

- One SRC member was concerned about wind companies putting power poles above ground. One of the projects had no mention of what they would do with existing power poles during repowering. It would be important to add language suggesting that in certain situations, this could be more hazardous than in other situations. The

original concept was not to put them across canyons or notches. Another noted that American kestrel fatality clusters might be correlated with the nearness of power poles. This species contributes strongly to the mortality estimates.

- An SRC member said it should be emphasized that, while SRC members have identified certain areas as highest risk areas, they have not identified every risky area.
- It was suggested that the language indicate that power poles be put underground in topographically risky situations to reduce perching.

The document, with these changes, is [P183 SRC Integrated Comments on NOP](#).

SRC members said they would think about additional references they could send to Smallwood to add to the document, which would need to be finalized for submittal on October 8. (No additional references were added and the document was submitted.)

Public Comment

Mike Boyd of CARE said he is concerned that the SRC won't continue its existence under the new process.

Status Update on Implementation of New Monitoring Program

Related Documents

[P180 SRC Comments on DIP](#)

Facilitator Mary Selkirk said there are three items to address under this topic, confirming SRC priorities for reallocating monitoring budget funding to studies; moving ahead on burrowing owl surveys; and an SRC recommendation on Contra Costa turbines.

One SRC member said it will be important to spend two hours or more on the burrowing owl study at the next meeting, perhaps at an upcoming conference call. Another SRC member agreed. While extremely important, the current study needs considerable work.

Monitoring Team Report

Doug Leslie of the Monitoring Team said this discussion will inform that topic. The Monitoring Team has integrated comments from the SRC at their July meeting into the Detailed Implementation Plan (DIP) for the new monitoring program that is being implemented in October. A new issue has arisen: NextEra may be on schedule to remove and repower all of its Contra Costa turbines this coming summer. The Future Monitoring Plan calls for selecting turbines for monitoring that are not expected to be removed. Because of this, the Monitoring Team removed the Contra Costa turbines from the Monitoring Plan. Three SRC members provided comments recently. One SRC member suggested that the Contra Costa turbines be included in monitoring, because no EIR for their repowering has yet been circulated or certified. If they are left out of monitoring, but NextEra ends up not removing them, the Monitoring Team would have a biased, incomplete sample. If they are included in monitoring, but NextEra does remove them midyear, a significant part of the sample would only exist for a portion of the year. However, the Team could legitimately extrapolate from its sample to the entire Altamont, except for annual variation and seasonal effects.

Issue: Whether to Keep Contra Costa Turbines in Monitoring

One SRC member was concerned that there is already so much variation, and that another element could be added if they are left in the monitoring plan.

Another SRC member said the Contra Costa turbines are a major part of the Altamont that would no longer be surveyed, and until the EIR is completed, the decision not to monitor them would be made based on word-of-mouth. The job is to monitor the Altamont Pass, not part of it.

Joan Stewart of NextEra clarified that the company plans to remove the Contra Costa turbines as soon as the EIR is certified, which is expected in the spring of 2011. The turbine removal, recontouring and repowering would all take place as one continual process. The plan would be to have all the turbines repowered by the end of 2011. A draft EIR is only a few weeks away. The EIR could conceivably be completed as soon as March.

Jesse Schwartz of the Monitoring Team said the turbines could be phased out of monitoring as their repowering became more certain. The question would be how to redistribute the sampling effort.

An SRC member said it wouldn't be necessary to redistribute the effort. It could be taken up in post-construction monitoring, so there would be no loss of monitoring.

Another SRC member said, if they are left in the sample, there would be at least a half year, and maybe more, of monitoring data from them.

Doug Leslie said post-repowering monitoring would use a different search interval and search radius, and would occur in a different geography, with different turbines. Also, a decision would be needed on fixed versus rotating monitoring.

One SRC member was concerned about the physical power of losing the turbines halfway through the process, and wonder what the effect would be. It seems cleaner not to include them in monitoring. There are pros and cons.

Two SRC members favored leaving the turbines in the sample and redistributing the effort to keep the power, as half of a bird year is better than none.

Another SRC member recognized the concern about the loss of sample size and the issue of partial years, but felt leaving the turbines in the sample would bring in important information. Once repowering occurs, there would be a temporary loss of sample size. After repowering, post-construction monitoring would be required.

An SRC member continued to be concerned that this would not provide the opportunity to create a more statistically stronger sample, with stronger assurance and less variability.

One possibility, an SRC member said, would be to add the Vasco Winds site to the sample.

Ultimately, four SRC members favored leaving the Contra Costa turbines in the monitoring sample.

New Monitoring Program Budget

Doug Leslie gave a verbal presentation on the monitoring budget. It would be at the same level. There would be a reduced sample size and reduction in carcass searches. The rough numbers for mortality searches, including direct costs for housing, vehicles, etc., would be \$300,000 for six months. The QAQC study would be \$100,000. The burrowing owl study would be \$55,000 to maintain the same full monitoring budget level.

He told the SRC that implementing the QAQC study is particularly difficult because it is a double blind study, so monitoring team members cannot be traded. There needs to be some staff flexibility. Therefore, a third study cannot be fixed or rigid. If there was a staff illness, there needs to be the flexibility to fill in for personnel.

Burrowing Owl Study

Doug Leslie described the burrowing owl study plan he has developed. It would involve looking at distribution and abundance by geography and habitat type. There would be burrow surveys based on a random stratified sampling scheme looking at the valley floor, low slopes, mid slopes and upper slopes. It would be similar to the carcass surveys, to give an indication of background mortality, and would be followed in the spring by intensive nesting surveys. Ground squirrel populations could also be mapped during the project.

One SRC member said the burrowing owl study needs to take place in the spring, when the birds are nesting.

Another SRC member said this study design is not the SRC's priority and does not address the behavioral mechanisms underlying the causes of mortality. The SRC was also thinking in the range of \$55,000 with its burrowing owl study design.

Another SRC member said the Monitoring Team needs to work with the SRC on this topic.

Another SRC member said he was intrigued by the burrowing owl study proposal, which is not unlike what the SRC had proposed. He also likes the distribution study.

Doug Leslie said the SRC will need to have a burrowing owl study or something to take its place. The Monitoring Team can implement the Contra Costa turbines proposal, but it will be challenging. They will implement the QAQC study in Alameda County only and keep the Contra Costa County search separate, and swap them in when the turbines are removed.

One SRC member favored moving forward with an expanded search radius study. He recalled that the SRC in July had favored this as part of the monitoring plan. Additional members agreed it was important.

Ariel Ambruster and Mary Selkirk of the facilitation team said the notes from the July meeting, while incorporating the SRC recommendation for a search radius study, did not reflect that the SRC recommended that the search radius study be implemented with the new monitoring plan at the beginning of the bird year.

The SRC agreed that the subcommittee of Julie Yee and Shawn Smallwood could meet with the Monitoring Team to discuss the search radius issue further, with the assumption that the \$55,000 could be used toward it.

Doug Leslie reported that he will revamp the Detailed Implementation Plan to add in the Contra Costa County turbines, and will include some of the Diablo Winds turbines within the current budget.

Wrap Up and Next Steps

Conference Call

Should an SRC conference call be needed, members identified the afternoon of October 5 as a possible date, pending one member's calendar check.

Next in-person meeting:

December 13-14, two full days

Tentative topics:

- Final Monitoring Report
- New monitoring implementation review
- Burrowing owl study
- Status report on new baseline

ATTENDEES

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